

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-8866-2022

Date of decision : January 09, 2023

Hardeep Singh

....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Sameer Bhatia, Advocate
for the petitioner.

Mr. Sehaj S. Aulakh, AAG., Punjab.

PANKAJ JAIN, J. (ORAL)

The petitioner has preferred present petition under Article 226/227 of the Constitution of India for issuance of writ in the nature of certiorari seeking quashing of the order dated 19.06.2017 (Annexure P-6) whereby the petitioner has been ordered to be dismissed from service. The only contention that has been raised by the petitioner is with respect to the non-consideration of 31 years of regular service of the petitioner for the purpose of his entitlement to pension.

Learned counsel for the petitioner at the outset submits that the matter would be covered in terms of the ratio of law laid down in **Surinder Singh Vs. State of Punjab and others** passed by this Court in **CWP-8505-2018** decided on **09.01.2023**.

fact.

I have heard learned counsel for the petitioner and have gone through the records of the case.

This Court while considering the issue of consideration of service in terms of Second Part of Rule 16.2 of Punjab Police Rules in **CWP-8505-2018** decided on 09.01.2023 held as under:-

“In order to decide upon the same it would be apposite to peruse Rule 16.2:

"16.2. Dismissal-(1) Dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service. In making such an award regard shall be had to the length of service of the offender and his claim to pension.

[(2) If the conduct of an enrolled police officer leads to his conviction on a criminal charge and he is sentenced to imprisonment, he shall be dismissed: Provided that a punishing authority may, in an exceptional case involving manifestly extenuating circumstances for reasons to be recorded and with the prior approval of the next higher authority impose any punishment other than that of dismissal:

Provided further that in case the conviction of an enrolled police officer is set aside in appeal or revision, the officer empowered to appoint him shall review his case keeping in view the instructions issued by the Government from time to time in this behalf.]

(3) When a police officer is convicted judicially and dismissed or dismissed as a result of a departmental enquiry, in consequence of corrupt practices, the conviction and dismissal and its cause shall be published in the Police Gazette. In other cases of dismissal when it is desired to ensure that the

officer dismissed shall not be re-employed elsewhere, a full descriptive roll, with particulars of the punishments, shall be sent for publication in the Police Gazette."

The import of the aforesaid provision is no more res integra and has been subject of continuous debate. In case of "SI Surinder Singh Vs. State of Punjab & ors" (supra) Division Bench of this Court held as under:-

"11. It is, thus, evident that on the one hand there is violation of mandatory provisions of Rule 16.2(1) of the Rules in more than one way and on the other hand there are binding directions issued by Hon'ble the Supreme Court permitting the petitioner to exercise option of seeking voluntary retirement from the CID Department on the rank he was working.

12. It is equally well settled that the administrative orders can be interfered with, once they are considered to be unreasonable, by invoking 'Wednesbury' principle. In a Seven Judges Bench judgment of Hon'ble the Supreme Court in the case of Rameshwar Prasad (VI) vs. Union of India, 2006 (2) SCC 1, a statement of Wednesbury principle has been made in para 242, which reads thus:

"242 The Wednesbury Associated Provincial Picture Houses Ltd. vs. Wednesbury Corpn., 1948(1) KB 223, principle is often understood to mean that any administrative decision which is regarded by the Court to be unreasonable must be struck down. The correct understanding of the Wednesbury principle is that a decision will be said to be unreasonable in the Wednesbury sense if (i) it is based on wholly irrelevant material or wholly irrelevant consideration, (ii) it has ignored a very relevant material which it should have taken into consideration, or (iii) it is so absurd that no sensible person could ever have reached it."

13. The case of the petitioner would be covered by the aforementioned

principle, inasmuch as, the disciplinary and punishing authority has ignored from consideration while passing the order of dismissal, the mandatory requirement of Rule 16.2(1) of the Rules. The petitioner has rendered meritorious service from 10.10.1970 to 16.3.1992 and, therefore, the order of dismissal would not be sustainable."

Orders passed by an authority has to be self-sustainable. No amount of reasoning can be added to support the conclusion. From the bare perusal of the impugned order State counsel could not point out any content which would lead to the satisfaction that the mandatory provision as contained in Rule 16.2 was put into service while recording order of punishment against the petitioner. Reference by the State counsel with respect to the part of the order to contend that the length of service was one of the considerations is not only fallacious but is mis-conceived and misplaced. Perusal of the part referred to the counsel for the petitioner it can be safely inferred that the authority was of the opinion that keeping in view the length of the service it cannot be said that the petitioner was not conscious of the rules, the length of the service was not taken into considerations in terms of the Rule 16.2 of the Punjab Police Rules."

In view of the aforesaid fact and the ratio of law laid down by the Division Bench in the case of **"Dhan Singh Vs. State of Haryana and others"**, reported as **2009(1) RSJ 62** **"SI Surinder Singh Vs. State of Punjab and others"** **2008(4) RSJ 613** and **"State of Haryana and others Vs. Jai Dev"**, reported as **2012(4) RSJ 194** the present writ petition is allowed and the impugned order dated 19.6.2017 (Annexure P-6) whereby services of the petitioner have been dismissed and orders subsequent thereto are set aside. The authority is directed to

consider the length of service rendered by the petitioner and his claim to pension on the basis thereof. Let fresh order be passed within a period of three months from the date of receipt of certified copy of this order. However, order of reinstatement shall remain in abeyance till fresh order is passed and shall depend upon the outcome of such reconsideration at the hands of competent authority.

January 09, 2023
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(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No