

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

**CWP No.10565 of 2019
Date of decision : 16.01.2023**

Lakhbir Singh

....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. R.K. Arya, Advocate
for the petitioner.

Mr. Inderpreet S. Kang, Asstt. Advocate General, Punjab.

PANKAJ JAIN, J.

The instant writ petition has been filed under Article 226/227 of the Constitution of India seeking writ in the nature of certiorari for quashing the order dated 28th of May, 2013 passed by respondent No.5 whereby the services of the petitioner were ordered to be dismissed. The subsequent orders passed affirming the same are also under challenge.

2. As per the facts pleaded in the writ petition, the petitioner joined as Constable with the respondents in the year 1989 and subsequently was promoted as Head Constable in the year 2005. An FIR No.105 dated 11th of October, 2022 was got registered against the petitioner and his brother w.r.t. allegation of cheating one Mohan Singh and other co-sharers by dishonestly and fraudulently executing sale deed *qua* 2 Kanal 15 Marla of land by misrepresenting that such property fell to the share of their

deceased father (Jarnail Singh). In the said FIR, petitioner stands convicted. After conviction in the criminal proceedings, show cause notice was issued to the petitioner by the punishing authority. The petitioner filed reply to the said show cause notice. Vide impugned order, the punishing authority dismissed the petitioner from services invoking Rule 16.2 (2) of the Punjab Police Rules. The said order was taken in appeal by the petitioner, which stands rejected by respondent No.4 vide order dated 10th of October, 2013 placed on record at Annexure P-3. The revision preferred against aforesaid orders dated 28th of May, 2013 and 10th of October, 2013 also stands dismissed by the Revisional Authority vide Annexure P-4.

3. Ld. Counsel for the petitioner contends that the petitioner has more than 23 years of unblemished service to his credit. The allegations of cheating are false. The same relates to the domestic litigation in which the petitioner has been falsely roped in. He further submits that the punishing authority while passing the dismissal order has not considered the reply submitted by the petitioner. Counsel further asserts that even the revisional authority dismissed the revision preferred by the petitioner without affording an opportunity of personal hearing which is not permissible as per law. He thus, submits that the impugned order is merely based upon conviction in a criminal proceeding and the same having been passed without giving any opportunity of hearing to the petitioner, cannot be sustained in the eyes of law. Reliance has been placed upon the law laid down by Supreme Court in **Union of India vs. Tulsiram Patel, (1985) 3**

SCC 398.

4. Per contra, State Counsel submits the impugned order of dismissal issued against the petitioner is in consonance with the Rules. The petitioner having convicted in criminal proceedings is liable to be dismissed from services as per the provisions of Rule 16.2(2) of the Rule.

5. I have heard counsel for the parties and have gone through the records of the case.

6. It will be apposite to peruse Rule 16.2 of the Punjab Police Rules, which reads as under :-

“**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*.”

(emphasis supplied)

7. Admittedly, the petitioner was served with show cause notice before punishment of dismissal was passed. He submitted reply to the same. It is also admitted that before passing impugned order reply of the petitioner has been considered and opportunity of personal hearing has also been afforded to him by the authority. The petitioner was an enrolled police personnel. He was convicted and sentenced under the criminal charge. Thus, in light of provisions contained in Rule 16.2(2), no fault can be found with the impugned order dismissing the services of the petitioner. The law laid down in **Tulsi Ram's case (supra)** does not rescue the case of the petitioner. The petitioner has never been acquitted of the charges levelled against him in the criminal proceedings and remains a convict. Thus, this Court is satisfied that the punishing authority in its discretion has rightly considered the Rules and passed the impugned order dismissing the petitioner from services.

8. In view of the aforesaid facts, no fault can be found with the

impugned order. Resultantly, the writ petition is ordered to be dismissed.

January 16, 2023
Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No