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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-3676-2017 (O&M)
Date of decision : 13.03.2023

Gurpreet Singh

....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. K.G. Chaudhary, Advocate with
Ms. Sakshi Singh, Advocate
for the petitioner.

Mr. I.P.S. Kang, A.A.G., Punjab.

PANKAJ JAIN, J. (ORAL)

CM-1612-CWP-2020

This is an application for permission to file replication to the written statement filed by the respondents and to place it on record.

For the grounds mentioned therein, the same is allowed. Replication is taken on record.

CWP-3676-2017

By way of present writ petition, the petitioner prays for issuance of a writ in the nature of certiorari impugning the order dated 08.03.2013, whereby the petitioner has been awarded punishment of forfeiture of two year's approved service on permanent basis and further orders affirming the same in appeal.

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The petitioner who was working as Head Constable in CID (Intelligence wing) of Punjab Police was proceeded departmentally for having misused his position in procuring call detail records of a lady, who he is stated to be related to. In the inquiry, the petitioner was held guilty and was, thus, saddled with the punishment as stated hereinabove.

Mr. Chaudhary, submits that since it was a pseudonymous/anonymous complaint, the same ought to have been dealt with in accordance with instructions dated 07.11.2007 issued under the orders of Additional Director General of Police, Intelligence, Punjab. Since in the present case, identity of the complainant was never ascertained, the proceedings initiated against the petitioner are *per se* in the teeth of the said instructions and, thus, needs to be quashed. He further submits that as per the bare provision contained in Rule 16.5, authority imposing the punishment was required to specify the period for which the service has been forfeited. The impugned order imposing punishment being not in conformity with the Rules, deserves to be quashed. Reliance is being placed upon judgment passed by Himachal Pradesh High Court in the case of **'Bhupinder Singh Vs. State of Himachal Pradesh and others, Volume I, SLR Page 245'**. In the alternate, he submits that the forfeiture of two years service cannot have an effect of taking away the said service even for the purpose of qualifying service for pensionary purposes.

Mr. Kang, appearing for the State submits that since the matter related to breach of privacy of a woman, no fault can be found with the action of the respondents in not ascertaining the complainant.

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Moreover, the said instructions cannot have an effect of rendering the inquiry proceedings and the consequential order of punishment illegal. He further submits that in view of the fact that the order of punishment is specific and that the forfeiture is permanent, there was no requirement of specifying the period for which it has been forfeited.

I have heard learned counsel for the parties and gone through the record. There is no serious dispute with respect to the facts of the present case being matter of record.

In the considered opinion of this Court, Mr. Kang, is right in contending that since the matter related to breach of privacy of a woman, the authorities were correct in not ascertaining the identity of the complainant. Apart from that, the issue with respect to inter play between instructions and the statutory rules, is no more *res integra*. Where detailed procedure has been prescribed under the Rules itself, the instructions can be utilized only to fill up the gaps but the same cannot have an effect on rendering the inquiry proceedings illegally. So far as the alleged infirmity in the punishment order is concerned, it will be apposite to peruse Rule 16.5 of Punjab Police Rules, 1934 which reads as under:-

> **16.5 Stoppage of increments- or Forfeiture of approved service for increment. -**
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> The increment of a police officer on a time-scale may be withheld as a punishment. The order must state definitely the period for which the increment is withheld, and whether the postponement shall have the effect of postponing future increments. The detailed orders regarding the grant and stoppage of increments are contained in rule 13.2.

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(2) Approved service for increment may be forfeited, either temporarily or permanently, and such forfeiture may entail the deferment of an increment or increments or a reduction in pay. The order must state whether the forfeiture of approved service is to be permanent; or, if not, the period for which it has been forfeited.

(3) Reinstatement on the expiry of a period fixed under sub-rule (1) or (2) above shall be conditional upon good conduct in the interval, but, if it is desired under this rule not to reinstated an officer, a separate order shall be recorded after the officer concerned has been given opportunity to show cause why his reinstatement should not be deferred, and the period for which such order shall have effect, shall be stated. Rules regarding the method of recording punishments under this rule in seniority rolls are contained in Chapter X.

The order passed against the petitioner is forfeiture of approved service for increment i.e. the same has been passed under Rule 16.5(2). A bare perusal thereof would reveal that the authority is under obligation to specify the period for which the service has been forfeited only when the approved service is not forfeited permanently. In the present case, since the forfeiture is permanent, there was no requirement for the authority to specify the period. Word 'permanent' itself is indicative of period. Resultantly, the argument raised by the counsel for the petitioner sans merit and is hereby rejected. So far as alternate plea is concerned, definitely punishment has to be as per the rule only.

In view of the aforesaid, the present writ petition is disposed of accordingly.

13.03.2023 **(PANKAJ JAIN)**
ps-I **JUDGE**

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

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