

CWP-17084-2023

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2024:PHHC:011121

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-17084-2023

Date of Decision:29.01.2024

JOHN GEORGE

..... Petitioner

Versus

STATE OF PUNJAB AND OTHERS

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Atul Kaushik, Advocate
for the petitioner.

Mr. Inderpreet Singh Kang, AAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 04.05.2015 (Annexure P-4) whereby petitioner was dismissed from service and order dated 25.09.2020 (Annexure P-5) whereby appeal of the petitioner was dismissed.

2. The petitioner joined respondent as Constable on 15.09.1989. The petitioner in April' 2006 was temporarily posted as Cashier with Welfare Branch, Central Police Office, Punjab Police Headquarter, Sector 9, Chandigarh. An FIR No.50 dated 14.04.2006, under Sections 409 and 420 of IPC came to be registered against the petitioner alleging non-deposit of cash in the appropriate account. The petitioner was arrested on 12.06.2006 and thereafter released on bail vide order dated 23.05.2006. The petitioner was suspended on 14.04.2006 and reinstated on 28.07.2006. The department initiated proceedings against

the petitioner in 2006. A show cause notice dated 28.05.2007 proposing punishment of dismissal from service was issued which was followed by show cause notice dated 09.10.2009 wherein punishment of stoppage of one increment with cumulative effect was proposed. The Commandant, P.A.P., Chandigarh vide order dated 15.10.2009 (Annexure P-3) imposed punishment of stoppage of one increment with cumulative effect. The Trial Court vide judgment dated 18.07.2014 found the petitioner guilty in the aforesaid FIR and he was awarded sentence of 2 years alongwith fine. The petitioner preferred an appeal and Appellate Court vide order dated 29.07.2017 released the petitioner on probation. After conviction order dated 18.07.2014, the respondent vide order dated 04.05.2015 (Annexure P-4) dismissed the petitioner from service. The petitioner preferred an appeal which came to be dismissed vide order dated 23.03.2018 passed by Deputy General of Police, Armed Battalion, Jalandhar. The petitioner preferred further appeal/representation which was dismissed vide order dated 25.09.2020 (Annexure P-5) passed by Director General.

3. Learned counsel for the petitioner submits that after dismissal of representation by the Office of DGP, the petitioner approached Government. The petitioner was subjected to punishment of forfeiture of 1 year service with cumulative effect in 2009, thus, after conviction he could not be subjected to harsh punishment of dismissal from service. It amounts to double jeopardy on the part of respondent. The respondent has no right to pass two punishment orders with respect to same offence. The respondent has further passed dismissal order without compliance of mandate of Article 311 (2) of the Constitution of India.

4. Notice of motion.

5. Mr. Inderpreet Singh Kang, AAG, Punjab accepts notice on behalf of the respondents-State.

6. With the consent of both sides, the matter is taken up for final disposal.

7. Learned State counsel submits that keeping in view nature of offence the requirement of inquiry as contemplated by Article 311(2) was dispensed with. The petitioner was subjected to punishment of dismissal because he was convicted by Trial Court. On being asked, he expressed his inability to controvert the fact that petitioner for the same offence has been subjected to two departmental punishments.

8. The petitioner was concededly subjected to punishment of forfeiture of 1 year approved service vide order dated 15.10.2009. The said order was never recalled. The petitioner was suspended vide order dated 14.04.2006 and he was reinstated vide order dated 28.07.2006. The petitioner was subjected to punishment of dismissal from service after conviction by Trial Court. The Appellate Court has released the petitioner on probation.

9. The petitioner cannot claim that he has been acquitted because he has been released on probation, however, respondent for same offence could not subject him to two independent departmental punishments. The petitioner was subjected to punishment of forfeiture of 1 year approved service as soon as alleged offence came in the knowledge of the respondent. The said punishment was never recalled. The petitioner second time was subjected to punishment of dismissal from service after judgment of conviction passed by Trial Court. The

respondent has failed to show any provision of Punjab Police Service Rules which permits initiation of second departmental proceeding especially when first proceeding has not been dropped. The second proceeding which was initiated after 9 years from the alleged offence could not be concluded without compliance of mandate of Article 311 (2) of the Constitution of India. The respondent has failed to advance any plausible reason for dispensing with mandate of Article 311 (2) of the Constitution of India. The respondent has invoked second proviso to Clause (2) of Article 311 of the Constitution of India in a mechanical manner which is impermissible in view of judgment of Constitution Bench in ‘*Union of India and another Vs. Tulsi Ram Patel*’ 1985 3 SCC 398.

10. In the wake of above discussion and findings, the present petition deserves to be allowed and accordingly allowed. The impugned order dated 04.05.2015 (Annexure P-4) and order dated 25.09.2020 (Annexure P-5) are hereby set aside.

11. It is made clear that petitioner would not be entitled to salary for the past period on the principle of no work no pay, though, he would be entitled to other service benefits.

(JAGMOHAN BANSAL)

JUDGE

29.01.2024

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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No