

2024:PHHC:058500-DB

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

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LPA-991-2024 (O & M)
Date of Decision: 29.04.2024

Union Territory of Chandigarh and others

.....Appellant(s)

Versus

Karamjit Kaur

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA,
ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE LAPITA BANERJI**

Present: Mr. Lokesh Chander Aggarwal, Sr. Panel Counsel,
for the appellants.

Ms. Divya Sharma, Advocate,
for the caveator-respondent.

G.S.SANDHAWALIA, ACTING CHIEF JUSTICE (Oral)

CM-2399-LPA-2024

1. Application for condonation of delay of 62 days in filing the appeal is allowed, in view of averments made in the application supported by affidavit of the official of the appellant-U.T, Chandigarh.
2. Delay condoned.
3. CM stands disposed of.

LPA-991-2024 (O & M)

4. In the present appeal, the appellant-U.T. Administration has sought to challenge the decision dated 05.01.2024 of the learned Single Judge passed in CWP-37947-2018, Karamjit Kaur vs. U.T., Chandigarh and others vide which the writ petition of the respondent-writ petitioner was allowed and the order dated 13.07.2018 (Annexure P-3) was quashed. Resultantly, the respondent-writ

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petitioner was directed to be reinstated in service forthwith in continuity and entitled to all consequential benefits except for the financial benefits prior to the date of acquittal i.e. 20.10.2018 in the FIR which was registered against her. The learned Single Judge primarily relied upon the judgment passed by the co-ordinate Bench in ***Didar Singh vs. U.T., Chandigarh and others, 2020 (3) PLR 31***. It is brought to the notice of this Court that we have already upheld the said decision in ***LPA-1193-2011, U.T., Chandigarh and others vs. Didar Singh*** on 07.02.2024.

5. The reasoning which had prevailed with us was that the discharge from the post of Home Guard due to the wrong absence from duties without any leave/intimation was without giving the employee opportunity of defending himself and it was violative of the principles of natural justice. We had fallen back on Rule 27 of the Punjab Home Guard Rules, 1963 (in short 'the 1963 Rules') to uphold the order of the learned Single Judge. We had also noticed that in the said case, there was 16 years of service. In the present case, the service is 22 years.

6. The factum that the absence was on account of an involvement in matrimonial dispute of the son of the writ petitioner has also been discussed by the learned Single Judge. It was, thus, on that account the writ petitioner could not apparently join her duties from 11.11.2017 to 04.06.2018. She apparently remained in custody from 05.02.2018 to 30.04.2018. Had she been given any opportunity as such, she would have put forth her case, as such. Apparently, after being released on bail, the writ petitioner wished to join her duties as Home Guard, Volunteer but she was not allowed to do so and she had also filed a representation dated 24.05.2018 (Annexure P-2) and instead of acting on the same, the order of discharge was passed by the District Commandant, Home Guard, U.T.

7. A perusal of her representation would also go on to show that the writ

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petitioner was candid enough to give the details of the criminal proceedings as such and, therefore, at the time of passing of the discharge order, the punishing authority was well aware of the background which has led to the absence as such. However, apparently without holding any inquiry, the extreme order of punishment was passed by discharging the writ petitioner without keeping in mind the long years of service of 22 years which she had put in. We have already earlier relied upon the judgment in ***Davinder Singh and others vs. State of Punjab, (2010) 13 SCC 88*** wherein, in similar circumstances, the Home Guards were terminated on account of the acts of indiscipline committed at Amritsar Railway Station while travelling in connection with election duty. We have also noticed the judgment of the Apex Court in ***Grah Rakshak, Home Guards Welfare Association vs. State of H.P. and others, (2015) 6 SCC 247*** that the Home Guards as such had been directed to be paid duty allowances at such rates, total of which 30 days (a month) to come to minimum of the pay, to which the police personnel were entitled and the State Governments were directed to pass appropriate orders.

8. In such circumstances, we are of the considered opinion that the argument which is now sought to be raised and not raised earlier that the 1963 Rules have not been adopted by U.T. is without any justification. The defence as such taken in the reply was that the order dated 13.07.2018 was passed by exercising powers vested under Section 14.4 of the Compendium of Instructions issued by the Directorate General Civil Defence, MHA, Government of India, New Delhi. No such defence was taken that the Rules would not be applicable which would give the vested right as such of being heard before the impugned order was passed.

9. Even otherwise, we are of the considered opinion that it was for the State as such to act on the representation before dispensing with 22 years of

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service after giving opportunity of hearing to the writ petitioner and the same having not been done, the principles of natural justice had been violated and the order as such cannot be sustained. State is supposed to be a model employer and not a draconian one. In such circumstances, we do not find any valid reason to interfere in the order of the learned Single Judge. We are further of the considered opinion that the matter squarely stands covered.

10. The argument raised that during the pendency of the writ petition, a Committee was constituted of similarly situated persons and even the case of the writ petitioner was considered in which the pendency of the writ petition was also noticed, would go on to show that it was noticed that the writ petitioner has been acquitted of the charges framed against her under Sections 406, 498-A IPC in FIR No.116 dated 23.07.2013, P.S. City Kharar, by giving her the benefit of doubt. The said order also, thus, being of the Committee is not sustainable as apparently perusal of the order of the criminal Court would go on to show that the writ petitioner was tried alongwith her son and after examining the evidence in detail of the prosecution witnesses, the trial Court on 20.10.2018 (Annexure P-1) came to the conclusion that any gifts given to the bride-groom or his parents, whether in accordance with any custom or otherwise at the time of marriage, do not constitute an offence under Section 406 IPC as they would not constitute part of her *Istri Dhan*. Therefore, the articles gifted as such did not amount to any demand made by the accused persons and, therefore, offence under Section 406 IPC was not made out. Similarly, finding recorded under Section 498-A is that there is no specific date and incident had been given and only vague statements of the complainant as such had been made and there is no evidence that the complainant was ever beaten up by the accused on the pretext of demand of dowry. Thus, the acquittal apparently is on merits and only on account of the niceties of legal

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terminology as such that the words have been used that prosecution has not been able to prove the case beyond reasonable doubt. Apparently, the said judgment was not even examined in detail by the Committee and, therefore, the argument which has now been raised that the Committee had given post decisional hearing was not approved of by the learned Single Judge while relying upon the judgment of the Apex Court in *K.I. Shephard vs. UOI, (1987) 4 SCC 431*. The said finding is well justified since the Committee having not looked into the judgment of acquittal in detail, the order passed by the Committee regarding the case of the writ petitioner also cannot be sustained, in the peculiar facts and circumstances.

11. Resultantly, finding no merit in the present appeal, the same stands dismissed. Pending applications, if any, also stand dismissed accordingly.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

29.04.2024
shivani

(LAPITA BANERJI)
JUDGE

Whether reasoned/speaking	Yes
Whether reportable	No