

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

210

CWP-21796-2020
Date of Decision: 09.02.2024

Amarjit Singh ...Petitioner

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Anupam Bhardwaj, Advocate for the petitioner
Mr. Deepanjay Sharma, Deputy Advocate General, 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 16.10.2020 (Annexure P-3) whereby he has been dismissed from service.
2. The petitioner joined Punjab Police as Constable. The petitioner came to be implicated in FIR No.78 dated 21.05.2003 under Sections 406 & 498-A of Indian Penal Code, 1860 (for short 'IPC') registered at Police Station Tapa, District Barnala. The petitioner along with his parents faced criminal trial and he was convicted vide judgment dated 03.02.2010 passed by Judicial Magistrate, 1st Class, Barnala. He was awarded sentence of two years imprisonment besides fine of ₹1,500/-. The petitioner preferred an appeal before the Appellate Court which came up for consideration before Additional Sessions Judge, Barnala, who vide judgment dated 15.07.2020 dismissed the same. The petitioner unsuccessfully preferred criminal revision before this

Court. The revision was dismissed on 02.08.2010 and respondent-department dismissed the petitioner from service on 24.10.2010. The petitioner approached this Court by way of CWP No.12035 of 2016 seeking setting aside of his dismissal. This Court vide order dated 14.02.2020 set aside order of dismissal and directed Senior Superintendent of Police, Bathinda to pass a fresh order within four months from the date of receipt of certified copy of said order. The reinstatement of petitioner was kept in abeyance till fresh consideration by disciplinary authority. The relevant extracts of order dated 14.02.2020 read as:

“An examination of the above reproduced reasoning given by respondent No.5 shows that the order is based simply on the guidelines. No reference has been made to the conduct leading to the conviction of the petitioner. Not only this even the appellate, revisional and other higher authorities have passed the orders relying on the guidelines. This is despite the fact that the guidelines, Annexure P-5 had been initially stayed in the year 2011 and subsequently part of guidelines came to be quashed by this Court on 28.02.2013, Annexure P-16 by observing as under:-

“We, therefore, set aside sub-paras (ii) and (iii) of Para-1 of the impugned guidelines in the present form, however, giving liberty to the respondents, at the same time, to take out fresh guidelines in the modified form taking care of the law stated in this judgment.”

It, therefore, was obligatory on the authorities to have taken into consideration the fact that the guidelines which formed the basis of the order dismissing the petitioner from service did not withstand the judicial scrutiny. As such the dismissal order passed by the authorities deserved to be reconsidered. In view of the fact that the respondent authorities have ignored the orders of this Court, the Court is left with no

option but to set aside the impugned orders and remit the matter to the disciplinary authority to relook into the entire matter and pass a fresh order.

Accordingly, the impugned orders Annexures P-7, P-8 to P10 and P-15 are hereby quashed. The disciplinary authority, Senior Superintendent of Police, Bathinda- respondent No.5 is directed to examine the matter afresh and pass a speaking order in accordance with law within a period of 4 months from the date of receipt of certified copy of this order. However, order of re-instatement of the petitioner shall be kept in abeyance till fresh consideration by the disciplinary authority respondent No.5 and would depend upon the outcome of the same.

Writ petition is disposed of in the above terms.”

3. The disciplinary authority by impugned order dated 16.10.2020 (Annexure P-3) has rejected claim of the petitioner and approved his dismissal.

4. Mr. Anupam Bhardwaj, Advocate submits that petitioner was not guilty of gravest misconduct or habitual offender, thus, he could not be dismissed from service. As per Rule 16.2 of the Punjab Police Rules, 1934 (for short ‘1934 Rules’) a police officer may be dismissed from service if he is guilty of gravest misconduct or cumulative effect of misconduct of the officer amounts to incorrigibility and complete unfitness for police service. The petitioner was convicted under Section 498-A of IPC. The said offence had no bearing with his official duties. There was no dereliction of duty on the part of petitioner and he has not been dismissed on account of gravest misconduct or continued misconduct. The dispute was purely a matrimonial

dispute and an officer cannot be deprived from his livelihood on account of conviction in a matrimonial matter.

In support of his contention, learned counsel for the petitioner relies upon judgment dated 03.07.2019 (Annexure P-4) of this Court in ***Navjit Singh v. State of Punjab and others, CWP No.8877 of 2015.***

5. *Per contra*, learned State counsel submits that petitioner was a police officer and he was governed by 1934 Rules which are in the form of a complete Code. The judgments relating to officials other than officials of Armed Forces cannot be relied upon. The petitioner is relying upon judgment of this Court in ***Navjit Singh (supra)*** which relates to an employee of Punjab State Power Corporation who was not governed by 1934 Rules. Sub-Rule (2) of Rule 16.2 of 1934 Rules categorically provides that if an officer is convicted, he is liable to be dismissed. There is no discretion with the authorities to retain an officer who has been convicted and sentenced to imprisonment on a criminal charge.

6. I have heard the arguments of learned counsels for both sides and perused the record with their able assistance.

7. The entire case revolves around Rule 16.2 of 1934 Rules, which is reproduced as below:-

“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.”

8. The question of interpretation of Rule 16.2 of 1934 Rules came up before the Apex Court in ***State of Punjab v. Ram Singh, (1992) 4 SCC 54*** wherein it has been held that an officer may be dismissed in two situations i.e. on account of gravest misconduct or cumulative effect of continued misconduct. The relevant extracts of the said judgment read as:

“7. Rule 16.2(1) consists of two parts. The first part is referable to gravest acts of misconduct which entails awarding an order of dismissal. Undoubtedly there is distinction between gravest misconduct and grave misconduct. Before awarding an order of dismissal it shall be mandatory that dismissal order should be made only when there are gravest acts of

misconduct, since it impinges upon the pensionary rights of the delinquent after putting long length of service. As stated the first part relates to gravest acts of misconduct. Under General Clauses Act singular includes plural, "act" includes acts. The contention that there must be plurality of acts of misconduct to award dismissal is fastidious. The word "acts" would include singular "act" as well. It is not the repetition of the acts complained of but its quality, insidious effect and gravity of situation that ensues from the offending 'act'. The colour of the gravest act must be gathered from the surrounding or attending circumstances. Take for instance the delinquent who put in 29 years of continuous length of service and had unblemished record; in thirtieth year he commits defalcation of public money or fabricates false records to conceal misappropriation. He only committed once. Does it mean that he should not be inflicted with the punishment of dismissal but be allowed to continue in service for that year to enable him to get his full pension. The answer is obviously no. Therefore, a single act of corruption is sufficient to award an order of dismissal under the rule as gravest act of misconduct.

8. *The second part of the rule connotes the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service and that the length of service of the offender and his claim for pension should be taken into account in an appropriate case. The contention that both parts must be read together appears to us to be illogical. Second part is referable to a misconduct minor in character which does not by itself warrant an order of dismissal but due to continued acts of misconduct would have insidious cumulative effect on service morale and may be a ground to take lenient view of giving an opportunity to reform. Despite giving such opportunities if the delinquent officer proved to be incorrigible and found completely unfit to remain in service then to maintain discipline in the service, instead of dismissing the delinquent officer, a lesser punishment of compulsory retirement or demotion to a lower grade or rank or removal*

from service without affecting his future chances of re-employment, if any, may meet the ends of justice. Take for instance the delinquent officer who is habitually absent from duty when required. Despite giving an opportunity to reform himself he continues to remain absent from duty off and on. He proved himself to be incorrigible and thereby unfit to continue in service. Therefore, taking into account his long length of service and his claim for pension he may be compulsorily retired from service so as to enable him to earn proportionate pension. The second part of the rule operates in that area. It may also be made clear that the very order of dismissal from service for gravest misconduct may entail forfeiture of all pensionary benefits. Therefore, the word 'or' cannot be read as "and". It must be disjunctive and independent. The common link that connects both clauses is "the gravest act/acts of misconduct".

9. A conspectus of Rule 16.2(1) of 1934 Rules and perusal of afore-cited judgment reveals that a police officer may be dismissed from service subject to following circumstances and conditions:

- i. If the police officer is accused of gravest misconduct; or
- ii. The cumulative effect of continued misconduct proves that police officer is incorrigible and completely unfit for the service; or
- iii. The authority passing order shall consider length of service as well as claim of pension.

10. The entire case of the petitioner is founded upon reading of Sub-Rule (1) of Rule 16.2. The case of the petitioner is not covered by Sub-Rule (1) whereas it falls within four corners of Sub-Rule (2) of said Rule. Sub-Rule (1) is a general rule which permits authorities to dismiss an officer on the

occurrence of an event as contemplated therein. The said Rule is an open ended rule. It is a discretionary provision and discretion is always subject to judicial review. An officer may or may not be guilty of gravest misconduct. It is always subject to judicial review to ascertain whether the officer is guilty of gravest misconduct or not. The question whether an officer is guilty of cumulative effect of misconduct proving incorrigibility and complete unfitness is also a question of fact and has always remained subject matter of judicial review. Sub-Rule (2) carves out an exception to Sub-Rule (1) and in a way it is a proviso to Sub-Rule (1) which leaves no discretion with authorities and enjoins that an officer shall be liable to be dismissed if he has been convicted and sentenced to imprisonment on a criminal charge.

11. The expressions used in Sub-Rule (2) needs to be noticed. The legislature has used expression '*shall*' which indicates there is no discretion with authorities in case of conviction. Expression '*criminal charge*' is preceded by expression '*on a*' which means that nature of charge is irrelevant. The officer may be guilty of an offence either committed in the discharge of duty or having no bearing with his official duties. In every case, where an officer is convicted and sentenced to imprisonment on a criminal charge, he is liable to be dismissed. The proviso to said sub-rule is also important to be noticed. The proviso provides that if conviction is set aside in appeal or revision, the appointing authority shall review the case keeping in view the instructions issued by the Government.

12. It would also be relevant to notice Rule 16.3 of 1934 Rules. It provides that if a police officer is acquitted by criminal Court, he shall not be punished departmentally on the same charge or on a different charge upon the

evidence cited in the criminal case. Rules 16.3 of 1934 Rules is reproduced as below:

“16.3. Action following on a judicial acquittal. –

(1) When a Police Officer has been tried and acquitted by a criminal court he shall be not be punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal case, whether actually led or not, unless –

*(a) the criminal charge has failed on technical grounds;
or*

(b) in the opinion of the Court or of the Superintendent of Police, the prosecution witnesses have been won over; or

(c) the Court has held in its judgment that an offence was actually committed and that suspicion rests upon the police officer concerned; or

*(d) the evidence cited in the criminal case discloses facts unconnected with the charge before the court which justify departmental proceedings on a different charge;
or*

(e) additional evidence admissible under rule 16.25(1) in departmental proceedings is available.

(2) Departmental proceedings admissible under sub-rule (1) may be instituted against Lower Subordinates by the order of the Superintendent of Police but may be taken against Upper Subordinates only with the sanction of Deputy Inspector General of Police, and a police officer against whom such action is admissible shall not be deemed to have been honorably acquitted for the purpose of rule 7.3 of the Civil Services Rules (Punjab), Volume I, Part I.”

13. The acquittal from criminal proceedings does not automatically entitle immunity from departmental action. A police officer may be subjected to departmental punishment despite acquittal in criminal proceedings as per

exceptions carved out in Rule 16.3 of 1934 Rules. If acquittal is not based upon exceptions carved out in Rule 16.3 of 1934 Rules, a police officer is entitled to immunity from departmental action.

14. In the case in hand, the petitioner was concededly convicted and sentenced to imprisonment of 2 years by the Trial Court. The petitioner unsuccessfully preferred an appeal followed by revision before this Court. The petitioner was not dismissed from service at the first instance whereas he was dismissed from service after dismissal of revision by this Court.

15. In the wake of mandate of Sub-Rule (2) of Rule 16.2 of Punjab Police Rules, 1934, this Court does not find any infirmity in the impugned order and cannot ask the authorities to reinstate the petitioner. Nevertheless, despite mandate of aforesaid Rule, in view of reinstatement of similarly situated employees, as claimed by the petitioner, the respondent-department in exercise of its nectarean grace may re-consider case of the petitioner.

16. Disposed of in above terms.

(JAGMOHAN BANSAL)
JUDGE

09.02.2024
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>