IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-24511-2017 (O & M)
Date of Decision: 30.07.2025

Constable Sahab Singh .....Petitioner(s)

Versus

State of Haryana and others ....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. R.K. Malik, Sr. Advocate,
with Mr. Sandeep Dhull, Advocate,
for the petitioner.

Mr. Shashank Bhandari, Addl. A.G., Haryana.

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JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Article 226 of the Constitution of India is seeking setting aside of order dated 17.12.2019 whereby DGP has recalled his order dated 06.04.2017 and dismissed him from service.

2. The petitioner joined Haryana Police Force as Constable on 11.11.1991. He remained absent from duty on 6 different occasions. After conducting regular inquiry, he came to be dismissed from service vide order dated 19.01.2005. He preferred an appeal which came to be dismissed on 30.11.2005. He unsuccessfully preferred revision before DGP. He filed CWP-10860-2012 before this Court seeking setting aside of orders passed by authorities whereby he was dismissed from service. The matter came up for consideration before learned Single Judge of this court who vide detailed order dated 30.05.2012 dismissed said petition. The petitioner

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preferred intra court appeal which came up for consideration before Division Bench of this Court. The said appeal came to be dismissed vide order dated 12.03.2013. The petitioner after dismissal of LPA, approached State Government seeking setting aside of orders passed by Authorities. The Additional Chief Secretary to Government, Haryana vide order dated 21.12.2016 remanded the matter to DGP to review the matter. In the light of directions of Additional Chief Secretary, DGP reconsidered the matter and vide order dated 06.04.2017 substituted the punishment of dismissal from service for stoppage of 5 annual increments with permanent effect. The relevant extracts of order dated 06.04.2017 read as:-

> *"This order is being passed in compliance of Additional Chief Secretary to Govt. Haryana Home Department's Memo No. 8/33/2010-6HGI dated 21.12.2016. vide which mercy petitioner of Ex. Constable Sahib Singh No. 842/Jind has been received with the following observations:-*
>
> > ***"..... The case of Ex. Constable Sahib Singh No. 842/Jind is remanded to review the matter in view of the medical certificates submitted by him....."***
>
> *Brief facts of this case are that the revisionists remained absent from duty for a total period of 282 days on six different occasions without any leave or permission of the competent authority. For this misconduct, a regular departmental enquiry was conducted against him and he was found guilty of the charges levelled against him by the enquiry officer. Consequently, the Punishing authority awarded him punishment of dismissal from service vide order dated 19.1.2005. The appeal submitted by him was rejected by the appellate authority vide order dated*

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30.11.2015. The revision submitted by him was also considered and rejected by this office vide order dated 15.8.2006.

In compliance of the above order of Additional Chief Secretary to Govt. Haryana, Home Department, the petitioner has been called for personal hearing on 06.04.2017. The petitioner is present before the undersigned. I have heard him. He has been dismissed from service for a period of 282 days absence on six different occasions. He states that he was genuinely sick and the leave requested by him was not granted by the competent authorities. I have perused his medical record. I have also perused his service record. He has not been given any major punishment before the instate punishment. I am of the opinion that the punishment of dismissal from service for 282 days absence is not justified. The order of dismissal is set aside. Taking lenient view, the punishment is reduced to that of stoppage of five annual increments with permanent effect. The period he remained absent from duty or out of service is decided and the leave of kind due is sanctioned. However, he shall not be paid anything for the period he remained out of service on the principle of 'no work no pay'.

This order is issued today under my seal. Copy of this order is handed over to the petitioner by hand today in my presence."

3. The petitioner after his reinstatement started raising claim of back wages and increments. He preferred instant petition before this Court seeking direction to respondents to regularize his absence/dismissal period.

4. During the pendency of instant petition, the respondent came to know that petitioner on the earlier occasion had filed writ petition as well as LPA which was dismissed. The DGP by impugned order dated

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17.12.2019 recalled his previous order dated 06.04.2017 whereby earlier orders were reviewed. The relevant extracts of order dated 17.12.2019 read as under:-

> "*7. Whereas, reply to the Show Cause Notice has been received in this office on 09.07.2019 through email. It is mentioned in the reply that the Hon'ble High Court has not decided the Civil Writ Petition No. 10860 of 2012 as well as LPA No. 1813 of 2012 on merit and the same were dismissed on delay and latches. Further, it is mentioned that the Additional Chief Secretary to Government of Haryana, Home Department vide order dated 21.2.2016 has remanded the case back to the Director General of Police, Haryana to review the matter in view of the medical certificate submitted by him and Director General has reduced the punishment of dismissal to that of stoppage of 5 increments with permanent effect and in pursuance of the order passed by the Director General he had already joined on 6.4.17 and is continuing since then.*
>
> *8. Whereas, Constable Sahib Singh No. 779/Jind (842/Jind) appeared before the undersigned on 20.11.2019. However, no new plea has been raised nor any additional material has been submitted. I have examined all the relevant documents. Dismissal of Civil Writ Petition as well as LPA filed by Constable Sahib Singh No. 779/Jind (842/Jind) even on the ground of delay and latches have the same impact that the revisionist has lost his right of reinstatement in service by way of a judicial order but the revisionist managed his reinstatement from dismissal by concealing the material fact(s) from the authorities as he did not mention important fact of dismissal of Writ Petition and LPA in the mercy petition submitted in the office of ACS(H). Thus the order of reinstatement in service passed by the then Director General of Police, Haryana is not*

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legally sustainable. Therefore, action proposed vide Show Cause Notice dated 09/10.04.2019 is hereby confirmed and order dated 06.04.2017 is re-called. Hence, Constable Sahib Singh No. 779/Jind (842/Jind) is hereby dismissed from service with immediate effect.

A copy of this order shall be supplied to Constable Sahib Singh No. 779/Jind (842/Jind) free of cost under intimation to this office."

5. Mr. R.K. Malik, Sr. Advocate appearing for the petitioner submits that this Court in the previous round of litigation has dismissed writ petition on the ground of delay and laches. The appeal was also dismissed without considering merit, thus, the judgments passed by this Court could be ignored by Government while considering his mercy petition. The DGP rightly considered case of the petitioner and reviewed his previous orders. The alleged misconduct was not grave warranting dismissal from service. The petitioner could be awarded lesser punishment including premature retirement. The punishment of dismissal from service was harsh.

6. Mr. Shashank Bhandari, Addl. A.G., Haryana submits that order dated 21.12.2016 and order dated 06.04.2017 were passed without considering judgment passed by this Court in CWP-10860-2012. The moment authorities came to know the fact that writ petition against orders of DGP already stand dismissed, the order dated 06.04.2017 was recalled. The order dated 06.04.2017 was passed on account of concealment of facts on the part of petitioner.

7. I have heard the arguments and perused the record.

8. From the perusal of judgment dated 30.05.2012 passed by this Court, it is quite evident that petition was not dismissed simpliciter on the ground of delay and laches. The petition was dismissed on merit. The

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question of gravity of alleged offence and proportionate punishment was duly considered. The petitioner duly argued that for the alleged misconduct of absence from duty, he cannot be awarded punishment of dismissal from service. This Court negated his said argument. The length of the service of the petitioner was also considered. As order was passed on merit beside considering that there was delay of 6 years in filing writ petition, it cannot be concluded that there was no adjudication, thus, principle of merger cannot be invoked. The moment judgment dated 30.05.2012 was passed by this Court, all the orders passed by authorities merged in the said order. No authority except LPA Court or Hon'ble Supreme Court could set aside said order. The petitioner concealing said fact approached State Government which allowed mercy petition and remanded the matter back to DGP to review the case. It was a case of concealment of facts. The petitioner concealed material facts and succeeded to get favourable order. Fraud vitiates everything. It was not simple case of concealment but fraud on the part of petitioner. The authorities were within their jurisdiction to undo illegal order.

9. Before parting with the judgment, I would hasten to add that State Government is entertaining mercy petitions beyond jurisdiction. As per Punjab Police Rules, 1934 as made applicable to the State of Haryana (in short 'PPR'), State Government has no power to entertain mercy petition. As per Rule 16.32 of PPR, power to entertain mercy petition vests in DGP. This Court has noticed that in routine against orders of DGP, mercy petitions are entertained by State Government. Neither officials file review petition under Rule 16.28 nor Additional Chief Secretary is adjudicating as review petition.

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The State Government has power to review orders of authorities. The said power is enshrined in Rule 16.28 of PPR which is reproduced as below:-

> ***"16.28 Powers to review proceedings.*** *-(1) The Inspector-General, a Deputy Inspector-General, and a Superintendent of Police may call for the records of awards* ***made by their Subordinates and confirm, enhance, modify or annul the same, or make further investigation or direct such to be made before passing orders.*** *The State Government may also call for the records and review the awards made by the Inspector General of Police, Punjab or by any other authority subordinate to him.*
>
> *(2) If an award of dismissal is annulled, the officer annulling it shall state whether it is to be regarded as suspension followed by reinstatement, or not. The order should also state whether service previous to dismissal should count for pension or not.*
>
> *(3) In all cases in which officers propose to enhance an award they shall, before passing final orders, give the defaulter concerned an opportunity of showing cause, either personally or in writing, why his punishment should not be enhanced."*

10. From the perusal of said Rule, it is evident that Authority while exercising power of review has power to confirm, enhance, modify or annul the award or make further investigation or direct such to be made before passing orders. The Government has no power to remand the matter to DGP. In the said Rule, it is not provided that reviewing authority may pass such orders as deem fit. In the said Rule, it is categorically provided that

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scope of review is very limited. Authority can 'confirm', 'enhance', 'modify' or 'annul' the award. The authority before passing order may make further investigation or direct to be made before passing orders.

11. In ***Aish Mohammad vs. State of Haryana and others (2023) 4 SCC 617,*** Hon'ble Supreme Court while adverting to Rule 16.28 of PPR has noticed that incongruity has crept in the said Rule due to passage of time, legally and in fact. To a judicially or legally trained mind, it is obvious that 'review' carries a specific connotation but the same is not in Rule 16.28 of PPR. Review is a relook at an order passed by the same authority which passed the original order, be it a Court or an Executive Officer. Heading to the Rule is misnomer in as much as no power of review is created or conferred as manifest from reading of said Rule. There is provision of appeal under Rule 16.29 and revision under Rule 16.32.

Despite observations made by Hon'ble Supreme court in 2023, the State Government has not amended aforesaid Rule to make it at par with present understanding of remedies against *quasi* judicial orders.

12. In the wake of above discussion and findings, this Court is of the considered opinion that instant petition deserves to be dismissed and accordingly dismissed.

13. Pending application(s), if any shall also stand disposed of.

30.07.2025 (JAGMOHAN BANSAL)
shivani JUDGE

Whether reasoned/speaking Yes
Whether reportable Yes

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