
(1991) 05 P&H CK 0105
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1121 of 1989

Ex. Constable Randhir Singh and Another	APPELLANT
Vs	
The State of Haryana and Others	RESPONDENT

Date of Decision : 29-05-1991

Acts Referred:

Punjab Police Rules, 1934 — Order 16.2(2)

Citation : (1993) 103 PLR 276

Hon'ble Judges : G.R. Majithia, J

Bench : Single Bench

Advocate : H.S. Gill, for the Appellant; Rameshwar Malik, for the Respondent

Final Decision : Dismissed

Judgement

G.R. Majithia, J.—The petitioners have impugned their order of dismissal from service in this petition under Articles 226/227 of the Constitution of India.

2. The petitioners were enrolled as constables ; that in the year 1986 they were posted at police station, Baroda ; that an FIR was registered at Police Station, Butana against Om Parkash Mahajan ; that the Sub Inspector of Police accompanied by ASI Maha Singh and the petitioners and two other constables went to the spot for investigation of the case ; that Om Parkash Mahajan was asked to surrender before the police but he assaulted the police party ; that the police party assaulted the complainant in self defence ; that regarding this incident FIR No. 31 dated 15 4.1980 was registered at the police station ; that Kalawati also filed a private complaint against SI Jagan Nath and the petitioners u/s 325/34 Indian Penal Code ; that the petitioners were convicted and sentenced for two years R.I. and a fine of Rs. 200/- u/s 325/34 IPC and six months R.I. u/s 323/34 IPC by the the Additional Sessions Judge, Sonapat ; that the appeal filed by the petitioners was dismissed ; that the Superintendent of Police recommended that the petitioners be granted pardon under Article 161 of the Constitution of India; that by order dated September 20, 1986 the petitioners were dismissed from service and they unsuccessfully challenged the

order in appeals and revision.

3. Written statement was filed on behalf of the respondents. It was maintained therein that the order of dismissal was perfectly legal and valid. The order was justified under Rule 16.2 (2) of the Punjab Police Rules.

4. The only plea raised by the learned counsel for the petitioners that a Government servant cannot be dismissed from service merely on the ground that his conviction was recorded on a criminal charge by a criminal court. In other words dismissal from service after conviction on a criminal charge is not essentially an automatic consequence of said conviction and the competent authority has to consider all the circumstances of the case and then to decide whether the conduct of the delinquent official which led to his conviction is such as to render his further retention in public service undesirable. In support of his submission, the learned counsel relied upon *Om Prakash Vs. The Director Postal Services (Posts and Telegraphs Department), Ambala and Others, and Gurbachan Dass v. The Chairman Posts and Telegraphs Board, Ministry of Communication, Government of India, New Delhi 1983 (1) S. L. R. 729*. In *Om Parkash's* case (supra) the Bench was interpreting Rule 19(i) of the Central Civil Services (Classification, Control and Appeal) Rules (1965). Interpreting this rule, the Bench held that an order of dismissal or removal or for compulsory retirement can be passed under rule 19 (i) without conforming to the procedure prescribed in Rules 14 to 18 not on the basis of the conviction, but only if the competent authority finds that the relevant misconduct of the Government servant renders his further retention in public service undesirable. An order imposing a punishment on a Government servant simply because of his conviction on account of his conviction on a criminal charge without reference to the conduct which led to his conviction is not sustainable. This view was followed in *Gurbachan Dass's* case (supra) These rulings have no applicability to the facts of the instant case. The order of dismissal from service was passed under Order 16.2 (2) of the Punjab Police Rules, as applicable in the State of Haryana, which reads thus :-

"16.2(2). An enrolled police officer sentenced judicially to rigorous imprisonment exceeding one month or to any other punishment not less severe, shall, if such sentence is not quashed on appeal or revision, be dismissed. An enrolled police officer sentenced by a criminal court to a punishment of fine or simple imprisonment, or both, or to rigorous imprisonment not exceeding one month, or who, having been proclaimed u/s 87 of the Code of Criminal Procedure fails to appear within the statutory period of thirty days may be dismissed or otherwise dealt with at the discretion of the officer empowered to appoint him. Final departmental orders in such cases shall be postponed until the appeal or revision proceedings have been decided, or until the period allowed for filing an appeal has lapsed with it appellate or revisionary proceedings having been instituted. Departmental punishments under this rule shall be awarded in accordance with the powers conferred by rule 16.1".

Sub rule (2) of Rule 16.2 (supra) says that an enrolled police officer sentenced judicially to rigorous imprisonment exceeding one month can be dismissed from service. The disciplinary authority acting under this rule passed the order of dismissal of the petitioners and no exception can be taken to it. Executive instructions cannot run contrary to the statutory rules.

5. For the reasons aforesaid, the writ petition is devoid of any merit and is dismissed but with no order as to costs.