
(2014) 07 P&H CK 0300

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 14165 of 2000 and Civil Misc. 5600 of 2014

Pala Ram

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 10-07-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 311(1)

Citation : (2014) LabIC 3957

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Advocate : R.S. Mamli, Advocate for the Appellant; Sunil Nehra, Sr. DAG, Advocate for the Respondent

Judgement

Augustine George Masih, J.—Prayer in this application is for early hearing of the case and disposal. Notice of the application was issued to the Advocate General, Haryana and on the asking of Court, Mr. Sunil Nehra, Sr. DAG, Haryana had accepted notice on behalf of the State on 08.05.2014.

2. For the reasons mentioned in the application and with the consent of counsel for the parties, the writ petition is taken up for final disposal.

3. Application stands allowed.

Civil Writ Petition No. 14165 of 2000

4. Petitioner has approached this Court impugning the order dated 09.06.1999 (Annexure P-8), vide which he has been punished with stoppage of one future increment with permanent effect, order dated 20.01.2000 (Annexure P-10) rejecting his appeal and the order dated 12.06.2000 (Annexure P-12) rejecting the revision preferred by the petitioner against the punishment order.

5. It is the contention of the counsel for the petitioner that the order of punishment dated 09.06.1999 passed by the Superintendent of Police, Yamuna Nagar is not sustainable as the Superintendent of Police, Yamuna Nagar is not

the appointing authority of the petitioner. The appointing authority of the petitioner was the Inspector General of Police and, therefore, no punishment could be imposed by an authority lower in rank than the appointing authority. As such, it would violate Article 311(1) of the Constitution of India.

6. The second submission made by the counsel for the petitioner is that the petitioner could not be contacted on his wireless set between 1.45 p.m. to 3.35 p.m. on 16.09.1998 despite repeated calls by the Control Room Yamuna Nagar and Police Station Sadar Jagadhri because of the wireless set going unserviceable. Petitioner was not absent from duty but was on patrol duty and, therefore, the punishment of stoppage of one increment with permanent effect is not sustainable. His further contention is that the punishment imposed upon the petitioner is too harsh and deserves to be interfered with.

7. On the other hand, counsel for the State has referred to Rule 12.1 of the Punjab Police Rules, 1934 (as applicable to the State of Haryana) to contend that the appointing authority of the Sub-Inspector is the Superintendent of Police. Further, as per Rule 16.1 of the said Rules, the punishing authority with regard to the punishment of stoppage of the increment in the case of a Sub-Inspector again is the Superintendent of Police. When the statutory rules provide for an authority which is competent to impose a particular punishment, the same would be applicable and that the provisions as contained under Article 311(1) of the Constitution on which the petitioner is placing reliance would not be applicable as its applicability is only limited to a situation where punishment of dismissal, removal or reduction in rank is imposed by the authorities. In support of this contention, reliance has been placed upon the Division Bench judgment of this Court in LPA No. 618 of 2013, Azad Singh ASI v. State of Haryana and others, decided on 09.05.2013.

8. On the other hand, counsel for the petitioner has placed reliance upon the Single Bench judgment passed in CWP No. 3289 of 2001, titled as S.I. Mawasi Ram v. State of Haryana and others, decided on 06.09.2001 to contend that the appointing authority only can pass an order of punishment upon an employee. He has also placed reliance upon the judgment in Ram Lal v. State of Haryana and others, 1997 (2) SLR 421 : (1997 Lab IC 2280), where it has been held that the reversion order cannot be passed by an authority lower than that of the appointing authority. Reliance has also been placed upon the letter of the Inspector General of Police, Ambala Range dated 10.07.2000 (Annexure P-13) in support of this contention, according to which the final orders are required to be passed by the Inspector General of Police after holding a departmental enquiry against officials such as ASI or the SI.

9. I have considered the submissions made by the counsel for the parties and with their assistance have gone through the records of the case.

10. The first contention of the counsel for the petitioner with regard to the violation of Article 311(1) of the Constitution of India, which mandates

punishment to be imposed by the appointing authority and none below the said authority which is a plea taken for challenging the legality of the order dated 09.06.1999 (Annexure P-8) passed by the Superintendent of Police, Yamuna Nagar on the assumption that the promoting authority of the petitioner was the Inspector General of Police, cannot sustain in the light of the Division Bench judgment of this Court in Azad Singh ASI's case (supra), where it has been held as follows:--

"The primary contention raised by Dr. Redhu, counsel for the appellant is that the Superintendent of Police was not competent to initiate disciplinary action or impose punishment on the appellant as the Inspector General of Police, is the appointing authority of the appellant. He relies upon two Division Bench decisions of this Court i.e., (i) CWP No. 2116 of 1995 titled as Ex. Head Constable Nar Singh v. State of Haryana and others, decided on 25.4.1995 (Annexure P-14) and (ii) CWP No. 12487 of 1999 titled as Head Constable Ram Kumar v. State of Haryana and others, decided on 30.1.2001 (Annexure P-17). The said plea was taken by the appellant before the learned single Judge, who turned down the same holding that there is no violation of Article 311(1) of the Constitution of India, for the reason that the statutory rules, namely, the Punjab Police Rules, 1934 as applicable to the State of Haryana, expressly authorize the Superintendent of Police under Rule 12.1 to impose such punishment."

11. We have also given our thoughtful consideration and perused the record. In our considered view the plea taken by the appellant must fail for more than one of the following reasons:--

(i) the appellant did not take such a plea in his reply to the charge-sheet or before the inquiry officer or in response to the show-cause notice served on him by the Superintendent of Police.

(ii) The judgment relied upon by the appellant in case of Head Constable Ram Kumar (Annexure P-17), does not help him as that was a case where the aggrieved Head Constable had taken a specific plea in his reply questioning the competency of the Superintendent of Police to initiate disciplinary action.

(iii) Article 311(1) of the Constitution mandates that no person who is a Member of a Civil Service of the Union/State or holds a civil post shall be "dismissed" or "removed" or "reduced in rank" by an authority subordinate to that by which he was appointed.

(iv) No such punishment has been imposed on the appellant. The decision in the case of Ex. Head Constable Nar Singh (Annexure P-14), is thus distinguishable as that was a case of "dismissal" from service.

(v) The learned single Judge has rightly referred to Rule 12.1 of the Punjab Police Rules, 1934, as applicable to the State of Haryana, whereunder the punishment of stoppage of increment can be imposed by Superintendent of Police.

(vi) The validity or applicability of these Rules is not under challenge in these

proceedings.

For the abovesaid reasons, no interference in the impugned order is called for. Dismissed."

12. The judgment on which reliance has been placed by the counsel for the petitioner in S.I. Mawasi Ram's case (supra), deals with a situation where order of compulsory retirement was passed by an authority lower than the appointing authority, where Article 311(1) of the Constitution would be attracted and, therefore, the said judgment in the present case where only the punishment of stoppage of one increment with future effect has been imposed would not apply. The judgment in Ram Lal's case (1997 Lab IC 2280) (supra) relied upon by the counsel for the petitioner would also not apply in the present case as that was again a case where reversion order was passed by the authority lower than the appointing authority.

13. In the light of the law as has been laid down by this Court, referred to above in Azad Singh's case (supra), the letter dated 10.07.2000 (Annexure P-13) addressed by the Inspector General of Police, Ambala Range cannot be made the basis for taking support or holding the order of punishment dated 09.06.1999 (Annexure P-8) illegal.

14. The next contention which has been raised by the counsel for the petitioner is that the petitioner was patrolling the area. The conclusion of the respondents that he was not patrolling the area on 16.09.1998 cannot be sustained in the light of the evidence which he has produced during the departmental enquiry. Adverse assumption has only been drawn on the basis of the fact that the petitioner did not respond to the wireless messages sent to him. For that the petitioner had explained that the wireless set had gone unserviceable, which has resulted in no response on the part of the petitioner to the calls made on the wireless set.

15. This contention of the counsel for the petitioner cannot be accepted in the light of the limited jurisdiction which the Court has while exercising its extraordinary powers under Article 226 of judicial review. In an enquiry which is held against an employee, the writ Court would interfere only where there is no evidence at all available on the record for holding an employee guilty or the findings are perverse and based on total misreading of the evidence.

16. Present is not such a case. There is ample evidence against the petitioner which has resulted in the findings as recorded by the Enquiry Officer which has been accepted by the punishing authority to be correct. The evidence which has been relied upon by the petitioner is the statement of Chhote Ram Barber (Annexure P-3), which indicates that the petitioner instead of performing his own duties was getting his shave done at about 3.30 p.m. Another statement on which reliance has been placed is that of Ram Pal (Annexure P-1) which further shows that the petitioner was negligent as it was a general strike and on that day the diesel of the Jeep had finished and he had to ask witness Ram Pal to give him

2/3 litres of diesel. He further requested meals for 4/5 persons to be brought by him. This indicates the way the petitioner was patrolling the area. There was, in fact, no patrolling on his part as there was no diesel in his Jeep.

17. In view of the above factual position, it cannot be said that the punishment imposed upon the petitioner by the punishing authority is without any basis. The further orders passed by the Inspector General of Police on his appeal and the Director General of Police on his revision dated 20.01.2000 and 12.06.2000, Annexures P-10 and P-12 respectively also do not call for any interference.

18. The assertion of the counsel for the petitioner that the punishment imposed upon the petitioner is disproportionate to the misconduct attributed to him also cannot be accepted keeping in view the fact that on 16.09.1998 there was a general strike and the petitioner was specially assigned the duty of maintaining law and order being the SHO of Police Station, Sadar Jagadhri. He should have taken due care and caution with regard to the vehicle and the wireless set. Assuming the wireless set was not in working order, no evidence has been produced by the petitioner during the enquiry proceedings which would indicate that he had subsequently got the same repaired. The punishment as imposed upon the petitioner is not one which would prick the conscience of the Court or would be too harsh and disproportionate to the misconduct attributed and proved against the petitioner. In view of the above, finding no merit in the writ petition, the same stands dismissed.