

(2009) 01 P&H CK 0233

High Court Of Punjab And Haryana At Chandigarh**Case No:** C.W.P. No. 5735 of 2008

Massa Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision: Jan. 14, 2009**Acts Referred:**

- Punjab Civil Services (Punishment and Appeal) Rules, 1970 - Rule 4(4)
- Punjab Police Rules, 1934 - Rule 16.38

Citation: (2009) 1 ILR (P&H) 995 : (2009) 7 SLR 369**Hon'ble Judges:** Permod Kohli, J**Bench:** Single Bench**Advocate:** R.S. Bajaj, for the Appellant; Charu Tuli, D.A.G., for the Respondent**Final Decision:** Allowed

Judgement

Permod Kohli, J.

The Petitioner is aggrieved of the action of the Respondents in initiating fresh enquiry against him,--vide order (Annexure P-6) and also the fresh charge-sheet (Annexure P-9) besides the retrospective suspension,--vide order (Annexure P-5). He has also sought a direction for revoking his suspension and a further direction in the nature of mandamus to allow him to perform his duties with all consequential benefits of arrears etc. alongwith interest. Before dwelling into the issue involved in this petition, it is necessary to briefly notice the facts of case.

2. The Petitioner was recruited as a Constable in the year 1975 in Punjab Police Department at Jalandhar. He was inducted as a Constable in the 36th Battalion PAP and thereafter transferred to 80th Battalion PAP in the year 1982. While serving in 80th Battalion, he was placed under suspension,--vide order dated 9th March, 1988 on the allegations of creating nuisance in the mess under the influence of liquor. Suspension was followed by an enquiry which proved him guilty of charge. Consequently, he was dismissed from service,--vide order dated 24th May, 1988.

Vide the same order, he was denied the full salary and other emoluments, except the subsistence allowance for the period under suspension from 9th March, 1988 to 24th May, 1988. An appeal preferred by the Petitioner before the Deputy Inspector General of Police, PAP (Admn.), Jalandhar Cantt. resulted into dismissal,--vide his order, dated 6th January, 1989. The Petitioner challenged the order of dismissal and that of the appellate authority in Civil Court. The suit filed by the Petitioner was decreed ,--vide judgment, dated 6th March, 1992 (Annexure P-1) passed by the Sub Judge, 2nd Class, Jalandhar and -the order of dismissal, the appellate order and the enquiry proceedings were declared illegal, void and not binding upon the Petitioner and consequently set aside. The appeal preferred against the aforesaid judgment before the Additional District Judge (Ad hoc), Jalandhar was dismissed ,--vide its judgment, dated 2nd February, 2005. Regular Second Appeal No. 2402 of 2005 filed before this Court was also dismissed ,--vide its judgment, dated 22nd December, 2005. Not being satisfied with the dismissal of the Regular Second Appeal, the Respondents-State filed a SLP before the Hon"ble Supreme Court which also resulted in dismissal,-- vide order, dated 7th July, 2006. Having lost the battle throughout upto the last Court, the Respondents-State,--vide its order, dated 28th December, 2006 (Annexure P-5) reinstated and allowed the Petitioner to join duty. Simultaneously, he was placed under suspension from the date of dismissal i.e. 24th May, 1988. A fresh Departmental enquiry-was also ordered against him with subsistence allowance equal to half pay. Vide a subsequent order dated 1st February, 2007 (Annexure P-6), a fresh departmental enquiry was initiated and one Mohan Singh, PPS, Assistant Comd. 8th Battalian was appointed as Enquiry Officer. The enquiry officer was, however, replaced by another Enquiry Officer, Shri Navjot Singh, DSP vide order dated 10th January, 2008 (Annexure P-7). The Petitioner filed his objections to the initiation of fresh enquiry,--vide his representation, dated 21st January, 2008 (Annexure P-8). Without considering the representation, the Petitioner was served with summary of allegations (Annexure P-9) by the Enquiry Officer. It is against the aforesaid orders (Annexures P-5, P-6, P-7 and P-9) the Petitioner has approached this Court.

3. From the perusal of the orders (Annexures P-5 and P-6), it appears that the Respondents decided to enquire the matter primarily on the ground that earlier order of dismissal and that of appellate authority, and the enquiry were set aside on technical grounds i.e. due to non-observance of principles of natural justice. It is, however, not disputed that the subsequent enquiry relates to the same incident and on the same facts and circumstances. From the perusal of the judgment of the trial court (Annexure P-1), it is evident that the order of dismissal of the Petitioner and that of the appellate authority were set aside not merely on the basis of non-observance of principles of natural justice, but also on the ground that enquiry was not conducted in accordance with law and the Petitioner was not permitted to defend himself. Apart from above, the trial court also recorded a specific finding that consumption of liquor while not on duty does not amount to commission of

gravest act of misconduct warranting exemplary penalty of dismissal.

The trial court also held that the initiation of departmental or criminal proceedings without the sanction of District Magistrate under Rule 16.38 of the Punjab Police Rules vitiated the entire action as it was mandatory to have obtained sanction under the aforesaid rule from the District Magistrate. It is pertinent to note that while decreeing the suit and setting aside the order of dismissal and the appellate order, neither any liberty was granted for initiating fresh enquiry on the same cause of action nor any such liberty was sought from the trial court. The order of the trial court has been upheld upto the Hon"ble Supreme Court. Thus, the controversy set at rest after the dismissal of SLP by Hon"ble Supreme Court. The action of the Respondents to initiate de-novo action in respect of the same incident is thus impermissible and not warranted by law. The Respondents have attempted to defend their action on two counts--firstly that the Petitioner during his services has been awarded various punishments as enumerated in paragraph 2 of the reply and secondly that under Rule 4(4) of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, fresh enquiry is permissible. Rule 4(4) relied upon by the Respondents which is noticed here under:

Rule 4 (4) Where penalty of dismissal, removal or compulsory retirement from service imposed upon a Government employee is set aside or declared or rendered void in consequence of or by a decision of a court of law and the punishing authority, on a consideration of the circumstances of the case decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government employee shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

4. A bare reading of the said Rule denotes that this rule relates to further enquiry and not the fresh/de novo enquiry. Rather the fresh charge-sheet is based upon the same set of circumstances. Otherwise also, I am of the considered view that once the order of dismissal and the appellate order have been set aside by the Civil Court and the order of the civil court has been upheld upto the Hon"ble Supreme Court, the Respondents cannot be permitted to re-agitate and re-determine the issue a fresh and nullify the judgment and decree of the Civil Court by their administrative action . Apart from that, fresh enquiry is not sustainable in law. The Respondents have placed the Petitioner under suspension retrospectively with effect from the date of his dismissal in the year 1988 which order has been quashed by the Civil Court and has attained finality. Such an action is also contrary to all canons of justice.

5. Under the given circumstances, this Petitioner is allowed. Impugned orders (Annexures P-5, P-6, P-7 and P-9) are hereby quashed. As a consequence, the

Petitioner shall be deemed to have been reinstated in service,--vide Annexure P-5 and the Respondents shall, however, take a decision about the period of suspension of the Petitioner by passing a speaking order in accordance with law within a period of two months of the receipt of a certified copy of this order. If the Petitioner is found entitled to any claim, the same be released to him within a period of one month thereafter.