



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

224

CWP-19542-2018 (O&M)

Date of decision: 11.03.2025

Mukesh Kumar

...Petitioner

VERSUS

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Rakesh Sobti, Advocate for the petitioner.

Mr. Tapan Kumar, AAG Haryana.

VINOD S. BHARDWAJ, J. (Oral)

1. Seeking quashing of the order dated 23.01.2018 whereby the appeal preferred by the petitioner against the order dated 16.10.2017 to the extent of treating the period from the date of dismissal to his re-instatement into service i.e. 01.08.2013 to 12.01.2017 as Dies-non, was rejected. A further direction is also sought to regularize the period from date of dismissal to re-instatement as 'leave of kind due' or 'extra-ordinary leave'.

2. Learned counsel appearing on behalf of the petitioner contends that the petitioner joined the Jail Department as a Warden on 23.09.2003 and performing his duties with full dedication and to the complete satisfaction of his superiors and no adverse order has ever been conveyed to him. However, an FIR No.58 dated 20.02.2006 under Sections 148, 323, 324 and 149 of the Indian Penal Code, 1860 was registered against him at Police Station Assandh, District Karnal (Haryana). He was eventually convicted by the trial Court vide judgment of conviction dated 16.10.2012 and sentence



dated 18.10.2012. Aggrieved thereof, an appeal was preferred by the petitioner before the Sessions Court, Karnal wherein vide order dated 29.11.2016, the petitioner was released on probation of good conduct under Section 4 of the Probation of Offenders Act. He submits that since a conviction is no longer a disqualification for employment once an accused is released on probation, hence, the petitioner submitted an application for being re-instated in the service. He was re-instated in service on 12.01.2017 but the respondents then served a charge-sheet dated 07.04.2017 on the petitioner on the allegation that he had not intimated the department about the quarrel and registration of the FIR case. He submits that the petitioner submitted his reply and the enquiry report was submitted wherein it was stated that the charges leveled against the petitioner were although proved but in the application submitted by him for grant of leave, he had referred to his appearance in the Court, which showed his ignorance about the departmental Rules rather than any *malafide* intention on his part.

3. Learned counsel for the petitioner submits that the petitioner was thereafter served with a show cause notice dated 28.08.2017 alongwith a copy of the enquiry report and he was granted an opportunity of making a representation, if he so desired. The same was submitted by the petitioner responding to each and every charge and he gave clarification of all the facts. The disciplinary authority thereafter passed an order and exonerated the petitioner from charges leveled against him but for the period during which he remained out of service i.e. from 01.08.2013 to 12.01.2017, was treated as Dies-non. An appeal was preferred by the petitioner before the



appellate authority which was dismissed and the order passed by the punishing authority was upheld. He made a reference to the judgment dated 18.02.2013 passed by a Division Bench of this Court in **LPA-95-2013** titled as '**State of Haryana and another Vs. Ram Chander**', wherein it was held that the proceedings under Section 323/324 of IPC are not in the nature of moral turpitude and as such the order of termination of the employee therein was held to be bad. The employee was thus directed to be re-instated in service.

4. On being confronted, learned counsel for the petitioner is not in a position to dispute that the initial order of termination of the services of the petitioner dated 01.08.2013 is not a subject matter of challenge in the present petition. Hence, the said Division Bench judgment is not applicable to the facts of the present case. Even at the time of filing of the present petition, the initial order of termination of service was not a subject matter of challenge and the only challenge is to the subsequent order that was passed in the disciplinary proceedings that were initiated by the respondent-department, after re-instatement of the petitioner. A specific objection has also been raised by the respondent-State in this regard contending that in the absence of any challenge to the initial order of termination or the conditions imposed in the subsequent order of re-instatement, the petitioner cannot at this stage contend that the order passed by the disciplinary authority after exonerating him of the charges leveled against him treating the intervening period from 01.08.2013 to 12.01.2017 as a Dies-non is in any manner contrary to law.



5. On a specific query posed to the counsel for the petitioner, he is not in a position to refer to any Rule/Regulation or instructions issued by the competent authority as to whether the period during which the employee stayed out from the service on account of his own involvement in a criminal case has to be treated as duty period for all purposes.

6. On account of failure of the petitioner to point out any illegality in the said order or the same being passed without taking into consideration the applicable statutory regulations and/or the instructions issued by the competent authority in this regard, this Court would not be in a position to hold that the orders under challenge suffer from any illegality, impropriety or non-consideration of material and relevant instructions.

7. The present writ petition is accordingly **dismissed** and the orders passed by the competent authorities are upheld.

(VINOD S. BHARDWAJ)
JUDGE

11.03.2025

Mangal Singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No