

Chaman Lal Saraf (Dead)By Lrs. & Ors vs State Of Haryana & Ors on 3 December, 2014

Equivalent citations: AIR ONLINE 2014 SC 73, (2014) 4 ESC 720, 2015 (3) SCC 552, (2015) 1 SERV LJ 227, (2015) 1 CUR CRI R 15, (2014) 13 SCALE 444, 2015 ALL MR (CRI) 2905, (2015) 1 DLT(CRL) 580, (2013) 3 UC 2243

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Bench: Pinaki Chandra Ghose, M.Y. Eqbal

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRL. M.P. NO. 10148 OF 2013

In

Special Leave Petition (Crl.) No. 2238 OF 1995)

Chaman Lal Saraf (Dead)

By LRs. & Ors.

....Petitioner(s)

Versus

State of Haryana & Ors.

....Respondent(s)

And

Ramphal

....Applicant

J U D G M E N T

PINAKI CHANDRA GHOSE, J.

1. The present Crl. M.P. No. 10148 of 2013 in S.L.P. (Crl.) No. 2238 of 1995 has been filed by the applicant on 03.04.2013 seeking clarification of the order dated 03.11.2003 passed by this Court in Crl. M.P. No. 8421 of 2003 in S.L.P. (Crl.) No. 2238 of 1995, vide which the said Misc. Petition was dismissed with costs and this Court did not grant permission to reinstate the applicant Ramphal.

2. The present application has been filed in pursuance of the order dated 14.3.2013 passed by this Court in Special Leave Petition (C) No. 29555 of 2011, which is as under:-

"In the face of the directions issued by this Court in order, dated 3rd November, 2003, passed in Crl.M.P. No.8421 of 2003 in Special Leave Petition (Crl.) No.2238 of 1995, which also takes notice of the order passed by this Court on 14th February, 2001, in Crl.M.P. Nos. 5767 & 5768 of 2000 in Special Leave Petition (Crl.) No.2238 of 1995, we are of the opinion that the learned single judge as well as the Division bench were understandably constrained not to decide Civil Writ Petition No.6675 of 1996 on merits. However, we can also visualize the plight of the petitioner as it prima facie appears that when the orders were passed by this Court on 14th February, 2001 and 3rd November, 2003, the petitioner was neither a party nor was he heard.

In view of the aforesaid observations, Mr. Ashok Mahajan, learned counsel for the petitioner, makes a prayer for adjournment to enable his client to move an appropriate application. Let such application, if any, be filed within two weeks."

3. The relevant facts, necessary to decide the present application, are as under:-

4. Mr. Ramphal, applicant was enrolled as Constable in Haryana Police on 1.6.1963 and subsequently he got promotions. On 9.4.1992, he was promoted to the rank of Inspector due to his outstanding work and performances.

5. On 25/26.6.1992, when the applicant was posted as Inspector, Station House Officer of Police Station, City Kaithal, it has been alleged that the applicant alongwith other police officials illegally detained and gave beating to one Chaman Lal Saraf, Ex-M.L.A., and his son Indresh Kumar, (Petitioner Nos. 1 and 2 in S.L.P.(C) No. 2238 of 1995). An Enquiry Commission headed by Shri O.P. Gupta, District & Sessions Judge, Kurukshetra was appointed by the State Government to make an enquiry into the said matter. The said Commission of Enquiry enquired into the allegation of illegal detention and torture of Mr. Chaman Lal Saraf and his son Mr. Indresh Kumar on the night of 25/26.6.1992 by the applicant and Kaithal Police. The Commission of Enquiry submitted its report on 31.7.1993 and recorded a finding that there was an illegal detention and torture of Mr. Chaman Lal Saraf and his son.

6. On the basis of the aforesaid report of the Commission of Enquiry, a departmental enquiry was ordered to be held against the applicant which was conducted by Shri Vishal Singh, D.S.P. Panchkula. In the departmental enquiry also, the applicant was found guilty.

7. In the year 1994, not feeling satisfied with the report of the Commission of Enquiry, Shri Chaman Lal Saraf and his son filed a Writ Petition being C.W.P. No. 9899 of 1994 in the High Court praying for issuance of directions to the respondents to hold an independent enquiry through C.B.I. into the alleged incident which took place on 25/26.6.1992. The High Court, vide order dated 13.2.1995, dismissed the said writ petition. Being not satisfied with the dismissal of the aforesaid writ petition, Petitioner Nos.1 and 2 filed S.L.P. (Crl.) No.2238 of 1995 in this Court.

8. On 24.2.1996, the Dy. Inspector General of Police, Rohtak Range, Rohtak issued a show cause notice to Mr. Ramphal, applicant, as he was found guilty in the Departmental Enquiry, which was

conducted in pursuance to the report dated 31.7.1993 submitted by the Commission of Enquiry. A reply to the show cause notice was submitted by the applicant on 6.3.1996. The Dy. Inspector General of Police, Rohtak Range, Rohtak vide order dated 29.3.1996, reverted the applicant from the rank of Inspector to that of Sub-Inspector. The Director General of Police, Haryana, suo-moto summoned the record and vide its order dated 27.4.1996, dismissed the applicant from the services.

9. On 5.5.1996, the applicant filed C.W.P. No. 6675 of 1996 in the High Court of Punjab & Haryana, challenging the aforesaid orders dated 29.3.1996 and 27.4.1996 passed by the Dy. Inspector General, Rohtak Range, Rohtak and Director General of Police, Haryana, respectively, whereby the applicant was reverted from the post of Inspector to Sub- Inspector and thereafter dismissed from the services.

10. On 16.8.1996, this Court disposed of the S.L.P. (Crl.) No. 2238 of 1995 by passing the following order:-

"Since appropriate steps have been taken by the Government of Haryana in this matter and the required action has also been taken against the officers found guilty of dereliction of their duties..... in view of these facts it is not necessary to pursue this matter any further keeping in view the attitude of the Government of Haryana to take necessary action itself. This Special Leave Petition is disposed of accordingly."

11. The High Court of Punjab & Haryana allowed the C.W.P. No. 6675 of 1996 vide its order dated 8.12.1997 and set aside the order of dismissal passed against the applicant. Against the aforesaid order of the High Court, the State of Haryana filed Letters Patent Appeal before the Division Bench of the High Court. The Division Bench did not grant any stay of the order dated 8.12.1997.

12. The applicant filed contempt petition as the respondents did not comply with the order dated 8.12.1997 passed by the High Court of Punjab & Haryana in C.W.P. No. 6675 of 1996. Thereafter, in compliance of the aforesaid order, the applicant was taken back in the services.

13. On 10.11.1998, the Division Bench of the High Court allowed the Letters Patent Appeal and set aside the order dated 8.12.1997 and remanded the matter to the learned Single Judge for deciding the writ petition afresh. On 15.1.1999, the applicant was again dismissed from the service.

14. On 11.12.2000, during the pendency of the aforesaid C.W.P. No.6675 of 1996, the State of Haryana, in pursuance to the representation submitted by the applicant, withdrew the orders dated 29.3.1996 and 27.4.1996 which were the subject matter of the said writ petition. On 26.12.2000, the applicant was taken back in service and was further promoted to the rank of D.S.P. The applicant as a result of his reinstatement was also paid arrears of salary and consequential benefits for the period for which he remained out of service.

15. In the year 2000, Petitioner Nos. 1 and 2 filed Crl.M.P. Nos. 5767 & 5768 of 2000 in Special Leave Petition (Crl.) No.2238 of 1995. This Court, vide order dated 14.2.2001 disposed of the Crl.M.P. Nos. 5767 and 5768 of 2000 and issued the following directions:-

"xxx xxx xxx xxx xxx xxx xxx As per this order it seems in view of the last order by this Court the State Government has withdrawn the two orders passed in favour of the concerned officer, namely, order of reinstatement and the order of dismissal. Learned counsel for the applicant, however, has expressed strong resentment in the manner in which this has happened despite the earlier order passed by this Court as aforesaid. On the other hand learned counsel for the State states that there would not be any such order in future. However, we make it clear that in future if any order of reinstatement is to be passed it should be passed only after seeking approval of this Court. We are observing this only in view of special facts and circumstances of the case.

With the said observations these Crl. M.Ps have been disposed of."

(emphasis supplied)

16. During the pendency of the C.W.P. No.6675 of 1996, the applicant reached the age of superannuation and retired from services. On 9.12.2002, the High Court of Punjab & Haryana allowed the C.W.P. No.6675 of 1996 filed by the applicant. The operative part of the order is reproduced as under:-

"xxx xxx xxx xxx xxx xxx xxx In the light of the aforesaid factual position and in view of the fact that the Government itself has admitted in its order dated 11.12.2000 that the impugned orders had been passed in violation of the service rules, I am of the view that the impugned order dated 29.3.1996 and 27.4.1996 cannot be sustained. They are accordingly quashed. Since the petitioner has already retired, the respondents are directed to compute the consequential benefits due to the petitioner under the service rules and pay the same to him within three months from the date on which a certified copy of this order is made available to them."

17. As this Court vide order dated 14.2.2001 had held that if any order of reinstatement of the applicant is to be passed, it should be passed only after seeking approval of this Court, the State of Haryana filed Crl.M.P. No.8421 of 2003 in S.L.P. (Crl.) No.2238 of 1995 in this Court for seeking permission of this Court to implement the order dated 9.12.2002 passed by the High Court reinstating the applicant into the service.

18. This Court vide order dated 3.11.2003 dismissed the Crl.M.P. No. 8421 of 2003 and did not grant permission to reinstate the applicant. This Court held as under:-

"xxx xxx xxx xxx xxx xxx xxx It appears that Inspector Ramphal had filed Writ Petition bearing No. 6675 of 1996 seeking reinstatement. That Writ Petition was pending in January and December, 2000 when orders of reinstatement were passed. Thus orders of reinstatement has been passed even though the matter was sub-judice before the Punjab & Haryana High Court. The Writ Petition was pending even when this Court dealt with the Crl.M.P. It was not pointed out to this Court that a Writ Petition was pending before the Punjab & Haryana High Court. Had it been pointed out this Court could have directed that orders of this Court be brought to the notice of Punjab & Haryana High Court. Writ Petition No. 6675 of 1996 reached for hearing before the Punjab & Haryana High Court on 9th December, 2002. The Punjab & Haryana High Court by order of the same date has quashed

the orders dated 29th March, 1996 and 27th April, 1996. Reading of the order dated 9th December, 2002 makes it clear that the only reason why the termination of service has been quashed is because an impression was given to the Punjab & Haryana High Court that the dismissal and reversion orders were only passed because of the conviction of the officer and that after acquittal there is no ground on which termination and reversion could be sustained. A reading of the order dated 9th December, 2002 shows that Punjab & Haryana High Court was not informed that an enquiry committee had found the officers guilty of dereliction of duty. The Punjab & Haryana High Court was not informed that a statement had been made before this Court on 16th August, 1996 and termination had taken place pursuant to the assurance given to this Court. Also the subsequent order dated 14th February, 2001 has obviously not been brought to the notice of the Punjab & Haryana High Court. It appears to us that the Government is colluding with the officer in trying to some how or the other get him reinstated. In our view, this is playing with the Courts. This cannot be permitted. We do not grant permission to reinstate Inspector Ramphal. This order be brought to the notice of Punjab & Haryana High Court by the State of Haryana and by our Registry."

19. The High Court vide order dated 9.12.2005 recalled the order dated 9.12.2002 and restored the C.W.P. No.6675 of 1996 to its original number. The learned Single Judge observed as under:-

"xxx xxx xxx xxx xxx xxx xxx The writ petition was admitted on 2.8.1996 and came up for final hearing before the learned Single Judge of this Court and was allowed on 08.12.1997. Against the said order, Letters Patent Appeal No. 270 of 1998 was filed before this Court, which was heard on 10.11.1998. The case was then remanded to the Single Judge by observing that the writ petition was decided on a single question that was agitated. Since the petitioner had raised some other submissions, he was given liberty to urge the same before the Single Judge and direction was issued to list the writ petition before the Single Judge, accordingly. When the matter was placed before the learned Single Judge, he noticed as can be seen from order dated 17.8.2001 that the petitioner had been convicted and sentenced for one year rigorous imprisonment for offences under Sections 323/342 of the Indian Penal Code for the same incident which had led to order of his dismissal. The petitioner had then filed a criminal appeal against the said judgment, which was pending before this Court. Learned Single Judge, thereafter, ordered that the case be re-listed only after the decision of the criminal appeal. The writ petition was, accordingly, adjourned sine-die.

Subsequently, the writ petition came up for hearing before another Bench after the acquittal of the petitioner of the criminal charge. The learned Single Judge then vide his order dated 9.12.2002, allowed the writ petition in following terms:-

I am of the view that the impugned order dated 29.3.1996 and 27.4.1996 cannot be sustained. They are accordingly quashed.

Since the petitioner has already retired, the respondents are directed to compute the consequential benefits due to the petitioner under the service rules and pay the same to him within three months from the date on which a certified copy of this order is made available to them."

20. The learned Single Judge of the High Court vide order dated 9.12.2010 dismissed the C.W.P. No.6675 of 1996 filed by the applicant. The operative part of the aforesaid order passed by the learned Single Judge of the High Court of Punjab & Haryana is as under:-

"xxx xxx xxx xxx xxx xxx In view of what has been noticed above, it is clear that it would not be appropriate for this Court to adjudicate the lis raised by the petitioner in the present writ petition. The Hon'ble Supreme Court has very clearly expressed its strong disapproval as to what all has happened in this case. The State counsel has given an undertaking that there would not be any such order of reinstatement in future. The Hon'ble Supreme Court has observed that in future if any order of reinstatement of the petitioner is passed, it should be passed only after approval from this Court, meaning, Hon'ble Supreme Court.

In this view of the matter, this lis raised by the petitioner, cannot be gone into in the present writ petition. It would be appropriate for the petitioner to approach the Hon'ble Supreme Court if he is left with any grievance. Otherwise also, I have not been able to find any merit in the plea raised by the petitioner."

21. On 3.2.2011, the applicant feeling aggrieved by the aforesaid order dated 9.12.2010, filed L.P.A. No.992 of 2011 before the Division Bench of the High Court. On 12.8.2011, the Division Bench of the High Court dismissed the aforesaid L.P.A. filed by the applicant and affirmed the order dated 9.12.2010 passed by the learned Single Judge of the High Court. The Division Bench of the High Court observed as under:-

"..... The order of dismissal passed against the appellant is the result of undertaking given by the State counsel before Hon'ble the Supreme Court when it was found that the respondent-State was hand in glove with the appellant. Therefore, this Court cannot tinker with either the undertaking given by State counsel nor it could observe anything with regard to order passed by Hon'ble the Supreme Court. The appeal does not deserve admission and is, therefore, liable to be dismissed.

For the reasons aforementioned, this appeal fails and the same is dismissed."

22. The applicant, feeling aggrieved by the order dated 12.8.2011 passed by the Division Bench of the High Court filed Special Leave Petition (C) No. 29555 of 2011 in this Court. On 14.3.2013, when the said special leave petition came up for hearing, this Court gave liberty to the applicant to file the appropriate application.

23. On 10.01.2014 this application was listed before the learned Registrar when following order was passed:

"The Id. Counsel for the petitioner and the Id. Counsel for the respondent No.4 are present.

What gets revealed from the perusal of the office report is that the Id. counsel for the respondent No.4 has on 27.11.2013 filed a letter stating therein that for the purpose of the present application, the petitioner and the applicant/respondent No.4 are the only necessary parties and the other respondents are not necessary for the determination of the lis. The petitioner has already filed his reply to the said application. Therefore, the application shall be processed for listing before the Hon'ble Court for further future directions."

Submissions

24. Mr. Ashok K. Mahajan, learned counsel appearing for the applicant submitted that the applicant is not bound by the observations made by this Court in its order dated 3.11.2003 because neither any notice of the Crl.M.P. No.8421 of 2003 was issued to the applicant nor the applicant was served with the copy of the said application filed by the State of Haryana. As no notice was issued to the applicant, he was not present to assist and put forth his case before this Court. He submitted that the applicant has been condemned unheard. He further submitted that, as is clear from the order dated 3.11.2003, the applicant was not heard and no opportunity was given to the applicant by this Court before passing of the order dated 3.11.2003. The said order has seriously prejudiced the case of the applicant and grave injustice has been done to the applicant inasmuch as the High Court had set-aside the order of dismissal passed by the State of Haryana and after passing of the order dated 3.11.2003 by this Court, the learned Single Judge recalled the order dated 9.12.2002 whereby the applicant was ordered to be reinstated into service. Thereafter, the C.W.P. No. 6675 of 1996 was re-heard and in view of the order dated 3.11.2003 passed by this Court, the High Court did not examine the merits of the dismissal order passed against the applicant. The Division Bench of the High Court also, in view of the order dated 3.11.2003, dismissed the L.P.A. of the applicant.

25. Learned counsel for the applicant further submitted that there was no question of reinstatement of the applicant because when the State of Haryana filed the application for implementation of the judgment dated 9.12.2002, the applicant had already superannuated from service and only the question of retiral benefits remained. He further submitted that in the interest of justice, it is necessary that this Court may clarify the order dated 3.11.2003 passed by this Court in Crl.M.P. No.8421 of 2003 in S.L.P. (Crl.) No.2238 of 1995 and direct the High Court to examine the merits of the order of dismissal dated 27.4.1996 and decide the Writ Petition of the applicant i.e. C.W.P. No.6675 of 1996.

26. On the other hand, on 25.11.2013, Mr. Navin Chawla, learned counsel for the petitioners filed a reply to the application of applicant (respondent No.4 in the SLP) seeking clarification of Order dated 03.11.2003. The learned counsel for the petitioners has raised the following objections:-

- i) That the application filed by the applicant/respondent No.4 under the garb of clarification seeking review of the Order dated 3.11.2003 is liable to be dismissed as no ground of review has been made out in the application.

ii) That the present application is barred by limitation. The order was passed on 3.11.2003 and was well within the knowledge of the applicant/respondent No. 4 and it was also directed that the said order be brought to the notice of the High Court of Punjab & Haryana.

In view of the above, there could not have been any occasion for the applicant to challenge his removal from service and therefore, the revival of the writ petition itself was incorrect.

iii) That the applicant has not sought any review of the order or recall of the order dated 14.2.2001 passed by this Court in Crl.M.P. Nos. 5767 and 5768 of 2000 in S.L.P. (Crl.) No. 2238 of 1995 whereby this Court had directed that in future if any order of reinstatement is to be passed, it should be passed only after seeking approval of this Court.

iv) That this application under reply is a clear abuse of the process of this Court.

27. The learned counsel for the petitioners submitted that the applicant has been found guilty of illegally detaining the petitioners and custodial torture. He further submitted that the applicant, in collusion with the State of Haryana, has been repeatedly trying to get himself reinstated and acquitted of the criminal charges against him. It is only because of this Court that the applicant has been unsuccessful in such attempt. He submitted that not only this Court has twice prevented the re-instatement of the applicant but has also set-aside his acquittal from the criminal charges by remanding the matter back to the High Court of Punjab and Haryana as the State had intentionally not brought the entire evidence to the notice of the High Court leading to the acquittal of the applicant from the criminal case.

28. The learned counsel for the petitioners submits that the facts of the case would also show how difficult it is for a person to fight with might of the State and delinquent officers it wants to protect and how in spite of the direction passed by this Court, repeated attempts are being made to somehow give benefit to the applicant on one pretext or the other.

29. The learned counsel for the petitioners has referred to a judgment of this Court in the case of Indresh Kumar Vs. Ramphal & Ors. (2010) 2 SCC 241, in which this Court vide its Judgment and Order dated 6.1.2010 allowed the appeal filed by Mr. Indresh Kumar, Petitioner and remanded the matter back to the Hon'ble High Court for a fresh consideration as various vital piece of evidence had not been brought to the notice of the High Court. A perusal of the aforesaid case shows that most of the facts of the present Crl.M.P. No. 10148 of 2013 in S.L.P. (Crl.) No. 2238 of 1995 are narrated in the said judgment and order dated 6.1.2010.

30. The learned counsel for the petitioner has denied that the applicant is not bound by the observation made by this Court in the Order dated 3.11.2003 passed by this Court. He further submitted that the applicant, all throughout, has been aware of the passing of the said order by this Court but has chosen to take his chance with an attempt to mislead the High Court of Punjab & Haryana again, instead of filing an application seeking review of the said order if he was aggrieved of the same.

31. He further submitted that the effect of the judgment and order dated 9.12.2002 passed by the High Court of Punjab & Haryana was reinstatement of the applicant with all consequential benefit. However, in view of the order dated 14.2.2001 passed by this Court, the said order could not have been implemented by the Respondent, i.e. Government of Haryana, without seeking leave of this Court. As the order dated 9.12.2002 had been passed by the High Court of Punjab & Haryana upon being misled by the applicant and Government of Haryana, respondent No.1, the question of implementing the same did not arise and was rightly rejected by this Court in its order dated 3.11.2003.

32. Learned counsel for the petitioner denied that it is in the interest of justice that this Court clarifies the Order dated 3.11.2003. He further submitted that the order dated 3.11.2003 requires no clarification and the Order dated 09.12.2010 passed by the High Court dismissing the writ petition filed by the applicant is correct and in accordance with the order dated 3.11.2003 passed by this Court.

33. After hearing the counsel for both the parties it is very clear that the applicant (Ramphal) has tried to circumvent the process of Court by approaching the Court in guise of different reasons. As this Court has observed earlier also, the applicant has tried to get himself reinstated, or avail retiral benefits contrary to the earlier order of this Court. Present application for clarification of the order dated 03-11-2003 again is a vexatious one. There appears to us no need for clarification as the order is already very comprehensive and succinct.

34. After perusing the facts which we have already stated in the preceding paragraphs, it appears to us that the petitioners under the garb of clarifications tried to have an order to reopen the case and to deal with the same when all the points have been decided. We cannot keep our eyes shut in the matter that the order was passed on 03.11.2003 and was within the knowledge of the petitioner/applicant. From the facts it is obvious that the petitioner is trying to abuse the process of the court and we do not appreciate such steps rather deprecate the same. In these circumstances, we find no merit in this petition.

35. In the light of the foregoing, Criminal Miscellaneous Petition No.10148 of 2013 is dismissed with costs.

.....J (M.Y. EQBAL)J (PINAKI CHANDRA GHOSE)
NEW DELHI;

DECEMBER 03, 2014.