Aish Mohammad vs State Of Haryana on 14 June, 2023

Author: Vikram Nath

Bench: Vikram Nath

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4044 OF 2023
[@ SPECIAL LEAVE PETITION (CIVIL) NO.12248 OF 2023]
[@ DIARY NO. 23042 OF 2011]

AISH MOHAMMAD ...APPELLANT

VERSUS

STATE OF HARYANA & ORS. ...RESPONDENTS

R1: STATE OF HARYANA
R2: DIRECTOR GENERAL OF POLICE (HARYANA), PANCHKULA
R3: INSPECTOR GENERAL OF POLICE, GURGAON
R4: SENIOR SUPERINTENDENT OF POLICE, GURGAON
R5: INSPECTOR GENERAL OF POLICE, FARIDABAD
R6: SUPERINTENDENT OF POLICE, NUH
R7: SUPERINTENDENT OF POLICE, PALWAL

J U D G M E N T

AHSANUDDIN AMANULLAH,J.

the basis of the available record. The Respondents are represented through counsel and have filed written submissions. Delay condoned, in these peculiar facts and circumstances, in the interest of justice. I.A. 72995/2022 [seeking condonation of delay in refiling/curing the defects] is formally allowed.

2. Leave granted.

3. The sole appellant has moved this Court being aggrieved by the Final Judgment and Order dated 25.04.2011 (hereinafter referred to as the “Impugned Judgment”) [2011 SCC OnLine P&H 4687 | ILR (2012) 2 P&H 747] passed by a learned Division Bench of the High Court of Punjab and Haryana at Chandigarh (hereinafter referred to as the “High Court”) in Letters Patent Appeal

No.406 of 2011 (O & M), whereby the learned Division Bench allowed the appeal preferred by the respondent-State and set aside the Order dated 27.01.2010 [2010 SCC OnLine P&H 1193] passed by the learned Single Judge in Civil Writ Petition No.19128 of 2006.

THE FACTUAL PRISM:

> 4. The appellant joined as Constable in Haryana Police on 15.01.1973 and promoted as Head Constable on 06.12.1993. One Assistant Sub-Inspector Basant Pal made a complaint against the appellant. This led to a departmental enquiry, where the appellant was held guilty and ordered to be reverted from Head Constable to Constable. A representation was filed by the appellant before the Inspector General of Police, Gurgaon Range against the said reversion order, resultantly whereof, by order dated 28.04.2001, the Inspector General of Police, Gurgaon Range, modified the order of reversion to stoppage of one increment.

The Controlling Officer of the appellant recorded adverse remarks against him for the periods between 11.10.1999 to 31.03.2000 and 01.04.2000 to 29.12.2000. Initially, the representation filed apropos the period between 01.04.1999 to 31.03.2000 was rejected by orders dated 19.02.2002 and 27.06.2001. However, the representation pertaining to the period from 01.04.2000 to 29.12.2000 was partly accepted by order dated 20.07.2002. Thereafter, the appellant preferred a second consolidated representation for the aforesaid periods, which was accepted on 28.01.2005. This second representation by the appellant was pursuant to judgment dated 27.09.2004 in Civil Suit No.168 of 2002 (filed on 06.08.2002) before the learned Civil Judge (Junior Division), whereby the stoppage of one increment was set aside and the respondents were directed to release the same. However, his prayer for expunging the adverse remarks was not accepted, yet liberty to prefer a fresh representation was granted by the learned Civil Court.

5. Challenge to judgment dated 27.09.2004 supra by the respondent-State was dismissed by the learned District Judge, Gurgaon, and the same has attained finality. The appellant, in terms of observations made by the learned Civil Judge (Junior Division) Gurgaon in the judgment dated 27.09.2004, preferred a consolidated representation before the Inspector General of Police, Gurgaon Range for expunction of adverse remarks, on 07.01.2005. The Inspector General of Police, Gurgaon Range, Gurgaon vide order dated 28.01.2005 expunged all the adverse remarks. Thereafter, the appellant received a Show-Cause Notice dated 05.09.2006 from the Director General of Police, Haryana stating that undue benefit had been given to the appellant by expunction of remarks and why the same should not be restored and an order of compulsory retirement be passed against him, indicating thereby, that due to expunction of these adverse remarks, he had escaped being retired from service compulsorily and also became eligible for further promotion. The appellant filed his Reply to the Show-Cause Notice on 22.09.2006. The Director General of Police, Haryana by order dated 30.10.2006 directed reconstruction of the Annual Confidential Report [hereinafter referred to as “ACR” (in singular) and “ACRs” (in plural)] for the aforesaid period.

6. Aggrieved by the order dated 30.10.2006, the appellant filed Civil Writ Petition No.19128 of 2006 before the High Court. During the pendency of this writ petition, the appellant received notice for

retirement issued by the Superintendent of Police, Mewat, Nuh dated 08.09.2008, informing him that his service was not required by the department beyond the age of 55 years, in public interest and he was to stand retired from service under the State of Haryana in terms of Rule 3.26(d) of the Punjab Civil Services Rules, 1934 Vol-I Part I and Rule 8.18 of the Punjab Police Rules, 1934 as applicable to the State of Haryana. This was followed by the order of the Superintendent of Police, Palwal dated 27.10.2008 directing his retirement with effect from 30.11.2008. The learned Single Judge by judgment dated 27.01.2010 in Civil Writ Petition No.19128 of 2006 [2010 SCC OnLine P&H 1193] allowed the Writ Petition and the order for reconstruction of the adverse ACRs and compulsory retirement was quashed. The learned Single Judge also held that the appellant was entitled to all consequential benefits. The relevant part of the said judgment1 notes:

> "... I have heard learned counsel for the parties. The controversy involved in these writ petitions is covered by a judgment in the case of Amarjit Kaur v. State of Punjab and others, 1988 (4) SLR 199 and a Division Bench judgment of this Court dated 26.5.2006 passed in CWP No. 8356 of 2006 (Ram Niwas v. State of Haryana) as also a judgment of the Hon'ble Supreme Court in the case of Rathi Alloys and Steel Ltd. v. C.C.E. (1990) 2 SCC 324. In the case of Ram Niwas (supra), following observations have been made:-
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> "....Firstly, in law there is administrative hierarchy which was not to be respect and any successor cannot set aside the order passed by his predecessor.
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> Secondly, there is no provision under the Punjab Police Rules, 1934, as applicable to Haryana or in any instructions or subordinate legislation providing for review of an order passed by the predecessor in office. It is well settled that power or review cannot be exercised unless it is expressly provided by the Statute. In this regard, reliance may be placed on a judgment of the Hon'ble Supreme Court in the case of Rathi Alloys and Steel Ltd. v.
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> C.C.E., (1990) 2 SCC 324. Our view also finds support from the The extract is from the SCC OnLine version. It is noted that the cited portion from Ram Niwas (supra) seems to be grammati- cally incorrect.
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> judgment of this Court in the case of Amarjit Kaur v. State of Punjab and others, 1988 (4) SLR 199...." Following the aforesaid judgment, CWP No. 9973 of 2007 and CWP No. 12095 of 2007 were allowed by a co-ordinate Bench of this Court vide order dated 23.3.2009. Ratio of all these judgments is that the predecessor of an Officer in the hierarchy of service has no authority to review his orders." (sic)

7. Evincibly, the learned Single Judge concluded, in essence, that the original expunction could not be held to be illegal, and the subsequent reconstruction of the remarks would be incorrect in view of the pronouncements of law referred to by him.

8. The respondent-State, aggrieved, preferred Letters Patent Appeal No.406 of 2011 (O & M) which was allowed by judgment dated 25.04.2011 [2011 SCC OnLine P&H 4687] setting aside judgment dated 27.01.2010 of the learned Single Judge, thereby restoring the order of the Director General of Police, Haryana dated 30.10.2006. The judgment of the learned Division Bench is impugned before us. SUBMISSIONS BY THE APPELLANT:

> 9. Learned counsel for the appellant submitted that the judgment impugned is unsustainable for the reason that the main ground for allowing the appeal of the respondent-State was that the Order of the Inspector General of Police dated 28.01.2005 was completely against the verdict of the learned Civil Court refusing to expunge the adverse remarks, which was not only highly improper but totally unwarranted and the Director General of Police rightly set aside the order of his subordinate. It was submitted that the learned Division Bench failed to consider that the Director General of Police did not have any power of review as per the Punjab Police Rules, 1934 which applied to the State of Haryana.
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> 10. Moreover, reiterating that the basic reasoning of the learned Division Bench for allowing the appeal of the State, as noted supra, was that the learned Civil Court had refused to interfere in expunging the remarks passed by the Controlling Officer and thus, the Inspector General of Police had no authority to pass an order for expunction, was highly improper and totally unwarranted. Learned counsel submitted that under similar circumstances, a co-ordinate Single Bench had interfered to hold that the Director General of Police had no power to review an order passed by the predecessor-in-office.

SUBMISSIONS ON BEHALF OF THE OFFICIAL RESPONDENTS-R1 to R7:

> 11. Per contra, learned counsel for the State of Haryana and the other official respondents (R2, R3, R4, R5, R6 and R7) submitted that the present case had been refiled after an inordinate delay of 11 years. It was submitted that even though the ground of delay is sought to be explained, being the unfortunate death of the appellant's son, the same took place in 2011 and thus, re-filing having been done only in 2022 i.e., 10 years after such incident, would not entitle the appellant to the benefit of condonation for such long and unexplained delay. He submitted that the view taken in the Impugned Judgment, that the Inspector General of Police could not have over-reached the judgment of the learned Civil Court, is correct. Moreover, it was submitted that the adverse entry in the ACR of the appellant was on account of serious charges – viz. Corruption, insubordination and dereliction of duty.
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> 12. Learned counsel summed up his arguments by taking the stand that the appellant, having been compulsorily retired, the same not being a 'punishment', the principles of natural justice would not be applicable.

ANALYSIS, REASONING AND CONCLUSION:

13. Having considered the rival submissions, the Court would note that both the learned Single Judge and the learned Division Bench did not appreciate the legal position in the correct perspective of the factual background.

14. The undisputed position is that adverse remarks were entered into the ACR of the appellant for the period(s) in question, due to which initially an order of departmental enquiry was passed based on a complaint; in the departmental enquiry, an order came to be passed, and the appellant was reverted from the post of Head Constable to the post of Constable. The appellant challenged such reversion. The reversion order was modified to stoppage of one increment. For expunction of the adverse remarks, he moved before the Inspector General of Police, Gurgaon Range, which was initially rejected for the entire period in question. On further representation, the Inspector General of Police, Gurgaon Range, on 20.07.2002, expunged the remarks partially for the period of 01.04.2000 to 29.12.2000.

15. The appellant filed Civil Suit No.168 of 2002 against the order of stoppage of one increment as also the adverse entry(ies)/remark(s) in his ACR, which was finally decided by the learned Civil Judge (Junior Division), Gurgaon by judgment and order dated 27.09.2004, interfering with the stoppage of one increment, but not interfering with the ACR aspect. However, in the said judgment, it was observed as under:

“If at all, plaintiff feels that recording remarks was the result of above adverse said departmental proceedings and result thereof, then in the wake of setting aside of the impugned order by this court, plaintiff, if so advised may again file a representation with the competent authority against the adverse remarks which shall be decided by said authority expeditiously. In the totality of circumstances, this court is not inclined to interfere with the satisfaction of competent authority to record adverse remarks in the ACR of plaintiff. Hence, no relief whatsoever regarding expunction of adverse remarks can be granted in favour of plaintiff. Accordingly, issue No.2 is hereby decided against plaintiff and in favour of defendants.” (sic)

16. This permitted the appellant to again file a representation before the Inspector General of Police, Gurgaon Range, for expunction of adverse remarks, which was disposed favourably, and the adverse remarks were expunged. However, the Director General of Police issued a Show-Cause Notice to the appellant that the adverse remarks were wrongly expunged, which made the appellant escape compulsory retirement. Thereafter, the appellant was retired having crossed the age of 55 years, in terms of such power being conferred on the competent authority under the Punjab Civil Services Rules. The matter then came before the High Court, initially before the learned Single Judge who, relying on certain precedents, recorded that the Director General of Police could not have passed the order impugned therein, as it amounted to a review of an order passed by his predecessor-in-office.

17. The Court would pause at this juncture to indicate that the factual premise noted by the learned Single Judge itself was wrong, inasmuch as it was the Inspector General of Police, who had, in effect, 'reviewed' an order passed by his predecessor-in-office by expunging the adverse remarks, which was previously declined by his predecessor-in-office. Volume II of the Punjab Police Rules, 1934 provides as under:

"16.28. Powers to review proceedings (1) The Inspector-General, a Deputy Inspector-

General, and a Superintendent of Police may call for the records of awards made by their subordinates and confirm, enhance, modify or annul the same, or make further investigation or direct such to be made before passing orders.

(2) If an award of dismissal is annulled, the officer annulling it shall state whether it is to be regarded as suspension followed by reinstatement, or not. The order should also state whether service previous to dismissal should count for pension or not.

(3) In all cases in which officers propose to enhance an award they shall, before passing final orders, give the defaulter concerned an opportunity of showing cause, either personally or in writing, why his punishment should not be enhanced." (emphasis supplied)

18. Clearly, the 'review' contemplated in Rule 16.28 empowers a superior authority to 'call for the records of awards made by their subordinates and confirm, enhance, modify or annul the same, or make further investigation or direct such to be made before passing orders.' As such, the 'review' is by a superior authority and not the same authority.

19. Before adverting to the merits, we may at once highlight the incongruity that has crept in the Rules (supra) due to passage of time, legally and in fact. To a judicially or legally trained mind, it is obvious that 'review' carries a specific connotation, but the same is not the case herein. Put simply, review is a re-look at an order passed by the same authority which passed the original order, be it a Court or an executive officer. The heading to the rule above is a misnomer inasmuch as no power of 'review' is created or conferred, as manifest from a reading of (1), (2) and (3) of Rule 16.28. For completeness, Rule 16.29 is entitled "Right of appeal" and Rule 16.32 is labelled "Revision". This is one part of the issue.

20. The next part is that the Rules, originally framed in 1934, contemplated the authorities as "The Inspector-General, a Deputy Inspector-General, and a Superintendent of Police". The "Inspector-General" of that time [when the service was called Imperial/Indian Police] headed the State Police, but is today known as, in most States and Union Territories, barring a handful, in the hierarchy of the State Police, as the Director-General of Police, an officer drawn from the Indian Police Service, who sits at the apex of the state police machinery. In fact, today the Inspector-General of Police is administratively subordinate to the Director-General of Police and the Additional Director-General of Police.

21. The Rules were also framed at a time when the system of Ranges and Commissionerates had not been established. Indubitably, the Rules, for better or for worse (worse, we hazard) have not kept pace with the times. We do not appreciate why the authorities concerned are unable to update/amend the Rules with at least the correct official description of posts to obviate confusion.

22. In the case at hand, the Director General of Police, Haryana, had never passed any order earlier and for the first time when the issue was brought to his notice, a Show-Cause Notice was issued to the appellant as to why the adverse remarks be not reconstructed; as due to such expunction, he had escaped from being retired from service compulsorily. Thus, the order passed by the learned co-ordinate Single Judge in CWP No.9973 of 2007 and CWP No.12095 of 2007 dated 23.03.2009 had no applicability in the facts and circumstances of the present case. Be that as it was, the State of Haryana moved in appeal against the judgment of the learned Single Judge herein, which was allowed in favour of the respondent-State.

23. This Court finds that the learned Division Bench has not approached the issue in the manner it was required to. The reason given for interference with the learned Single Judge's view is that it was highly improbable and unwarranted for the Inspector General of Police to have expunged the adverse remarks when there was a judicial verdict by the learned Civil Court refusing to do so. The said reasoning was employed despite noting the fact that even if there was any power of review, in the extant circumstances, it was wholly arbitrary. It was further observed that a judicial verdict by the learned Civil Court should have been respected. This Court would note that such reasoning is also erroneous. The fact remained that, rightly or wrongly, the learned Civil Court had granted this opportunity to the appellant to move again for expunction of adverse remarks, which the appellant did. Having said that, this Court would now look at the issue from a totally legal point of view – firstly, the authorities were exercising the power conferred on them by statute, and secondly, any order which amounts to 'review' (in the legal sense of the word) of an earlier order by the same authority cannot be undertaken, unless specifically so conferred by the relevant statute.

24. Moreover, the learned Civil Judge (Junior Division) found no ground to interfere with the adverse remarks yet granted liberty to the appellant to move for expunction thereof. The learned Civil Court erred in assuming that it had the power to do so, in the absence of any such provision in the Punjab Police Rules, 1934. There may be cases where a High Court under Articles 226 or 227 of the Constitution of India or this Court in exercise of its constitutional powers may specifically direct for fresh consideration of a representation, even in the absence of specific provisions. In High Court of Tripura v Tirtha Sarathi Mukherjee, (2019) 16 SCC 663, the question that arose was whether, in the absence of a statutory provision, a writ petitioner could seek re-evaluation of examination answer scripts? Answering, this Court held:

> "20. The question however arises whether even if there is no legal right to demand re-valuation as of right could there arise circumstances which leave the Court in any doubt at all. A grave injustice may be occasioned to a writ applicant in certain circumstances. The case may arise where even though there is no provision for re-valuation it turns out that despite giving the correct answer no marks are awarded. No doubt this must be confined to a case where there is no dispute about the

> correctness of the answer. Further, if there is any doubt, the doubt should be resolved in favour of the examining body rather than in favour of the candidate. The wide power under Article 226 may continue to be available even though there is no provision for re- valuation in a situation where a candidate despite having giving correct answer and about which there cannot be even the slightest manner of doubt, he is treated as having given the wrong answer and consequently the candidate is found disentitled to any marks.
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> 21. Should the second circumstance be demonstrated to be present before the writ court, can the writ court become helpless despite the vast reservoir of power which it possesses? It is one thing to say that the absence of provision for re-valuation will not enable the candidate to claim the right of evaluation as a matter of right and another to say that in no circumstances whatsoever where there is no provision for re-valuation will the writ court exercise its undoubted constitutional powers? We reiterate that the situation can only be rare and exceptional." (emphasis supplied)

25. The unique nature of power bestowed on the High Courts under Article 226 has very recently been commented upon in B S Hari Commandant v Union of India, 2023 SCC OnLine SC 413. In Sanjay Dubey v State of Madhya Pradesh, 2023 SCC OnLine SC 610, while declining to interfere with the order impugned therein, a reason which weighed was that a High Court had passed the said order, and not a Court of Session. This again emphasised the special nature of the High Courts, including that they are Constitutional Courts.

26. Thus, the observation by the learned Civil Court that the appellant could approach the authority, cannot be taken to mean that the appellant was granted carte blanche liberty in law to approach the same authority. What the learned Civil Court lost sight of was that no provision permitted the course of action suggested by it. Examined from another lens, even if we were to read the learned Civil Court's view in the appellant's favour, at best, he may have had some justification in approaching the Director General of Police, Haryana, being a superior authority, but the same authority could not have been approached again. On this line of reasoning, it becomes clear that even though the appellant had a window to move before the authorities again and dehors the learned Civil Court not interfering, but the same should have been to the superior authority and not the same authority, which had earlier refused expunction. In any event, we need not dilate on this further.

27. As far back as in 1971, directions were issued by the State Government that repeated representations would not be entertained as it would be contrary to Government Letter No. 2784-3S-70 dated 22.03.1971 mandating that a second representation against adverse remarks would not lie and which clarified the position that the same authority did not have any power of review for an order passed by its predecessor-in-office.

28. As such, the Director General of Police had rightly show-caused the appellant and taken subsequent action thereupon. Considering the chain of events, the consequential action, in our considered view, cannot be said to be arbitrary or shocking the conscience of the Court, so as to warrant interference. For a person in uniformed service, like the police, adverse entry relating to

his/her integrity and conduct is to be adjudged by the superior authority(ies) who record and approve such entry. Personnel having such remarks being compulsorily retired as per the statutory provisions under the Punjab Civil Services Rules, 1934, in the instant facts, is not an action this Court would like to interdict. We are hence not inclined to interfere with the order impugned, though as discussed above, for entirely different reasons than what were considered by and prevailed with the learned Division Bench.

29. Accordingly, the instant appeal stands dismissed.

30. Parties are left to bear their own costs. ADDITIONAL DIRECTION(S):

31. Copies of this judgment be communicated to the

(a) the Chief Secretaries, Governments of Punjab and Haryana at Chandigarh; (b.1) the Principal Secretary, Department of Home Affairs and Justice, Government of Punjab and (b.2) the Additional Chief Secretary, Home, Government of Haryana, and (c) the Directors General of Police, Punjab and Haryana by the Registry.

32. Steps be taken forthwith in line with the observations recorded at Paragraphs 19 to 21.

.....J. [VIKRAM NATH] .....J. [AHSANUDDIN AMANULLAH] NEW DELHI JUNE 14, 2023