

(15) In view of the fact situation of the present case, noted above, the instant one is not a fit case for exercising the inherent powers under Section 482 Cr.P.C.

(16) Keeping in view the totality of the facts and circumstances of the present case, coupled with the reasons aforementioned, the present petition is devoid of any merit and it must fail.

(17) Accordingly, the present petition is dismissed.

A. Aggarwal

Before M.M.Kumar & T.P.S. Mann, JJ.

STATE OF HARYANA AND OTHERS,—Appellants

versus

ASI AISH MOHAMMAD,—Respondents

LPA 406 of 2011

25th April, 2011

Punjab Police Rules, 1934 - RI.12.32 - Letters Patent, 1919 - Cl. X -A.C.R.s - Adverse remarks - Challenged before Civil Court but not accepted - Subsequent representation accepted by Inspector General of Police - Adverse remarks expunged - Orders recalled by Director General of Police - Judicial verdict of Civil Court decree should have been respected - Held, Inspector General of Police's power of review, if any, in these circumstances wholly arbitrary - Order passed by Director General of Police upheld.

Held, That the judicial verdict by Civil Court refusing to expunge the adverse remarks has been completely ignored by the Inspector General of Police. It is not only highly improper but it is totally unwarranted. Even if Inspector General of Police enjoys any power of review exercise of such a power in these circumstances is wholly arbitrary. The judicial verdict of Civil Court decree should have been respected and, therefore, the Director General of Police has rightly set aside the order of his sub-ordinate. For the aforesaid reasons the judgment in Ram Niwas Ram Niwas' case (supra)

would not be applicable. The learned Single Judge has wrongly applied the law to the facts of the present case. Accordingly, the order dated 27.1.2010 passed by the learned Single Judge is not sustainable and liable to be set aside. As a sequel to the above discussion the instant appeal is allowed and the order dated 27.1.2010 passed by the learned Single Judge is set aside. The order dated 30.10.2006 (P-6), passed by the Director General of Police, Haryana, is upheld.

(Paras 7 & 8)

Aman Chaudhary, Addl. AG, Haryana, *for the appellants.*

S.N. Yadav, Advocate, *for the respondent.*

M.M. KUMAR, J.

(1) The State of Haryana and its officers has filed the instant appeal under Clause X of the Letters Patent against the judgment dated 27.1.2010 rendered by the learned Single Judge allowing the writ petition filed by the petitioner-respondent by quashing orders of re-construction of adverse Annual Confidential Reports as well as compulsory retirement passed against him. He has further been held entitled to all consequential benefits. The learned Single Judge has found that the controversy involved in the writ petition is covered by a judgment rendered in the case of **Amarjit Kaur versus State of Punjab and others (1)** and a Division Bench judgment of this Court rendered in the case of **Ram Niwas v. State of Haryana** (CWP No. 8356 of 2006, decided on 26.5.2006) as also a judgment of Hon'ble the Supreme Court in the case of **Rathi Alloys and Steel Ltd. versus C.C.E. (2)**. In the case of Ram Niwas (supra) it has been held that 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 and that the power of review cannot be exercised unless it is expressly provided by the Statute.

(2) The undisputed facts of the present case are that a complaint was made against the petitioner-respondent by one ASI Basant Pal when he was posted as a Head Constable in the Police Post, Sushant Lok, Gurgaon. In a regular departmental enquiry he was found guilty and punishment

(1) 1988 (4) SLR 199

(2) 1990 (2) SCC 324

of reversion from the post of Head Constable to that of Constable was ordered to be inflicted upon him. He made a representation before the Inspector General of Police, Gurgaon Range, Gurgaon, who converted the punishment of reversion into stoppage of one increment, vide order dated 28.4.2001. In the meanwhile, some adverse remarks in the ACR of the petitioner-respondent were recorded by the Senior Superintendent of Police, Gurgaon, for the period from 1.4.1999 to 11.10.1999, 11.10.1999 to 31.3.2000 and 1.4.2000 to 29.12.2000. It has come on record that the petitioner-respondent made different representations from time to time for expunging the adverse remarks, which are detailed as under:

Period	Representation considered by	Outcome	Date of order
1.4.1999 to 11.10.1999	Inspector General of Police, Gurgaon Range, Gurgaon.	Rejected	19.2.2002
11.10.1999 to 31.3.2000	Inspector General of Police, Gurgaon Range, Gurgaon.	Rejected	27.6.2001
1.4.2000 to 29.12.2000	Inspector General of Police, Gurgaon Range, Gurgaon.	Partly accepted	20.7.2002
1.4.1999 to 11.10.1999, 11.10.1999 to 31.3.2000 and 1.4.2000 to 29.12.2000 (Consolidated representation)	Inspector General of Police, Gurgaon Range, Gurgaon.	Accepted	28.1.2005

(3) It is pertinent to mention that against the punishment of stoppage of one increment as well as adverse remarks, the petitioner-respondent filed a civil suit, which was partly decreed by the Civil Judge (Junior Division), Gurgaon, vide judgment and decree dated 27.9.2004 (P-2). The order dated 28.4.2001 stopping his one increment was set aside and the appellants were directed to release one increment. However, his prayer for expunging adverse remarks was not accepted by the Civil Court. Even the appeal filed by the appellants was dismissed by the learned District Judge, Gurgaon.

(4) Despite the judicial verdict declining the expunging adverse remarks, the petitioner-respondent again filed a consolidated representation dated 7.1.2005, for expunction of all the adverse remarks claiming that the order of stoppage of one increment has been set aside by the Civil Court. The Inspector General of Police, Gurgaon Range, vide order dated 28.1.2005, accepted the representation and directed expunging of his adverse remarks for the period 1.4.1999 to 11.10.1999, 10.10.1999 to 31.3.2000 and 1.4.2000 to 29.12.2000 (P-3).

(5) On 5.9.2006, the Director General of Police, Haryana, issued a show cause notice to the petitioner-respondent stating that he was given undue benefit by expunging his adverse remarks for the aforesaid period and the orders dated 20.7.2002 and 28.1.2005 passed by the Inspector General of Police, Gurgaon Range, Gurgaon were liable to be recalled and he is to be compulsorily retired (P4). On 22.9.2006 (P-5), the petitioner filed reply to the show cause notice. Thereafter, he also filed CWP No. 16514 of 2006 challenging the show cause notice dated 5.9.2006 (P-4). However, the said writ petition was dismissed as withdrawn giving liberty to the petitioner to file a afresh one. On 30.10.2006, the Director General of Police, Haryana passed an order for restoration and reconstruction of the adverse remarks in the ACR of the petitioner-respondent No. 1 (P-6). Feeling aggrieved, the petitioner-respondent No. 1 filed CWP No. 19128 of 2006.

(6) During the pendency of the said writ petition, the petitioner-respondent No. 1 was compulsory retired from service by the Superintendent of Police, Palwal, vide order dated 27.10.2008. On 27.1.2010, the learned Single Judge quashed the order for reconstruction of the adverse remarks in the ACR as well as the order of compulsory retirement of the petitioner-respondent No. 1. Accordingly he has been held entitled to all consequential benefits, in accordance with law. In that regard, the learned Single Judge has placed reliance on the following observations made in the case of Ram Niwas (supra):

“...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. 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. vs. C.C.E.*, (1990) 2 SCC 324. Our view also finds support from the judgment of this Court in the case of *Amarjit Kaur versus State of Punjab and others*, 1988 (4) SLR 199....”

(7) Having heard learned counsel for the parties and perusing the paper book we are of the considered view that the judgment rendered in the case of *Ram Niwas* (supra) and other judgments relied upon by the learned Single Judge would not come to the rescue of the petitioner-respondent No. 1. A close scrutiny of the factual position as narrated above would show that the Director General of Police, Haryana, has not exercised any power of review. He has passed one order dated 30.10.2006 directing restoration and reconstruction of adverse remarks in respect of petitioner-respondent. It seems that the line appearing in the concluding para of the order dated 30.10.2006, which states that “*The then Director General of Police has wrongly and unauthorisedly expunged above remarks by entertaining second representation against the Govt. instructions.....*”, has weighed with the learned Single Judge in quashing order dated 30.10.2006. As a matter of fact the factual position is otherwise. In the show cause notice dated 5.9.2006 (P-4) it has been specifically mentioned that the petitioner-respondent No. 1 has made representations from time to time for expunction of adverse remarks in the ACR for different period, as is evident from the table made in the preceding para 2. His representations for expunging the adverse remarks for the period from 1.4.1999 to 11.10.1999; 11.10.1999 to 31.3.2000 were rejected by the Inspector General of Police, Gurgaon Range, Gurgaon, vide orders dated 19.2.2002 and 27.6.2001 respectively, whereas his another representation in respect of the period from 1.4.2000 to 29.12.2000 was partly accepted on 20.7.2002. The petitioner-respondent No. 1 made yet another consolidated representation for the entire period starting from 1.4.1999 to 29.12.2000, which has been accepted by the said authority vide order dated 28.1.2005. The judicial verdict by Civil Court refusing to expunge

the adverse remarks has been completely ignored by the Inspector General of Police. It is not only highly improper but it is totally unwarranted. Even if Inspector General of Police enjoys any power of review exercise of such a power in these circumstances is wholly arbitrary. The judicial verdict of Civil Court decree should have been respected and, therefore, the Director General of Police has rightly set aside the order of his sub-ordinate. For the aforesaid reasons the judgment in Ram Niwas' case (supra) would not be applicable. The learned Single Judge has wrongly applied the law to the facts of the present case. Accordingly, the order dated 27.1.2010 passed by the learned Single Judge is not sustainable and liable to be set aside.

(8) As a sequel to the above discussion the instant appeal is allowed and the order dated 27.1.2010 passed by the learned Single Judge is set aside. The order dated 30.10.2006 (P-6), passed by the Director General of Police, Haryana, is upheld. No costs.

V. *Suri*

Before Mehinder Singh Sullar, J.

DR. ONKAR CHANDER JAGPAL & ANOTHER,—Petitioners

versus

**UNION TERRITORY, CHANDIGARH
AND ANOTHER,—Respondents**

CrI. M.No.M-54307 of 2006

23rd January, 2012

Code of Criminal Procedure, 1973 - S. 482 - Indian Penal Code, 1860 - S.3 - Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 - S. 3 - History of civil and criminal litigation between parties, with regard to ownership of house and right of parking - Complainant lodged an FIR against petitioner under S.3 of the SC&ST(P&A) Act, 1989 - Petition filed seeking quashing of complaint - Allegation in the FIR lack in material particulars - Complainant should have alleged (i) accused were not members of SC/ST (ii) they knew that complainant was a member of SC/ST (iii) accused intentionally insulted or intimidated with intent to humiliate her as a member of SC/ST (iv) insult/intimidation was in public view