

**HIGH COURT OF TRIPURA
AGARTALA**

W.P.(C)No.231 of 2025

Shri Haripada Saha,
S/o Shri Sarath Chandra Saha,
Resident of Kunjaban Colony,
P.O.: Abhoynagar, Agartala,
PIN: 799005

....Petitioner(s).

Versus

- 1. The State of Tripura**
Represented by the Secretary,
Education Department, Government of Tripura,
New Secretariat Complex, P.O.: Secretariat,
PIN: 799010,
Agartala, West Tripura District.
- 2. The Director of Elementary School Education,**
Government of Tripura, Agartala,
P.O.: Agartala, PIN: 799001,
West Tripura District.

..... Respondents.

For Petitioner(s)	:	Mr. Mr. Dulal Chandra Saha, Adv.
For Respondent(s)	:	Mr. Dipankar Sarma, Addl. G.A.
Date of Hearing	:	27.02.2026
Date of delivery of Judgment and Order	:	11.03.2026
Whether fit for Reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

Heard Learned Counsel, Mr. D. Saha appearing on behalf of the petitioner and also heard Learned Additional G.A., Mr. D. Sarma appearing on behalf of the State-respondents.

02. This writ petition is filed by the petitioner seeking the following reliefs:

- (a) admit this petition;
- (b) call for the records;
- (c) issue writ in the nature of mandamus calling upon the respondents to show cause as to why the petitioner should not be;
- (d) issue writ in the nature of certiorari calling upon the respondents to show cause as to why the Memo No.5(46)-DEE/DP/2017 dated 21-06-2024, should not be set aside and quashed.
- (e) issue writ in the nature of Certiorari calling upon the respondents to show cause as to why the order No.F.5(46)-DEE/DP/2017/1431-34 dated 24-09-2021, should not be set aside and quashed,
- (f) pass any other order/orders which your Lordship deem fit and proper;

03. Taking part in the hearing, Learned Counsel for the petitioner drawn the attention of the Court that in the year 1989 the petitioner joined under the Education Department, Government of Tripura and while in service, he was implicated in a criminal case and was convicted. After that the respondent-authority by an order dated 24.09.2021 (Annexure-1) dismissed the petitioner as assistant teacher (Primary). Challenging that he preferred a writ petition before this Court which was numbered as WP(C) No.273 of 2023 and this Court by order dated 02.05.2023 (Annexure-2) disposed of the writ petition setting aside the order dated 24.09.2021 on the ground of violation of the principles of natural justice.

For the sake of convenience, the operative portion of the order passed by this Court in W.P.(C) No.273 of 2023 runs as follows:

"Heard both sides and perused the evidence on record. The impugned order dated 24.09.2021 is violative of the principle

of natural justice and also contrary to the proviso of Rule 19 of CCS(CCA) Rule, 1965 wherein it is mandated that notice needs to be given by the respondents before imposing a penalty for conviction against the petitioner. Since the respondents has passed the impugned order which is under challenge without issuing any notice, the same is held as violative of the principle of natural justice. Accordingly, the same is set aside and liberty is given to the respondents to take steps in accordance with law as expeditiously as possible.

With the above observation and direction, this present writ petition stands disposed of. Stay if any stands vacated and pending application(s), if any also stands closed."

04. Challenging that order the State preferred an appeal which was numbered as WA No.67 of 2023 and the Division Bench of this High Court by judgment and order dated 20.05.2024 disposed of the appeal with the following conditions:

"6. However, we are of the considered view that following the ratio laid down by the Apex Court in the case of *State of Uttar Pradesh and Others versus Rajit Singh* reported in (2022) 15 SCC 254 at paragraph No. 12, the setting aside of the order of discharge could not lead to automatic reinstatement. But the appellant-employer shall ensure that proceeding for taking a fresh decision in the matter is undertaken within a reasonable time preferably 12(twelve) weeks from the date of receipt of copy of this order.

7. With the aforesaid modification in the impugned order, the instant appeal is disposed of. Pending application(s), if any, shall also stand disposed of."

It was further submitted that thereafter, the respondent-authority issued another memo dated 21.06.2024 **(Annexure-4)** and asked the petitioner to submit his contention within seven (7) days from the date of receipt of the memo and accordingly, the petitioner submitted his representation on 11.07.2024 **(Annexure-5)** and thereafter,

again the respondent-authority issued another memo calling for personal hearing of the petitioner **(Annexure-6)** dated 16.08.2024 and after that by order dated 27.03.2025 **(Annexure-7)** the respondent-authority has again dismissed the service of the present petitioner as assistant teacher.

Learned Counsel further submitted that without compliance of the provision of Rule 14 CCS and CCA Rules 1965, the respondent-authority most illegally has passed the order on 27.03.2025 which needs to be interfered with. In support of this contention, Learned Counsel relied upon one judgment of the Hon'ble Supreme Court of India in **Shanker Dass vs Union of India & Anr** dated 12.03.1985 reported in **(1985) 2 SCC 358**, wherein in para No.7 Hon'ble the Apex Court observed as under:

"7. It is to be lamented that despite these observations of the learned Magistrate, the Government chose to dismiss the appellant in a huff, without applying its mind to the penalty which could H appropriately be imposed upon him in so far as his service career was concerned. Clause (a) of the second proviso to Article 311 (2) of the Constitution confers on the Government the power to dismiss a person from service "on the ground of conduct which has led to his conviction on a criminal charge." But, that power, like every other power, has to be exercised fairly, justly and reasonably. Surely the Constitution does not contemplate that a Government servant who is convicted for parking his scooter in a non-parking area should be dismissed from service. He may, perhaps, not be entitled to be heard on the question of penalty since clause (a) of the second proviso to Article 311(2) makes the provisions of that article inapplicable when a penalty is to be imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act justly. Considering the facts of this case, there can be no two opinions that the penalty of dismissal from service imposed upon the appellant is whimsical."

Referring the same, Learned Counsel submitted that since the respondent-authority did not invoke the provision of Rule 14 of CCS CCA Rules in dismissing the service of the petitioner and as such the same is liable to be interfered with and quashed.

He also relied upon another citation of the Supreme Court of India in the **State of Uttar Pradesh vs. Ranjit Singh** dated 22.03.2022 reported in **(2022) 15 SCC 254** wherein Hon'ble the Apex Court in para No.14 observed as under:

"14. In view of the above discussion and for the reasons stated above, the findings recorded by the Tribunal as well as the High Court quashing and setting aside the order of punishment imposed by the disciplinary authority by applying the doctrine of equality is hereby quashed and set aside. However, as the enquiry is found to be vitiated and is found to be in violation of the principles of natural justice inasmuch as it is alleged that the relevant documents mentioned in the charge-sheet were not supplied to the delinquent officer, we remand the matter to the disciplinary authority to conduct a fresh enquiry from the stage it stood vitiated i.e. after the issuance of the charge-sheet and to proceed further with the enquiry after furnishing all the necessary documents mentioned in the charge-sheet and after following due principles of natural justice. The aforesaid exercise shall be completed within a period of six months from today."

Further reliance was placed upon another judgment in **Roop Singh Negi vs. Punjab National Bank & Ors.** dated 19.12.2008 reported in (2009) 2 SCC 570 wherein Hon'ble the Apex Court in para Nos.14 & 15 observed as under:

"14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The

charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

15. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left."

Again Learned Counsel for the petitioner relied upon another citation in **Satyendra Singh vs. State of Uttar Pradesh & Anr.** dated 18.11.2024 reported in **(2024) SCC OnLine SC 3325** wherein Hon'ble the Apex Court in para No.14 observed as under:

"14. In the case of Roop Singh Negi¹¹, this Court held that mere production of documents is not enough, contents of documentary evidence have to be proved by examining witnesses. Relevant extract thereof reads as under:—

"14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry

officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

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...

19. The judgment and decree passed against the respondent in Narinder Mohan Arya case [(2006) 4 SCC 713 : 2006 SCC (L&S) 840] had attained finality. In the said suit, the enquiry report in the disciplinary proceeding was considered, the same was held to have been based on no evidence. The appellant therein in the aforementioned situation filed a writ petition questioning the validity of the disciplinary proceeding, the same was dismissed. This Court held that when a crucial finding like forgery was arrived at on evidence which is non est in the eye of the law, the civil court would have jurisdiction to

interfere in the matter. This Court emphasised that a finding can be arrived at by the enquiry officer if there is some evidence on record.
..."

(emphasis supplied)"

Finally, Learned Counsel relied upon another citation of in **Vishwanath Vishwakarma v. State of U.P. & Ors.** reported in **(2023) SCC OnLine All 883**, wherein in para Nos.18, 21 and in the relevant portion of para No.30, Hon'ble the Apex Court observed as under:

"18. Division Bench of this Court has also considered this issue in *Sadanand Mishra v. State of U.P.* [*Sadanand Mishra v. State of U.P.*, 1993 LCD 70] and has taken the very same view. Relevant para of the said judgment is being quoted hereinbelow:

"On conviction of an employee of a criminal charge, the order of punishment cannot be passed unless the conduct which has led to his conviction, is also considered. It was further held that the scrutiny or exercise of conduct of an employee leading to his conviction is to be done ex parte and an opportunity of hearing is not to be provided for this purpose to the employee concerned."

21. Again a similar issue came up before this Court in *Ram Kishan* case [*Ram Kishan v. State of U.P.*, 2020 SCC OnLine All 170 : (2020) 1 ADJ 862] , in which an employee was convicted under Sections 302 and 134IPC and this Court after considering many judgments has taken the very same view. Relevant paras of the said judgment are being quoted hereinbelow: (SCC OnLine All paras 12, 13 and 14)

"12. In *Shankar Dass v. Union of India* [*Shankar Dass v. Union of India*, (1985) 2 SCC 358 : 1986 SCC (Cri) 242 : 1985 SCC (L&S) 444 : AIR 1985 SC 772 : (1985) 2 SCR 358] , Supreme Court while referring to power under clause (a) of second proviso of Article 311(2) of the Constitution of India, has observed as under: (SCC p. 362, para 7)

'7. ... Be that power like every other power has to be exercised fairly, justly and reasonably....'

13. Proviso (a) to Article 311 of the Constitution of India, is an exception to clause (2) of Article 311, which is applicable where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge. In *Railways v. T.R. Chellappan* [*Railways v. T.R. Chellappan*, (1976) 3 SCC 190 : 1976 SCC (L&S) 398 (para 21)] , Hon'ble Supreme Court considered Article 311(2), proviso (a) and held that this provision confers power upon the disciplinary authority to decide whether in the facts of a particular case, what penalty, if at all, should be imposed on the delinquent employee, after taking into account the entire conduct of the delinquent employee, the gravity of the misconduct committed by him, the impact which his misconduct is likely to have on the administration and other extenuating circumstances or redeeming features, if any, present in the case and so on and so forth. The conviction of the delinquent employee would be taken as sufficient proof of misconduct and then the authority will have to embark upon a summary inquiry as to the nature and extent of the penalty to be imposed on the delinquent employee and in the course of the inquiry, if the authority is of the opinion that the offence is too trivial or of a technical nature it may refuse to impose any penalty in spite of the conviction. The disciplinary authority has the undoubted power after hearing the delinquent employee and considering the circumstances of the case to inflict any major penalty on the delinquent employee without any further departmental inquiry, if the authority is of the opinion that the employee has been guilty of a serious offence involving moral turpitude and, therefore, it is not desirable or conducive in the interests of administration to retain such a person in service. In *Sushil Kumar Singhal v. Punjab National Bank* [*Sushil Kumar Singhal v. Punjab National Bank*, (2010) 8 SCC 573 : (2010) 2 SCC (L&S) 674 (Paras 24 and 25)] , Supreme Court

explained the meaning of the words 'moral turpitude' to mean anything contrary to honesty, modesty or good morals.

14. Thus, in view of the law laid down by Supreme Court in Tulsiram Patel case [Union of India v. Tulsiram Patel, (1985) 3 SCC 398 : 1985 SCC (L&S) 672 : AIR 1985 SC 1416] , T.R. Chellappan case [Railways v. T.R. Chellappan, (1976) 3 SCC 190 : 1976 SCC (L&S) 398 (para 21)] and Shankar Dass case [Shankar Dass v. Union of India, (1985) 2 SCC 358 : 1986 SCC (Cri) 242 : 1985 SCC (L&S) 444 : AIR 1985 SC 772 : (1985) 2 SCR 358] , and two Division Bench judgments of this Court in Shyam Narain Shukla case [Shyam Narain Shukla v. State of U.P., (1988) 6 LCD 530] and Sadanand Mishra case [Sadanand Mishra v. State of U.P., 1993 LCD 70] , it can safely be concluded that while removing the petitioner from service, the respondents were bound to consider the conduct of the petitioner, which has led to his conviction in the sessions trial. This was the condition precedent for the competent authority to acquire jurisdiction to impose punishment of removal from service. However, the impugned order is unfortunately silent and does not show consideration of conduct of the petitioner which has led to his conviction in the ST No. 178 of 2005. It was necessary for the respondents, while passing the impugned order, to consider the conduct of the petitioner leading to his conviction and then to decide what punishment is to be inflicted upon him. This has not been done by Respondent 2 while removing the petitioner from service. Therefore, the impugned order cannot be sustained and is hereby quashed."

30. ***

28. In the facts of the present case the petitioner has been dismissed from service on 18-3-2016 and has attained the age of superannuation on 31-12-2018. He has admittedly not worked during this period. The proceedings against the petitioner, consequent upon his conviction in an offence under Section 307IPC cannot be said to be without jurisdiction or arbitrary, on facts.

The order of dismissal has been found wanting on account of non-consideration of petitioner's conduct leading to his conviction and has been set aside, for such reasons. The petitioner would be entitled to all service and retiral benefits including continuity excluding salary between 18-3-2016 to 31-12-2018 by applying the principles of 'no work no pay'. It is however reiterated that the period between 18-3-2016 to 31-12-2018 shall be counted for payment of retiral benefits.'"

Referring the same, Learned Counsel for the petitioner submitted that since the respondent-authority did not follow the provision of Rule 14 of CCS CA Rules, 1965 and also failed to ensure the proceeding "for taking a fresh decision" as contained in para No.6 of the judgment of Hon'ble Division Bench of this High Court (Supra), so, the order dated 27.03.2025 passed by the respondent-authority cannot be sustained in the eye of law and the same is liable to be interfered with and quashed.

The State-respondents have contested the petition by filing counter-affidavit. In para Nos.12 & 13 the State-respondents have mentioned as under:

12. That, in response to the contents of paragraph-10 of the writ petition, it is humbly submitted that Sri Haripada Saha has been convicted & sentenced which he has undergone for offence under POSCO ACT i.e., an offence against a girl child. The Disciplinary Authority has considered and taken into account the entire conduct of the Sri Saha which led to his conviction and also the sentence he has suffered and the impact which it is likely to have on the children of school where Sri Saha is a teacher. In the reply to show cause, Sri Saha could not show any cogent ground to justify his retention in the Govt. Service in the Post of a Teacher after his conviction and sentence in an

offence under POCSO Act committed against a girl child.

Copy of Memo dated 27-03-2025 is enclosed hereto and marked as Annexure-R/4.

13. That, in response to the contents of paragraph-11 of the writ petition, it is humbly submitted that the conduct done by Sri Saha is not a minor offence. So it will not come under Rule 16 of CCS (CC & A) Rule, 1965. In Rule 19 (1) of the CCS (CC & A) Rules, 1965 suggests that the disciplinary authority must consider whether the conduct, which had led to his conviction, was such as warrants the imposition of a penalty and if so, what that penalty should be and the disciplinary authority will have to take into account the entire conduct of the delinquent employee, the gravity of the misconduct committed by him, the impact which his misconduct is likely to have on the administration and other extenuating circumstances or redeeming features. Once the disciplinary authority reaches the conclusion that the government servant's conduct was blameworthy and punishable, it must decide upon the penalty that should be imposed on the Government Servant. Clause (a) of second proviso to Article 311 (2) allows an exception where holding an inquiry is not necessary, while a dismissal can be made on the ground of conduct which has led to conviction on a criminal charge. 19(1) of CCS (CCA) rules, 1965 also provided similar course, subject to giving an opportunity to show cause.

05. However, at the time of hearing, Learned Additional G.A. drawn the attention of the Court referring Article 311 of the Constitution of India and submitted that in view of Article 311(2) of the Constitution of India, there was no need to draw up any separate proceeding before removal of the petitioner from the services he was convicted by a Court of Law. Now for the sake of convenience, let us reproduce herein below the relevant clause of Article 311(2) of the Constitution of India which provides as under:

"311.(2).No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable

opportunity of being heard in respect of those charges:

[Provided that where it is proposed after such inquiry, to impose upon him and any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply-]

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.”

Referring the same, Learned Additional G.A. further submitted that in compliance of the direction of the Division Bench of this Court before termination of service, the respondent-authority issued show-cause notice (**Annexure-4 & Annexure-R3**) and thereafter, personal hearing was made (**Annexure-6**) and finally, the order of dismissal was passed on 27.03.2025 (**Annexure-7**). So, there was no illegality in respect of the order passed by the respondent-authority regarding dismissal of service of the petitioner. Furthermore, Rule 19 of the CCS (CCA Rules) also empowers the authority to pass order for dismissal of the service of the petitioner on the ground that he was convicted by a Court of law.

It was further submitted that as per Rule 19 before order of dismissal he was given opportunity by issuing show-cause notice by the authority (Annexure 4 & R-3) and personal

hearing was also done (Annexure-6). So, the question of violation of the principle of natural justice does not arise.

For the sake of convenience let us reproduce herein below the relevant Rule 19 of the CCS (CCA Rules) 1965 which provides as under:

"(19) Permission to engage a legal practitioner for the defence.- Rule 14 (8) (a) of the CCS (CCA) Rules, 1965, provides, *inter alia*, that a delinquent Government servant against whom disciplinary proceedings have been instituted as for imposition of a major penalty may not engage a legal practitioner to present the case on his behalf before the Inquiring Authority, unless the Presenting Officer appointed by the Disciplinary Authority is a legal practitioner or the Disciplinary Authority, having regard to the circumstances of the case, so permits. It is clarified that, when on behalf of the Disciplinary Authority, the case is being presented by a Prosecuting Officer of the Central Bureau of Investigation or a Government Law Officer (such as Legal Adviser, Junior Legal Adviser), there are evidently good and sufficient circumstances for the Disciplinary Authority to exercise his discretion in favour of the delinquent officer and allow him to be represented by a legal practitioner. Any exercise of discretion to the contrary in such cases is likely to be held by the Court as arbitrary and prejudicial to the defence of the delinquent Government servant."

06. I have heard both the sides at length and perused the writ petition filed by the petitioner along with the documents annexed with the writ petition as well as the counter-affidavit and the documents submitted by the respondent-authority. Admittedly, in this case the present petitioner was convicted by a judgment dated 12.04.2019 passed by Learned Special Judge, West Tripura, Agartala in Special (POCSO) 32 of 2017 which has been affirmed/confirmed in appeal by this High Court by a judgment

dated 07.02.2020 in CrI.A.No.12 of 2019. The respondent-authority initially dismissed the petitioner from the service by order dated 24.09.2021 **(Annexure-1)** and challenging that he preferred writ petition before this High Court and this High Court by judgment dated 02.05.2023 in WP(C) No.273 of 2023 set aside the order of dismissal on the ground of violation of the principles of natural justice. Challenging the judgment of the Learned Single Judge, the State preferred an appeal bearing No. W.A. No.67 of 2023 and the Division Bench of this High Court by a judgment dated 20.05.2024 directed for taking a fresh decision within a period of twelve(12) weeks from the date of receipt of the copy of order. After that, the respondent-authority issued show-cause notice on 21.06.2024 **(Annexure-4)** and against that show-cause notice the petitioner submitted representation **(Annexure-5)**. Personal hearing was also made **(Annexure-6)** and thereafter, a fresh order was passed by the department on 27.03.2025 **(Annexure-7)**. I have also gone through the citations referred by the petitioner. Also I have gone through the provision of Article 311(2) of the Constitution of India as well as Rule 14 of the CCS (CCA) Rules 1965 as well as Rule 19 of the said rules. After going through the aforesaid citations referred by the petitioner and as well as the relevant provisions law and rules, it appears that in a case of this nature there was no need on the part of the respondent-authority to initiate a proceeding under Rule 14 of the CCS Rules 1965 against the present

petitioner rather Article 311(2) of the Constitution of India and Rule 19 of the CCS(CCA Rules) 1965 empowers the disciplinary authority to pass an order for dismissal of service which the respondent-authority did in this case. Even before passing an order of dismissal on 27.03.2025 show-cause notice was issued upon the petitioner, personal hearing was also made and as such I do not find any irregularity or illegality in the proceeding initiated by the respondent-authority in respect of the case of the present petitioner.

However Hon'ble the Apex Court in In **Union of India & Ors. v. Ramesh Kumar** reported in **(1997) 7 SCC 514**, wherein in para Nos.4, 5 and 6, Hon'ble the Apex Court observed as under:

"4. It appears that the Tribunal while allowing the application, was of the view that by suspension of the execution of sentence by the High Court the conviction recorded by the Special Sub-Judge against the respondent and the order of dismissal passed by the disciplinary authority have lost their efficacy and the respondent is to be treated under suspension till the final judgment to be delivered by the High Court in appeal preferred by the respondent. This view of the Tribunal is neither borne out from the rules applicable to the respondent nor by any judicial decisions cited before the Tribunal. Undisputedly, the respondent is governed by the CCS (CCA) Rules, 1965 read with the provisions of the Vigilance Manual. Rule 19 of CCS (CCA) Rules, 1965 which is applicable in the present case reads thus:

"19. Notwithstanding anything contained in Rule 14 to Rule 18—

(i) where any penalty is imposed on a government servant on the ground of conduct which has led to his conviction on a criminal charge, or

(ii) ***

(iii) ... provided in these rules,

the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:"

5. Rules 15.2 and 15.3 as occurring in Chapter VII of the Vigilance Manual are extracted below:

"15.2 ... accused public servant.

15.3. If the disciplinary authority comes to the conclusion that the offence for which the public servant has been convicted was such as to make retention in the public service prima facie undesirable, it can impose upon him under Rule 19(1) of CCS (CCA) Rules, 1965, the penalty of dismissal or removal or compulsory retirement from service as may be considered appropriate, with reference to the gravity of offence, without holding any enquiry or giving him a show-cause notice as provided in the proviso to Article 311(2) of the Constitution."

Fundamental Rule 54(1) is to the following effect:

"54. (1) ... make a specific order—

(a) regarding the pay and allowances to be paid to the government servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty."

6. A bare reading of Rule 19 shows that the disciplinary authority is empowered to take action against a government servant on the ground of misconduct which has led to his conviction on a criminal charge. The rules, however, do not provide that on suspension of execution of sentence by the appellate court the order of dismissal based on conviction stands obliterated and the dismissed government servant has to be treated under suspension till disposal of appeal by the appellate court. The rules also do not provide the disciplinary authority to await disposal of the appeal by the appellate court filed by a government servant for taking action against him on the ground of misconduct which has led to his conviction by a competent court of

law. Having regard to the provisions of the rules, the order dismissing the respondent from service on the ground of misconduct leading to his conviction by a competent court of law has not lost its sting merely because a criminal appeal was filed by the respondent against his conviction and the appellate court has suspended the execution of sentence and enlarged the respondent on bail. This matter may be examined from another angle. Under Section 389 of the Code of Criminal Procedure, the appellate court has power to suspend the execution of sentence and to release an accused on bail. When the appellate court suspends the execution of sentence, and grants bail to an accused the effect of the order is that the sentence based on conviction is for the time being postponed, or kept in abeyance during the pendency of the appeal. In other words, by suspension of execution of sentence under Section 389 CrPC an accused avoids undergoing sentence pending criminal appeal. However, the conviction continues and is not obliterated and if the conviction is not obliterated, any action taken against a government servant on a misconduct which led to his conviction by the court of law does not lose its efficacy merely because the appellate court has suspended the execution of sentence. Such being the position of law, the Administrative Tribunal fell into error in holding that by suspension of execution of sentence by the appellate court, the order of dismissal passed against the respondent was liable to be quashed and the respondent is to be treated under suspension till the disposal of criminal appeal by the High Court."

Similarly, in **Union of India v. V.K. Bhaskar** reported in **(1997) 11 SCC 383** in para Nos.3, 5, 7, 8 & 9, Hon'ble the Apex Court observed as under:

"3. Rule 19 of the Rules prescribes the special procedure in certain cases. At the relevant time, clause (i) of Rule 19 read as under:

"19. Special procedure in certain cases.—Notwithstanding anything contained in Rule 14 to Rule 18—

(i) where any penalty is imposed on a government servant on the ground of conduct which has led to his conviction on a criminal charge, or

(ii)-(iii)***

the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:"

5. The Tribunal was, therefore, not right in holding that the respondent could not be dismissed by invoking the provision of Rule 19(i) of the Rules because the appeal filed by him against the conviction and sentence is pending in the High Court.

7. We do not find any merit in this submission. The order of dismissal has to be read as a whole. If it is thus read, it would be found that in the first paragraph of the order the authority has referred to the fact of the respondent having been convicted on a criminal charge under Section 5(1)(c) read with Section 5(2) of the Prevention of Corruption Act, 1947 and Sections 409, 477-A and 120-B IPC and his having been awarded the penalty of rigorous imprisonment for one year and a fine of Rs 500 by the Special Judge, Jalandhar, on 17-5-1985. In the second paragraph of the said order the disciplinary authority has stated:

"It is considered that the conduct of Shri Vinod Kumar Bhaskar which has led to his conviction is such as to render his further retention in the public service undesirable/the gravity of the charge is such as to warrant the imposition of a major penalty for misappropriation of a sum of Rs 300 (approx.) along with other accused Man Singh, Jawala Das and Kewal Chander Kumar."

8. The said statement in the order of dismissal indicates that the disciplinary authority has applied its mind and after considering the conduct of the respondent which has led to his conviction on a criminal charge, has arrived at the conclusion that the said conduct was such as to render the further retention of the respondent in the public service undesirable. It cannot, therefore, be said that the order of dismissal was passed without the disciplinary authority applying its mind to the nature of the conduct of the respondent which led to his conviction on a criminal charge and which has rendered him undesirable to be retained in service.

9. The third paragraph of the order of dismissal refers to the advice that has been received from the Ministry of Law and Justice only for the purpose of arriving at the conclusion that in such a case it is not necessary to issue a charge-sheet or show-cause notice to a person who has been found guilty by court of law. The reference to the said advice from the Ministry of Law and

Justice does not mean that the disciplinary authority had not considered the matter in the light of the requirements of Rule 19(i) especially when a specific mention has been made about it in the second paragraph of the order. We are, therefore, unable to hold that the order dated 20-11-1986 dismissing the respondent from service has not been passed in accordance with the requirements of Rule 19(i) of the Rules, as construed by this Court in *Union of India v. Tulsiram Patel* [(1985) 3 SCC 398 : 1985 SCC (L&S) 672 : 1985 Supp (2) SCR 131]."

Further in **Prahlad Raut v. All India Institute of Medical Sciences** reported in **(2021) 14 SCC 472**, in para Nos.10, 11 and 12, Hon'ble the Apex Court observed as under:

"10. Rule 19 of the CCS (CCA) Rules is set out hereinbelow for convenience:

"19. Special procedure in certain cases.— Notwithstanding anything contained in Rule 14 to Rule 18—

(i) where any penalty is imposed on a government servant on the ground of conduct which has led to his conviction on a criminal charge, or

(ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or

(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these Rules,

the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:

Provided that the government servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under clause (i):

Provided further that the Commission shall be consulted, where such consultation is necessary, and the government servant has been given an opportunity of representing the advice of the Commission, before any orders are made in any case under this Rule."

11. The memorandum dated 6-1-2000 indicates compliance of the requisites for imposition of penalty under Rule 19(i) of the CCS (CCA) Rules. It is a matter of record that the appellant was convicted of the offence under Section 379 of the Penal Code for committing theft at a public place. The said memorandum reveals that the conduct of the appellant of committing theft in a public place, while under suspension on the serious charge of embezzlement and misappropriation, for which he was convicted under Section 379 of the Penal Code was duly considered. On such consideration, the authority concerned found retention of the appellant in the service of the respondent to be undesirable.

12. The appellant has apparently been given an opportunity of hearing. The memorandum dated 6-1-2000 records that the appellant had submitted a written explanation which had duly been considered before removing the appellant from the service of the respondent, from the date of his conviction."

From the aforesaid observations of the Hon'ble Supreme Court of India, it appears that the disciplinary authority is empowered to take action against a government servant on the ground of misconduct which has led to his conviction on a criminal charge. Even without holding any inquiry/ giving any show-cause notice as provided in the provision of Article 311(2) of the Constitution of the India, the disciplinary authority is empowered to pass order of dismissal which in the present case the authority has done. So, I find no irregularity or impropriety in the order passed by the respondent-authority in respect of dismissal of the petitioner from the service as assistant teacher, since, he was convicted in a case under POCSO Act and his conviction was upheld by the Appellate Court.

07. In view of the above, I do not find any scope to grant any relief in favour of the present petitioner of this case. In the result, the writ petition filed by the petitioner stands rejected being devoid of merit. No order is passed as to costs.

With this observation, this petition stands disposed of on contest.

Pending application(s), if any, also stands disposed of.

JUDGE



PURNITA DEB

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