

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

LPA No.660 of 2025
Reserved on : 16.09.2026
Decided on : 25.09.2026
Uploaded on: 25.09.2026

Adam Ram ...Appellant

Versus

State of HP and Anr. ...Respondents.

Coram

Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice.

Hon'ble Mr. Justice Bipin Chander Negi, Judge.

Whether approved for reporting?¹

For the appellant : Mr. P.P. Chauhan, Advocate.

For the respondents : Mr. Gobind Korla, Additional Advocate General.

Bipin Chander Negi, Judge

The present appeal has been preferred against the impugned judgment dated 20.05.2025 passed in CWPOA No. 3338 of 2019, whereby the writ petition preferred by the present appellant has been dismissed.

2. The incident on account of which removal of service of the writ petitioner was ordered had taken place on 10.04.2007. On account of the said incident, the writ petitioner had been prosecuted for an offense punishable under Section 302 IPC. The writ petitioner had remained in

¹ Whether the reporters of the local papers may be allowed to see the Judgment? *Yes*

judicial custody from April 2007 till 04.07.2007, when the writ petitioner was enlarged on bail by the Hon'ble High Court. The challan in the case at hand was instituted against the writ petitioner on 11.10.2007. On the basis of the same, the writ petitioner was tried in the Court of the Additional Sessions Judge, Kinnaur at Rampur. Vide judgment dated 29.07.2011, the writ petitioner was convicted by the learned Additional Sessions Judge, Kinnaur at Rampur under Section 304-II IPC.

3. On account of the aforesaid conviction, the writ petitioner was sentenced for five years' rigorous imprisonment and to pay a fine of Rs.20,000/-, and in default of the same, the writ petitioner was to undergo simple imprisonment for one year under Section 304-II IPC.

4. Aggrieved of the same, the writ petitioner had preferred Criminal Appeal bearing No.277 of 2011. The same was decided by a learned Single Judge of this Court on 26.06.2012. In the appeal, the writ petitioner was held guilty of the offence under Section 304-II of the IPC. However, the sentence was reduced to three years. The fine amount in appeal was not disturbed, and it was clarified in the appellate Court judgment that in default of paying the fine, the writ petitioner would be liable to undergo simple imprisonment for

a period of six months instead of one year, as had been ordered by the learned Additional Sessions Judge, Kinnaur, HP in judgment dated 29.07.2011.

5. In the aforesaid backdrop, Memorandum dated 30.03.2012 (page 84 of the paper-book) was issued by the Engineer-in-Chief, HPPWD to the writ petitioner, thereby affording an opportunity to the writ petitioner to make a representation on the penalty proposed in the memorandum. In the Memorandum, imposition of a major penalty, i.e., removal from government service, had been proposed. To the aforesaid memorandum, a response was submitted by the writ petitioner (page 86 of the paper-book), wherein the principal objection taken was that an appeal before the Hon'ble High Court had been preferred against the judgment passed by the Additional Sessions Judge, which was pending consideration. Hence, the authority was requested not to take any action till the pendency of the appeal so filed against the judgment of conviction.

6. The Engineer-in-Chief, HPPWD, after taking into account the response filed by the writ petitioner to the Memorandum dated 30.03.2012, the operative part of the judgment of the learned Additional Sessions Judge, passed the

impugned order dated 11.05.2012 (page 89 of the paper-book), whereby removal from service of the writ petitioner was ordered. Subsequent thereto, as has already been stated supra, Criminal Appeal No.277 of 2011 filed by the present appellant against the judgment passed by the learned Additional Sessions Judge was decided by a learned Single Judge of this Court on 26.06.2012, whereby conviction under Section 304-II of the IPC was upheld, the substantive sentence was reduced to three years, and the penalty imposed by the learned Additional Sessions Judge was kept intact. However, it was made clear that in case there is a default in paying the penalty, the writ petitioner would undergo simple imprisonment for a further six months.

7. After the conviction, the writ petitioner was imprisoned on 29.07.2011. The same continued up till 15.08.2013, whereinafter the writ petitioner was released on expiry of the sentence.

8. Feeling aggrieved by the impugned order dated 11.05.2012 (page 89 of the paper-book) passed by the Engineer-in-Chief, HPPWD whereby removal from service had been ordered, the writ petitioner had preferred an appeal against the same on 02.12.2013.

9. Post detailed consideration of the case of the writ petitioner and taking into account the provisions of Article 311 of the Constitution of India, the appellate authority, vide impugned order dated 29.09.2014 (i.e., Annexure R-1, pages 121–122 of the paper-book), was of the view that the penalty imposed vide order dated 11.05.2012 (page 89 of the paper-book) passed by the Engineer-in-Chief, HPPWD called for no interference.

10. It is in the aforesaid backdrop that by way of CWPOA No.3338 of 2019, the writ petitioner had laid a challenge to the impugned order dated 11.05.2012 passed by the Engineer-in-Chief imposing the penalty of removal from service. The writ petitioner had initially filed the Original Application in the month of August 2014 before the erstwhile Tribunal, which was then later transferred to this Court. During the pendency of the writ petition, the appeal preferred by the petitioner against the impugned order dated 11.05.2012 was decided vide order dated 29.09.2014 (Annexure R-1, pages 121–122 of the paper-book).

11. In the response filed, the respondents have sought to justify the penalty imposed taking into account the gravity

of misconduct, sentence imposed, and have thus supported the order of removal.

12. Heard counsel for the parties and perused the writ record.

13. Article 311(2) clause (a) speaks of "conduct which has led to his conviction on a criminal charge". There can be no question of suspending the conduct of the writ petitioner by an appellate court hearing an appeal against his conviction. Hence passing an order of removal of the writ petitioner in the case at hand, who has been convicted by a criminal court, by the Engineer-in-Chief, vide the impugned order dated 11.05.2012 (page 89 of the paper-book), is not barred merely because the appeal against the conviction dated 28.07.2011, is pending consideration or sentence order is suspended by the appellate court or on the ground that the said government servant-accused has been released on bail pending the appeal. In this respect reference can be made to ***Dy. Director of Collegiate Education (Admn.) v. S. Nagoor Meera, (1995) 3 SCC 377*** relevant extract whereof reads as under;

"6. Article 311(2) declares that no person, who is a member of the civil service of the

Union or All India Service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed, 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. The second proviso, however, carves out three exceptions to the said rule. We are concerned with the first exception mentioned under clause (a). Insofar as it is relevant, the second proviso reads as follows:

"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."

7. *This clause, it is relevant to notice, speaks of "conduct which has led his conviction on a criminal charge". It does not speak of sentence or punishment awarded. Merely because the sentence is suspended and/or the accused is released on bail, the conviction does not cease to be operative. Section 389 of the Code of Criminal Procedure, 1973 empowers the appellate court to order that pending the appeal "the execution of the sentence or*

order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond". Section 389(1), it may be noted, speaks of suspending "the execution of the sentence or order", it does not expressly speak of suspension of conviction. Even so, it may be possible to say that in certain situations, the appellate court may also have the power to suspend the conviction — an aspect dealt with recently in Rama Narang v. Ramesh Narang. At pages 524 and 525, the position under Section 389 is stated thus: (SCC pp. 524-525, paras 15 and 16) "Section 389(1) empowers the Appellate Court to order that the execution of the sentence or order appealed against be suspended pending the appeal. What can be suspended under this provision is the execution of the sentence or the execution of the order. Does 'order' in Section 389(1) mean order of conviction or an order similar to the one under Section 357 or Section 360 of the Code? Obviously the order referred to in Section 389(1) must be an order capable of execution. An order of conviction by itself is not capable of execution under the Code. It is the order of sentence or an order awarding compensation or imposing fine or release on probation which are capable of

execution and which, if not suspended, would be required to be executed by the authorities.

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In certain situations the order of conviction can be executable, in the sense, it may incur a disqualification as in the instant case. In such a case the power under Section 389(1) of the Code could be invoked. In such situations the attention of the Appellate Court must be specifically invited to the consequence that is likely to fall to enable it to apply its mind to the issue since under Section 389(1) it is under an obligation to support its order 'for reasons to be recorded by it in writing'. If the attention of the Court is not invited to this specific consequence which is likely to fall upon conviction how can it be expected to assign reasons relevant thereto? ... If such a precise request was made to the Court pointing out the consequences likely to fall on the continuance of the conviction order, the Court would have applied its mind to the specific question and if it thought that case was made out for grant of interim stay of the conviction order, with or without conditions attached thereto, it may have granted an order to that effect."

8. *We need not, however, concern ourselves any more with the power of the*

appellate court under the Code of Criminal Procedure for the reason that what is relevant for clause (a) of the second proviso to Article 311(2) is the "conduct which has led to his conviction on a criminal charge" and there can be no question of suspending the conduct. We are, therefore, of the opinion that taking proceedings for and passing orders of dismissal, removal or reduction in rank of a government servant who has been convicted by a criminal court is not barred merely because the sentence or order is suspended by the appellate court or on the ground that the said government servant-accused has been released on bail pending the appeal.

9. *The Tribunal seems to be of the opinion that until the appeal against the conviction is disposed of, action under clause (a) of the second proviso to Article 311(2) is not permissible. We see no basis or justification for the said view. The more appropriate course in all such cases is to take action under clause (a) of the second proviso to Article 311(2) once a government servant is convicted of a criminal charge and not to wait for the appeal or revision, as the case may be. If, however, the government servant-accused is acquitted on appeal or other proceeding, the order can always be revised and if the government servant is*

reinstated, he will be entitled to all the benefits to which he would have been entitled to had he continued in service. The other course suggested, viz., to wait till the appeal, revision and other remedies are over, would not be advisable since it would mean continuing in service a person who has been convicted of a serious offence by a criminal court. It should be remembered that the action under clause (a) of the second proviso to Article 311(2) will be taken only where the conduct which has led to his conviction is such that it deserves any of the three major punishments mentioned in Article 311(2). As held by this Court in *Shankar Dass v. Union of India*: (SCC p. 362, para 7)

"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 no-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."

10. *What is really relevant thus is the conduct of the government servant which has led to his conviction on a criminal charge. Now, in this case, the respondent has been found guilty of corruption by a criminal court. Until the said conviction is set aside by the appellate or other higher court, it may not be advisable to retain such person in service. As stated above, if he succeeds in appeal or other proceeding, the matter can always be reviewed in such a manner that he suffers no prejudice."*

14. From a perusal of the judgment of conviction passed by the learned Additional Sessions Judge dated 29.07.2011 and the judgment passed by the learned Single Judge in Criminal Appeal No.277 of 2011 dated 26.06.2012, it is apparent that the weapon of offence in the case at hand was a broken glass bottle. By use of the same, the writ petitioner had inflicted injury on the body of the deceased, specifically on the abdomen. Both the Courts have conclusively held that

the writ petitioner, in the aforesaid facts and attending circumstances, had requisite knowledge that by inflicting injury on the abdomen of the deceased with a broken glass bottle, the writ petitioner was likely to cause the death of the deceased. Hence, both the Courts had held the writ petitioner guilty of an offense under Section 304-II of the IPC. Since the intent to cause death or such bodily injury as was likely to cause death was missing in the case at hand therefore, the writ petitioner, though tried for an offence under Section 302 IPC, was held liable under Section 304-II IPC.

15. The aforesaid facts have been noticed by the Engineer-in-Chief, who passed the impugned order dated 11.05.2012 (page 89 of the paper-book), whereby the writ petitioner's removal from service had been ordered. The same had been ordered after affording due opportunity to the writ petitioner, as initially a memorandum dated 30.03.2012 (page 84 of the paper book) had been issued to the writ petitioner, wherein the proposed major penalty of removal of service sought to be imposed on the writ petitioner had been duly informed by the Engineer-in-Chief. Response thereto was filed (page 86 of the paper book).

16. Feeling aggrieved by the order dated 11.05.2012 passed by the Engineer-in-Chief, representation had been made on 02.12.2013, which was considered and decided vide order dated 29.09.2014 (Annexure R-1, pages 121–122 of the paper-book). While passing the same, due consideration to the facts of the case had been given by the appellate authority. Other than the aforesaid, provisions of the Constitution, i.e., Article 311, had also been taken into account.

17. Both the authorities and the learned Single Judge have perused the judgment of the criminal court and considered all the facts and circumstances of the case. The conviction has correctly been taken as proof of misconduct. Gravity of the misconduct has been rightly appreciated. The judgments relied upon by the writ petitioner before the learned Single Judge were duly considered and distinguished. The issue of proportionality of punishment was also taken into account. The punishment imposed cannot be said to be whimsical. In this respect, reliance has been correctly placed by the learned Single Judge on the judgment of the Apex Court in **(1985) 3 SCC 398, Union of India and Anr. Vs. Tulsiram Patel.**

18. In the case at hand the writ petitioner had been convicted by the Additional Sessions Judge on 29.07.2011. The same was affirmed by the learned Single Judge in Criminal Appeal No.277 of 2011 on 26.06.2012. After passing of the judgement of conviction by the Additional Sessions Judge the writ petitioner was afforded due opportunity to submit against the proposed major penalty of removal from service. The same was availed by the writ petitioner and after due consideration by the Engineer-in-Chief the order of removal from service of the writ petitioner dated 11.05.2012 had been passed. The same was a subject matter of challenge before the learned Single Judge. It was during the pendency of the aforesaid challenge that the appellate order dated 29.09.2014(Annexure R-1, pages 121-122 of the paper-book) had been passed confirming the initial order of removal dated 11.05.2012. In the aforesaid backdrop, on account of the principle of lis-pendens the learned Single Judge in the judgement under challenge had considered the legality of the appellate order dated 29.09.2014 (Annexure R-1, pages 121-122 of the paper-book) whereby the initial order of removal from service of the writ petitioner dated 11.05.2012 passed by the Engineer-in-Chief had been

confirmed. No infirmity in this respect can be found in the impugned judgement calling for interference by this court.

19. For the reasons stated here-in-above, no infirmity can be found with the view taken by the learned Single Judge. Accordingly, the present Letters Patent Appeal is dismissed. Pending miscellaneous application(s), if any, also stand disposed.

(G.S. Sandhawalia)
Chief Justice

(Bipin Chander Negi)
Judge

25th September, 2026
(Gaurav Rawat)