

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CWP No.10912 of 2011

Date of decision: 17.08.2015

Sajjan Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Ms. Ishrat Pannu, Advocate
for the petitioner.

Ms. Monica Chhibber Sharma, DAG, Punjab

Mr. J.S. Rana, Advocate
for respondent No.5.

AMOL RATTAN SINGH, J.

1. Learned counsel for the petitioner submits that the petitioner is not a Government employee/State employee and as such, directions by the State to terminate his services on the ground that he has been convicted for an offence punishable under Section 307 of the IPC, is without jurisdiction, as the petitioner is only a municipal employee.

She further submits that the offence committed by the petitioner does not come within the definition of moral turpitude and as such on that ground too, the directions given by respondent No.1 to the municipality, to initiate action for dismissing his services, are without any

basis. She relies upon a judgment of a coordinate Bench in **Mukhtiar**

Singh Vs. State of Punjab and others (CWP No.6604 of 2006), decided on 15.11.2006, to support his argument.

2. Learned State counsel, on the other hand, has pointed to the instructions issued by the Government, dated 05.08.1998, annexed with the reply of the Government, relying upon the judgments of the Supreme Court in **Deputy Director of Collegiate Education (Administration (Madras) Vs. S. Nagoor Meera**, as also in **Shankar Dass Vs. Union of India**, (1985) 2 SCC, 358, wherein the practice being adopted by various Governments, of continuing employees in public service, despite their conviction in criminal cases, was deprecated.

Thus, as per learned State counsel, the issue raised by learned counsel for the petitioner, that offence punishable under Section 307 of the IPC, committed by the petitioner, does not come within the definition of moral turpitude, is negated by the observation of the Supreme Court in the aforesaid judgment.

3. After considering the arguments of both learned counsel, it is seen that though in **Nagoor Meeras'** case (supra), as also in **Shankar Dass'** case (supra), the issue before the Supreme Court was not with regard to an offence punishable under Section 307 of the IPC, however, the issues are whether the offence comes within the ambit of 'moral turpitude' and, as to whether the Government, on grounds that an offence is one coming within the definition of moral turpitude, can direct dismissal of a municipal employee on that ground.

Before considering the Governments power to issue

directions with regard to such an employee, first, it needs to be seen as to whether or not an offence committed, punishable under Section 307 of the IPC, falls within the definition of moral turpitude or not.

4. Though Government has issued instructions listing the offences that come within the definition of moral turpitude, those have not been called for by this Court, in view of the fact that the petitioner, as already said, is not a Government servant, being a Leading Fireman in the services of the respondent-Municipal council.

Thus, first coming to the issue of whether or not the commission of an offence punishable under Section 307 IPC is, on principle, one involving moral turpitude or not, it would be useful to cite from a judgment of the Apex Court in **Raghvendra Kumar Vs. Prabal Kumar and others** (2014) 13 SCC 354.

While seized of the issue of rejection of nomination papers of a candidate for the post of a Pradhan of a Gram Panchayat, it was held as follows:-

“2. The first respondent wanted to contest election for Pradhan of Gram Panchayat Aheta, District Jalaun and he, therefore, filed his nomination paper which was accepted. Thereafter, by an order dated 05.10.2010 passed by the Returning Officer of Block Madhogarh, District Jalaun, his nomination was cancelled in view of his conviction under Section 307 IPC. It was argued before the High Court that the first respondent was released on bail by virtue of an order passed by the learned Single Judge of the Allahabad High Court on 25.08.2005 in Criminal Appeal No.3676 of 2005. Apart from this order, the impugned order accepted the submission that the conviction of the first respondent did not involve moral turpitude and therefore, the order dated 05.10.2010 passed by the Returning Officer was stayed. Consequently, Respondent 1 contested the election and got elected as Pradhan of Gram Panchayat Aheta.

3. The learned counsel for the appellant submitted that the order dated 25.08.2005 passed by the learned Single Judge was to admit

Criminal Appeal No.3676 of 2005 and suspend the sentence against Respondent No.1, but his conviction very much remained. Since it was a conviction under Section 307 IPC, it would certainly amount to an offence involving moral turpitude and, therefore, the Returning Officer was right in cancelling the nomination of Respondent No.1 and the High Court had no reason to interfere therewith.

4. Mr. D.K. Singh, learned counsel appearing for the first respondent, on the other hand, submitted that the suspension of sentence by the learned Single Judge of the High Court has to be taken into consideration, which the Division Bench has done while granting stay of the order passed by the Returning Officer.

5. We have noted the submissions of both the counsel. In our view, the order passed by the Division Bench of the High Court is patently wrong. Respondent 1 was convicted under Section 307 IPC. It is another matter that he was released on bail, but the release on bail cannot be equated with acquittal from the offence for which he was already convicted by the trial Court, and against which an appeal was pending its decision in the High Court. In the circumstances, we allow this appeal, set aside the order passed by the Division Bench of the Allahabad High Court. ”

5. Therefore, the Apex Court having held as above, the reliance of learned counsel for the petitioner on the judgment in **Mukhtiar Singhs'** case (supra), by a coordinate Bench of this Court, is misplaced.

Further, another coordinate Bench of this Court, seized of the issue of non-appointment of a selected candidate, as a Constable in the police, dealt with the issue in detail. In that case, **Parvesh Vs. State of Haryana**, (2009) 4 RCR (CrI.) 469 (P&H), the petitioner therein had been acquitted of the charge of having committed an offence punishable under Section 307 of the IPC, giving him benefit of doubt. However, the authority refused to give him an appointment letter on the ground that he had been involved in a crime involving moral turpitude and was only acquitted by giving him benefit of doubt and as such, his involvement in the crime could not be entirely ruled out.

This Court while holding that once the man had been acquitted, he could not be denied appointment, however, noticed the fact that the commission of an offence punishable under Section 307 of the IPC, is listed as one of the offences included as one of moral turpitude, by the Government.

Thus, even though the present petitioner is not a Government servant, however, the commission of an offence punishable under Section 307 of the IPC, having been held even by the Apex Court, as also by another coordinate Bench of this Court, as one involving moral turpitude, an argument to the contrary, cannot be accepted by this Court.

6. As regards the contention that the petitioner not being a Government servant no directions could be issued by respondent No.1 to the Municipality, Section 41 of the Punjab Municipal Act, 1911 (hereinafter to be referred to as “the 1911 Act”), has been relied upon by the Government, which stipulates as follows:-

“41. **Power to demand punishment of dismissal-** If in the opinion of the State Government, any officer or servant of the committee is negligent in the discharge of his duties, the committee shall, on the requirement of the State Government, suspend, fine or otherwise punish him; and if in the opinion of the State Government he is unfit for his employment, the committee shall dismiss him.

Provided that before requiring the committee to suspend, fine or otherwise punish any officer or servant or before declaring any officer or servant as unfit for employment, the State Government shall give to the concerned officer or servant an opportunity of being heard.”

Other than the above, though Section 236 of the Punjab Municipal Act, 1911, has not been referred to in the reply filed by the Government, it would be necessary to refer to it. The said provision runs as under:-

“236. **Power to State Government and its officers over**

committees. (1) The State Government and Deputy Commissioners, acting under the orders of the State Government, shall be bound to require that the proceedings of the committees shall be in conformity with law and with the rules in force under any enactment for the time bearing, applicable to Punjab generally or the area over which the committee have authority.

(2) The State Government may exercise all powers necessary for the performance of this duty, and may among other things, by order in writing, annul or modify any proceeding which it may consider not to be in conformity with law or with such rules as aforesaid, or for the reasons which would in its opinion justify an order by the Deputy Commissioner under Section 232.

(3) The Deputy Commissioner may within his jurisdiction for the same purpose exercise such powers as may be conferred upon him by rule made in this behalf by the State Government.”

7. In the present case, the Municipality, by various resolutions, (as can be seen from the order impugned in the present petition, Annexure P-4), kept postponing the matter of dismissal of the petitioner, despite Government directions, initially dated 19.05.2009, to that effect.

Consequently, the impugned order dated 11.05.2011 was passed by the 1st respondent, i.e. the Secretary to the Government of Punjab, Local Government Department, directing dismissal of the petitioner from service, on the above grounds.

In the opinion of this Court, the Government, in view of what is contained in Section 236 (2) of the 1911 Act, is within its jurisdiction to issue directions to the Municipality, where the action of the Municipality is considered not to be in conformity with law, including on the issue of retaining employees in service, who have been convicted for the commission of an offence involving moral turpitude.

Thus, even if Section 41 of the 1911 Act is considered to be only pertaining to the negligence of an employee in the discharge of his

duties, the jurisdiction of Government to issue directions as aforesaid, would still not cease in terms of Section 236(2) of the said Act.

Further, the petitioner, who is working as a Leading Fireman in the Municipal Council, is a public servant, though not a Government employee.

8. As regards non-hearing of the petitioner, which is the third ground taken by learned counsel, he was admittedly issued a show cause notice to which he replied. The need for personal hearing would not be necessary, in view of his admitted conviction by a competent Court in criminal proceedings. This is so, in view of the fact that his dismissal was not pursuant to any disciplinary proceeding initiated against him, but wholly on the basis of his conviction in criminal proceedings, by a competent Court, which is not in dispute.

As such, before his dismissal, no disciplinary proceedings were in fact needed to be initiated, the dismissal being wholly based upon his conviction in a criminal case. Though the petitioner is a municipal employee, and therefore the proviso to Article 311(2) of the Constitution would not be applicable to him (as has been held in various judgments of this Court right since **Mangal Sain Marwah Vs. State of Punjab**, (AIR 1953 Punjab 58), however, in the opinion of this Court, the principle would still be the same, where he is otherwise in public service under the Municipality. As such, beyond issuing a show cause notice, as to why he should not be dismissed from service, in view of his conviction, no further proceedings were required to be taken by the Municipality, before dispensing with his services.

In view of the above, I find no ground to interfere in the impugned order. Consequently, the writ petition is dismissed.

17.08.2015

vcgarg

(Amol Rattan Singh)
Judge