

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: July 6, 2015

+ **WP (C) No. 6315/2010**

RIAZ MUNIR AHMAD

..... Petitioner

Through: Mr. Mobin Akhtar, Adv. with
Petitioner in person

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Bhagvan Swarup Shukla,
Adv. with Mr. Vinod Kumar
Tiwari, Adv for R-1/UOI
Mr. Amit George, Adv. with Ms.
Zeba Khair, Adv. for R-2 to 4.

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

CM No. 5383/2015 (for necessary directions and early hearing)

This is an application seeking necessary directions and early hearing of the writ petition.

For the reasons stated in the application, and as the counsel for the parties agree that the writ petition involves a very short issue and the same be heard, accordingly, I allow the early hearing of the petition and the learned counsel for the parties have been heard on merit.

WP (C) No. 6315/2010

1. The challenge in this writ petition is to the orders dated March 24, 2005 and November 17, 2005 whereby the petitioner was issued a show cause notice seeking the petitioner's representation on a proposed decision taken by the Executive Council of the respondent No. 2 University to remove the petitioner from the services of the University (respondent No.2) and was in fact, removed after considering the representation so made by the petitioner.

2. The brief facts are, while the petitioner, at the relevant point of time was working as Professor in the respondent No. 2 University, a FIR No. 87/2002 under Sections 120-B and 420 of IPC was lodged against him in the New Friends Colony Police Station, on an allegation that he was running a fake Medical College at Sarai Jullena, New Delhi. The petitioner was arrested in the said case. Pursuant thereto, the petitioner was placed under suspension vide order dated March 2, 2002. On August 1, 2003, a memorandum was issued to hold an enquiry against the petitioner on two articles of charge. On October 18, 2004, the enquiry was adjourned sine die as the charges in the departmental enquiry were identical to the charges framed against the petitioner in the

criminal case. On November 9, 2004, the Chief Metropolitan Magistrate, Criminal Court convicted the petitioner of the offence under Section 420 read with Section 120-B IPC. On March 24, 2005, the respondents Nos. 2 to 4 issued a show cause notice to the petitioner seeking his representation on the proposed action of the respondent Nos. 2 to 4 to remove the petitioner from services on his conviction in the criminal case. The petitioner made a representation vide his letter, which is annexed as Annexure P9. It is noted that a further representation dated June 10 2005, was also given by the petitioner to the Registrar of the respondent No. 2-University bringing to his notice an order passed by the Addl. Sessions Judge on May 23, 2005 with regard to an appeal filed by the petitioner against the order of the Chief Metropolitan Magistrate, Delhi wherein, the learned ASJ has dropped the charge under Section 120-B IPC against the petitioner and waived the fine of Rs. 1 lakh and curtailed the sentence of 7 years to the already gone period. The competent authority, Executive Council on consideration of the representations made by the petitioner on April 18, 2005 and June 10, 2005, and also perusing the order passed by learned Addl. Sessions Judge, Delhi, a reference of which has been given above, was of the view

that the learned Addl. Sessions Judge has upheld the conviction of the petitioner and resolved to stick to the decision taken earlier by the Council for removing the petitioner from the services of the Jamia Milia Islamia. The petitioner not satisfied with the order of the learned Addl. Sessions Judge filed a Criminal Revision Petition No. 823-24/2005 before this Court against the order dated May 23, 2005. The revision petition was finally decided on August 28, 2009, wherein, this Court was of the following view:

“7. In the facts of this case, I find that the learned Additional Sessions Judge had found appellant, Riaz Muneer Ahmed, guilty of the offence under Section 420 read with Section 120-B IPC. However, the order on sentence as passed by the learned Magistrate was modified to the extent that the sentence was reduced to the period already undergone. Learned Additional Sessions Judge had also noted that the appellant had remained behind bars not only during his trial but also while his appeal was pending. Taking into consideration the facts of this case wherein the order on sentence was set aside by the learned ASJ and yet the petitioner herein has undergone a period of twenty six (26) months in jail, the benefit of Probation of Offenders Act is extended to the petitioner. It is also made clear that the petitioner would be entitled to the benefit of Section 12 of the Probation of Offenders Act and the same shall not affect his service career.

8. Petition stands disposed of.”

3. Accordingly, the petitioner on October 19, 2005, wrote a letter to

the respondent Nos. 2 to 4 requesting for his reinstatement. It is noted that the petitioner had challenged his removal in a Writ Petition (C) No. 33/2006. In one of the hearings in the Writ Petition on December 7, 2009 which was after the order of this Court in Criminal Revision Petition No. 823-24/2005, a submission was made to the Writ Court that in terms of the order of this Court in Criminal Revision Petition dated August 28, 2009, the petitioner had already made a representation to the respondent Nos. 2 to 4 for his reinstatement. On a statement made by the counsel for the respondent Nos. 2 to 4 that the decision on the representation shall be taken within 6 weeks, the petition was dismissed as withdrawn. It is the case of the petitioner in the proceedings that despite the statement made before the Court in W.P. (C) No. 33/2006, no decision has been taken.

4. In the counter affidavit filed by the respondent Nos. 2 to 4, they justified the action taken by the University in removing the petitioner on conviction by the Criminal Court as upheld by the Appellate Court.

5. The learned counsel for the petitioner has primarily made two submissions. First submission being, that in view of the fact that the petitioner has been given the benefit of Section 12 of the Probation of

Offenders Act ('Offenders Act', in short) and the observation of this Court in Criminal Revision Petition No. 823-24/2005 shall not affect his service career and the respondent Nos. 2 to 4 could not have removed the petitioner from the services. His second submission was that the competent authority is required to peruse the judgment of the Criminal Court and all facts and circumstances of the case and various factors in ***T.R.Chellappan's case (supra)*** before affecting the removal, in view of the judgment of the Supreme Court reported as ***AIR 1985 SC 1416, Union of India and Anr. Vs. Tulsiram Patel (Para 127)***.

6. Insofar as the first submission is concerned, the issue is no more res-integra inasmuch as in a later judgment in the case of ***2010 Vol. 8 SCALE Page 71, Sushil Kumar Singhal Vs. The Regional Manager, Punjab National Bank***, the Supreme Court, after considering and analysing the law including its earlier judgment in ***T.R.Chellapan's case (supra)***, was of the view that the conviction of an employee for an offence permits the disciplinary authority to initiate the disciplinary proceedings against the employee or to take steps for his removal from services on the basis of the conviction. The word "Disqualification" contained in Section 12 of the Offenders Act refers to the

disqualification provided in other Statutes as explained by the Court in the cases referred by it in the said judgment. It was held, the employee cannot claim a right to continue in service merely on the ground that he has been given benefit of probation under the Offenders Act.

7. Even I note that this Court had also considered the issue on many occasions. In **177 (2011) Delhi Law Times 471 (DB), Gokul Ram Meena Vs. Govt. of NCT of Delhi and Ors.**, this Court upheld the order of the Central Administrative Tribunal rejecting the original application filed by the petitioner in that case seeing the direction for being appointed as Constable (Male) Executive by holding as under:

“6. The stand of the petitioner is that when he submitted the application form, the case registered vide aforesaid FIR was sub-judice against him in the court of Judicial Magistrate, 1st Class, Thana Gazi. The petitioner had already mentioned about the case in the application form. The said case has been decided on 1st June, 2009 by the court of Judicial Magistrate, 1st Class, Thana Gazi, Distt. Alwar (Rajasthan) wherein petitioner and co-accused persons are acquitted u/s 323,341, 354 and 451 IPC due to compromise. The petitioner is convicted u/s 143 IPC and the court has given the benefit of section 3 of the Probation of Offenders Act, 1958 and it is ordered that in terms of section 12 of Probation of Offenders Act, the conviction would have no adverse effect on petitioner and one Sh. Gopi Ram in future in their Government service or otherwise. In view of the above directions, respondents are not justified in cancelling his candidature.

The Tribunal has considered the aforesaid aspect of

the matter in the light of judgment of this court in Satraj Singh Vs. Union of India & ors reported in 2007 IX AD (Delhi) 241 wherein after relying on the judgment of the Supreme Court in Commandant, 20th Battalion, ITB Police Vs. Sanjay Binjola reported in (2001) 5 SCC 317, it is held that the directions issued by the Session Judge, Bikaner to the effect that the conviction of the petitioner therein shall not have any adverse effect on his service was held to be without jurisdiction and therefore not binding on the respondents. Following the aforesaid judgment the Tribunal has rejected the contention raised by the petitioner that the direction of the Court of Judicial Magistrate, 1st Class, Thana Gazi, Distt. Alwar, Rajasthan in judgment dated 1st June, 2009 to the effect that the conviction of petitioner would have no adverse effect in future in Government Service is not binding on the Tribunal.

Recently, the Supreme Court in Sushil Kumar Singhal Vs. The Regional Manager, Punjab National Bank reported in (2010) IV LLJ 297 SC after taking note of various decisions on the issue, where after conviction, a person was released on probation, has upheld the dismissal of an employee who was convicted for an offence involving mortal turpitude. Even in the said case, appellant therein was given the benefit of Section 12 of the Probation of Offenders Act by the criminal court. If that is so, there is no reason to uphold the contention of petitioner who is involved in a serious crime”.

8. Even in a subsequent judgment dated April 18, 2013, a Division Bench of this Court while deciding **W.P.(C) 2372/2010** in the case of **Ajit Kumar Vs. Commissioner of Police and Ors.** involving an identical issue, was of the following view:

“7. It is seen that even though the Tribunal referred to Section 12 of the Offenders Act, it did not deliberate much on it and decided the case more on facts. No doubt the facts become relevant, when the appointment is in a police force. The larger question which falls for our consideration in this case, is whether petitioner having been released under Section 4 of the Offenders Act, does not suffer disqualification because of Section 12 of the said Act. We feel that the issue is no more res integra having decided by the Supreme Court in a plethora of judgments which are also followed by W P (C) 2372/2010 4 of 12 this Court. In the opinion reported as 2007 (IX) AD (Delhi) 241 Satraj Singh v. Union of India & Ors. a Division Bench held as under:-

“10. Union of India v. Bakshi Ram (1990) 2 SCC 426 was an appeal from a decision of the Rajasthan High Court, wherein the Rajasthan High Court, relying upon Section 12 of the Act had held that release on probation was the effect of removing the disqualification attaching to the employees conviction under Section 10(n) of CRPF Act. The Hon’ble Supreme Court reversed the said decision of the High Court. Paragraphs 8 to 13 of the said decision being relevant are produced herein below:

“8. It will be clear from these provisions that the release of the offender on probation does not obliterate the stigma of conviction. Dealing with the scope of Sections 3, 4 and 9 of the Probation of Offenders Act, Fazal Ali, J., in The Divisional Personnel Officer, Southern Railway and Anr. Etc. V. T.R.Challappan etc., [1975] 2 SLR 587 at 596 speaking for the Court observed:

These provisions would clearly show that an order of release on probation comes into existence only after the accused is found guilty and is convicted of the offence. Thus the conviction of the accused or the finding of the Court that he is guilty cannot be washed out at all because that is the sine qua non for the order or release

on probation of the offender. The order of release on probation is merely in substitution of the sentence to be imposed by the Court. This has been made permissible by the Statute with a humanist point of view in order to reform youthful offenders and to prevent them from becoming hardened criminals. The provisions of Section 9(3) of the Act extracted above would clearly show that the control of the offender is retained by the criminal court and where it is satisfied that the conditions of the bond have been broken by the offender who has been released on probation, the Court can sentence the offender for the original offence. This clearly shows that the factum of guilt on the criminal charge is not swept away merely by passing the order releasing the offender on probation. Under Sections 3,4, or 6 of the Act, the stigma continues and the finding of the misconduct resulting in conviction must be treated to be a conclusive proof. In these circumstances, therefore, we are unable to accept the argument of the respondents that the order of the Magistrate releasing the offender on probation obliterates the stigma of conviction.”

8. On similar lines in the decision reported as AIR 1998 SC 788 Harichand v. Director of School Education the Supreme Court held as under:-

“In our view, Section 12 of the Probation of Offenders Act would apply only in respect of a disqualification that goes with a conviction under the law which provides for the offence and its punishment. That is the plain meaning of the words “disqualification, if any, attaching to a conviction of an offence under such law” therein. Where the law that provides for an offence and its punishment also stipulates a disqualification, a person convicted of the offence but released on probation does not, by reason of Section 12, suffer the disqualification. It cannot be held that, by reason of Section 12, a conviction for an offence should not be taken into

account for the purposes of dismissal of the person convicted from government service.”

9. In a recent decision in Sushil Kumar Singhal’s case (supra), after W P (C) 2372/2010 6 of 12 analysing the law including the judgments referred above the Supreme Court has held as under:-

“9. The sole question involved in this case is whether the benefit granted to the appellant under the provisions of Act, 1958 makes him entitled to reinstatement in service.

The issue involved herein is no more res integra.

In Aitha Chander Rao v. State of Andhra Pradesh, 1981 (Suppl.) SCC 17, this Court held:-

“As the appellant has been released on probation, this may not affect his service career in view of Section 12 of the Probation of offenders Act.”

10. The said judgment in Aitha Chander Rao (Supra) was not approved by this Court in Harichand v. Director of School Education, (1998) 2 SCC 383, observing that due to the peculiar circumstances of the case, the benefit of the provisions of 1958 Act had been given to him and as in that case there had been no discussion on the words "disqualification, if any attaching to a conviction of an offence under such law", the said judgment cannot be treated as a binding precedent. This Court interpreted the provisions of Section 12 of the 1958, Act and held as under:

“In our view, Section 12 of the probation of offenders Act would apply only in respect of a disqualification that goes with a conviction under law which provides for the offence and its punishment. That is the plain meaning of

the words "disqualification, if any, attaching to a conviction of an offence under such law" therein. Where the law that provides for an offence and its punishment also stipulates a disqualification, a person convicted of the offence but released on probation does not by reason of Section 12, suffers the disqualification. It cannot be held that by reason of Section 12, a conviction for an offence should not be taken into account for the purposes of dismissal of the person convicted from government service." (Emphasis added).

11. In Divisional Personnel Officer, Southern Railway and Anr. v. T.R. Chellappan, AIR 1975 SC 2216, this Court observed that the conviction of an accused, or the finding of the Court that he is guilty, does not stand washed away because that is the sine-qua-non for the order of release on probation. The order of release on probation is merely in substitution of the sentence to be imposed by the Court. Thus, the factum of guilt on the criminal charge is not swept away merely by passing the order under the Act, 1958.

12. In Trikha Ram v. V.K. Seth and Anr., (1987) Supp. SCC 39, this Court had held that if a person stands convicted and is given the benefit of the provisions of the 1958, Act, he can be removed from service only on the ground that he stood convicted. But by virtue of the provisions of Section 12 of the 1958, Act, his removal cannot be a "disqualification" for the purposes provided in other Statutes such as the Representation of the People Act, 1950. The same view has been reiterated by this Court in Union of India and Ors. v. Bakshi Ram, (1990) 2 SCC 426; Karam Singh v. State of Punjab and Anr., (1996) 7 SCC 748; and Additional Deputy Inspector General of Police, Hyderabad v. P.R.K. Mohan, (1997) 11 SCC 571.

13. In Shankar Dass v. Union of India and Anr., AIR

1985 SC 772, this Court has held that the order of dismissal from service, consequent upon a conviction, is not a disqualification within the meaning of Section 12 of the 1958, Act. The court held as under:

“There are Statutes which provide that the persons, who are convicted for certain offences, W P (C) 2372/2010 8 of 12 shall incur certain disqualification; for example, Chapter III of the Representation of Peoples Act, 1951 entitles 'disqualification' for Membership of Parliament and State Legislatures, and Chapter IV entitles 'disqualification' for voting, contains the provisions which disqualify persons convicted of certain charges from being the Members of Legislatures or from voting at election to the legislature. That is the sense in which the word 'disqualification' is used in Section 12 of the Probation of Offenders Act.....Therefore, it is not possible to accept the reasoning of the High Court that Section 12 of the 1958 Act takes away the effect of conviction for the purpose of service also.”

14. In State of U.P. v. Ranjit Singh, AIR 1999 SC 1201, this Court has held that the High Court, while deciding a criminal case and giving the benefit of the U.P. First Offenders Probation Act, 1958, or similar enactment, has no competence to issue any direction that the accused shall not suffer any civil consequences. The Court has held as under: “We also fail to understand, how the High Court, while deciding a criminal case, can direct that the accused must be deemed to have been in continuous service without break, and, therefore, he should be paid his full pay and dearness allowance during the period of his suspension. This direction and observation is wholly without jurisdiction....”

15. In Union of India v. Trilochan Patel, AIR 1985 SC 1612, some part of the Judgment in T.R. Chellappan

(supra) was overruled by the Constitution Bench of this Court. But the observations cited hereinbefore were not overruled.

16. In *Punjab Water Supply Sewerage Board and Anr. v. Ram Sajivan and Anr.*, (2007) 9 SCC 86, this Court explained that the Judgment in *Aitha Chander Rao (supra)* did not lay down any law as no reason has been assigned in support of the order. Thus, the same remained merely an order purported to have been passed under Article 142 of the Constitution of India. This Court allowed the disciplinary authority to initiate the disciplinary proceedings in accordance with law and pass an appropriate order, in spite of the fact that in the said case, the court, after recording the conviction, had granted benefits of the provisions of the Act, 1958 to the employee.

17. In view of the above, the law on the issue can be summarized to the effect that the conviction of an employee in an offence permits the disciplinary authority to initiate disciplinary proceedings against the employee or to take appropriate steps for his dismissal/removal only on the basis of his conviction. The word 'Disqualification' contained in Section 12 of the Act, 1958 refers to a disqualification provided in other Statutes, as explained by this Court in the above referred cases, and the employee cannot claim a right to continue in service merely on the ground that he had been given the benefit of probation under the Act, 1958."

10. After considering the position of law as it stood in the year 2007 including some of the judgments referred above, this Court in the opinion in *Satraj Singh's case (supra)* held that the issue: whether the disqualification from which an employee is saved under Section 12 of the Act would also include action against him by his

employer under his conditions/rules is no more res integra.

11. Further in Gokul Ram Meena's case (supra) this Court upheld the order of the Tribunal rejecting the OA filed by the petitioner in that case seeking direction for being appointed as Constable (Male) Executive in identical circumstances by summing up in para 6 as under:-

“6. The stand of the Petitioner is that when he submitted the application form, the case registered vide aforesaid FIR was sub judice against him in the court of Judicial Magistrate, 1st Class, Thana Gazi. The Petitioner had already mentioned about the case in the application form. The said case has been decided on 1st June, 2009 by the court of Judicial Magistrate, 1st Class, Thana Gazi, Distt. Alwar (Rajasthan) wherein Petitioner and co-accused persons are acquitted under Section 323, 341, 354 and 451 IPC due to compromise. The Petitioner is convicted Under Section 143 IPC and the court has given the benefit of Section 3 of the Probation of Offenders Act, 1958 and it is ordered that in terms of Section 12 of Probation of Offenders Act, the conviction would have no adverse effect on Petitioner and one Sh. Gopi Ram in future in their Government service or otherwise. In view of the above directions, Respondents are not justified in cancelling his candidature. The Tribunal has considered the aforesaid aspect of the matter in the light of judgment of this Court in Satraj Singh v. Union of India and Ors. reported in 2007 IX AD (Delhi) 241 wherein after relying on the judgment of the Supreme Court in Commandant, 20th Battalion, ITB Police v. Sanjay Binjola reported in IV (2001), SLT 28=II (2001)CCR 240 (SC) =(2001) 5 SCC 317, it is held that the directions issued by the Session Judge, Bikaner to the effect that the conviction of the Petitioner therein shall not have any adverse effect on his service

was held to be without jurisdiction and therefore not binding on the Respondents. Following the aforesaid judgment the Tribunal has rejected the contention raised by the Petitioner that the direction of the Court of Judicial Magistrate, 1st Class, Thana Gazi, Distt. Alwar, Rajasthan in judgment dated 1st June, 2009 to the effect that the conviction of Petitioner would have no adverse effect in future in Government Service is not binding on the Tribunal. W P (C) 2372/2010 11 of 12 Recently, the Supreme Court in Sushil Kumar Singhal v. The Regional Manager, Punjab National Bank reported in VI (2010) SLT 84=(2010) IV LLJ 297 (SC) after taking note of various decisions on the issue, where after conviction, a person was released on probation, has upheld the dismissal of an employee who was convicted for an offence involving mortal turpitude. Even in the said case, Appellant therein was given the benefit of Section 12 of the Probation of Offenders Act by the criminal court. If that is so, there is no reason to uphold the contention of Petitioner who is involved in a serious crime.”

12. From the above it is seen that the position of law qua Section 12 of the Offenders Act is well settled. Section 12 would not come to the rescue of the petitioner. His release under Section 4 of the Offenders Act would not obliterate the conduct/act which constitutes the offence. The petitioner would not be entitled to any relief even on the interpretation of Section 12 of the Offenders Act”.

9. In view of the position of law referred to above, the conclusion of this Court in Crl. Rev. Pet. 823-24/2005 on the basis of reliance placed on the judgment in the case of ***Aitha Chander Rao Vs. State of A.P.***,

1981 Suppl. SCC 17 that the release on probation may not affect the petitioner's service career in view of Section 12 of the Offenders Act is per incuriam inasmuch this Court was not shown the judgment of the Supreme Court in *Sushil Kumar Singhal case (supra)*. Moreover, the University was not a party to those proceedings. The first submission made by the learned counsel for the petitioner needs to be rejected.

10. Insofar as the second submission made by the learned counsel for the petitioner, that the Authority was required to peruse the judgment of the Criminal Court and all the facts and circumstances of the case and various factors set out in *T.R. Chellapan's case (supra)* is concerned, it may be stated here that this Court has perused the show cause notice dated March 24, 2005 issued to the petitioner and the order of the removal dated November 17, 2005, so also the resolution passed by the Executive Council on August 17, 2010, shows a proper application of the mind on the part of the competent authority i.e. Executive Council, which has resolved as under:

*“The Majlis (EC) after detailed deliberation,
resolved as under:*

- (i) Sh. Riaz Ahmed is not a fit person to be retained on the employment rolls of an educational institution as he was convicted by a court of*

competent jurisdiction and it is not a case of honourable exoneration. A teacher with a tainted record is unacceptable to teach young students.

(ii) *His reinstatement shall be highly prejudicial to the academic environ of the University. Resultantly, no indulgence whatsoever can be granted to him in Jamia Millia Islamia”.*

11. The decision of the Executive Council was on relevant considerations and this Court, in exercise of judicial review, would not like to sit as an Appellate Authority over and above the Executive Council and come to a different conclusion. I do not see any merit in the writ petition. The same is dismissed.

12. No costs.

(V.KAMESWAR RAO)
JUDGE

JULY 06, 2015/akb