

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.15307 of 2015

Date of Decision: 08.09.2016

Satpal

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Deepak Girotra, Advocate,
for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

RAJIV NARAIN RAINA, J.

1. The petitioner was dismissed from service following conviction on criminal charges under sections 323, 324, 148, 149, 506 and 452 IPC in FIR No.473 dated December 24, 2002 in Police Station, Sadar Thanesar, District Kurukshetra. His appeal against conviction and sentence failed when the learned Appellate Court, Kurukshetra rejected the appeal. The petitioner was sent to judicial custody on January 11, 2013.

2. The petitioner is before this Court in Criminal Revision No.277 of 2013 against the judgment of conviction and sentence recorded by the Courts below. The High Court suspended the sentence pending revision vide order dated April 02, 2013. On release from judicial custody the petitioner returned to his job only to be handed over an order of suspension dated March 25, 2013 endorsed on April 05, 2013. His request for reinstatement has not met with success. On December 09, 2013 the

petitioner was dismissed from service following conviction on a criminal charge. He filed a statutory appeal (copy not placed on record) followed by a supplementary appeal dated December 21, 2014 against the order of dismissal but the same has been rejected by the competent authority vide impugned order dated July 01, 2015. The petitioner complains in his challenge on merits that he was not given an opportunity of hearing before the order was passed and, therefore, it suffers from violation of principles of natural justice. At the time of dismissal, the petitioner was serving as an Inspector in Haryana Roadways, Karnal.

3. A perusal of the impugned order placed at Annex P-6 in appeal reveals that resort has been had to the power under Article 311 (2) (a) of the Constitution of India for conviction in a criminal case. The petitioner has been held to be unfit to hold a public post re-affirming the earlier order dated December 09, 2013 passed by the disciplinary authority. It was argued before the Principal Secretary to Government in the department concerned in his capacity as the final appellate authority that neither a departmental inquiry was conducted nor any show cause notice was issued to the petitioner when the dismissal order was passed on December 09, 2013. The Principal Secretary considered the appeal and the supplementary appeal and rejected the same only for the reason that the Judicial Magistrate, Ist Class, Kurukshetra had recorded conviction in a criminal case and, therefore, the Director, State Transport was well within his right and discretion to think it not expedient to conduct any departmental inquiry since the order of the High Court dated April 02, 2013 has merely suspended the sentence of imprisonment. The conviction stands sufficient for action taken under

Article 311 (2) (a).

4. Reinstatement, if at all, would only follow on exoneration in the criminal case. On these premises, appeal has been dismissed by the State Government against which the petitioner has approached this Court seeking the relief of setting aside the order and for a direction reinstating the petitioner to service.

5. On notice, the State has appeared and put in its reply while contesting the case. They have not disputed facts. It is their defence that the conviction and sentence to rigorous imprisonment for periods of six months under section 148 IPC, three months under section 323 read with section 149 IPC. Similarly, RI for six months under section 324 IPC and one year under section 452 IPC and six months under section 506 IPC all read with section 149 IPC including imposition of fine of Rs.250/- in four and Rs.500/- in one of the sentences. Needless to say, the substantive sentences were ordered to run concurrently. As a result, the petitioner has to serve one year of imprisonment of which he had already undergone 2 months and 21 days till the sentence was suspended by this Court.

6. While Article 311 (2) (a) empowers employer to dismiss an employee on the basis of conviction recorded by a criminal court of competent jurisdiction but the power is not to be exercised in every case without due reflection after visiting the judgment of conviction, the role attributed and the gravity of the charges, the heinousness of the offences, the evidence etc. which all considerations have to be factored in before resorting to the constitutional provision. The offences under which the petitioner has been convicted and sentenced to rigorous imprisonment are

not heinous offences involving moral turpitude which show baseness of character precluding the convict from reinstatement at all costs and in all events and situations. There has been no worthwhile examination of the case of the petitioner by either the disciplinary authority or by the appellate authority in the impugned orders on the conduct which led to the conviction and they have mechanically applied the law in Article 311 (2) (a) which appears unreasonable and excessive. Absence of consideration on the procedural safeguard of evaluation of the conduct which led to the conviction is fatal to the action taken of extreme punishment of dismissal from service straightaway. It needs no commentary that when power is conferred it has to be exercised reasonably and prudently. The offences in which the petitioner was involved related to a dispute among neighbours, the complainant party being a policeman against the petitioner. The offence had nothing to do with his employment with the State. He committed no misconduct at work and, therefore, it appears to this Court far too excessive, oppressive and unfair that the petitioner having put in 32 years of service should be dismissed only to await outcome of his revision before the High Court.

7. I sincerely believe that his valuable rights can be redetermined on judicial review from the service law angle even without awaiting the result of the criminal revision as even if it goes against him it will not show ipso facto any baseness of character or vile behaviour. Fights in villages are not uncommon and Courts have to remain alive to the ground situation prevailing while dealing with offences under sections 323 and 324 and may be the graver one under section 452 for house trespass. Those are all part of

a chain of events which all culminated in conviction but still this Court is inclined to think that substantive justice would be done if the dismissal order is set aside and the disciplinary authority/statutory appellate authority representing State Government should liberally review and re-consider the case of the petitioner who was just two years short of reaching the age of superannuation when the axe fell on him. And to actively consider whether it would be just and meet to convert dismissal into compulsory retirement so that pension and pensionary rights are preserved and not lost to the petitioner and his family in order to prevent what appears to this Court to be absolutely disproportionate injury invading right to life and livelihood and principles of liberty fielded by Article 21 of the Constitution. Justice is the signature tune of administrative action synchronized by the harmony of the spheres. The most difficult thing is to measure the right doze and in this we often go wrong. How the perfect balance is maintained comes only with rich experience of life and the law and state of mind of the one who holds the balance with the spirit of humanism, a constitutional compulsion amongst the fundamental duties enumerated in Article 51A (h) falling in Part IVA of the Constitution introduced in 1977.

8. As a result, this petition is allowed and while setting aside the orders of dismissal, a direction is issued to the respondent-authorities to re-consider the case of the petitioner on the parameters of conduct which led to the conviction and if they do not justify dismissal then to further consider the case of the petitioner by converting the dismissal order into one of compulsory retirement from service, if the petitioner's services for the last 30 years are otherwise unblemished and he has no adverse service history or

red ink entry justifying loss of 30 years of service in the Haryana Roadways and based on one episode of a quarrel with a neighbour gone out of hand in a village. Let, therefore, a fresh order be passed within six weeks from the date of receipt of a certified copy of this order.

(RAJIV NARAIN RAINA)
JUDGE

08.09.2016
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Whether speaking/reasoned	Yes
Whether reportable	Yes