IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 30.03.2016

CWP No.3557 of 2015

Gurmeet Singh ...Petitioner

Vs.

State of Punjab & others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. A.K.Walia, Advocate, for the petitioner.

Mr. Inqulab Nagpal, AAG, Punjab.

1. To be referred to the Reporters or not? Yes.
2. Whether the judgment should be reported in the Digest? Yes.

RAJIV NARAIN RAINA, J.

1. On 27th February, 2015, this Court passed the following order in the first motion hearing of the case presented under Article 226 of the Constitution challenging an order of dismissal from service passed by the disciplinary authority empowered to dismiss by invoking Article 311 (2) (a) of the Constitution. The order reads:

> *"The conviction is for commission of crime in a private land dispute which has nothing to do with Government service. The petitioner had rendered 28 years of service before the dismissal order was passed. The dismissal is for conviction without going into the conduct which led to the conviction contrary to the mandate of Article 311 of the Constitution.*
>
> *Though an appeal is maintainable before the Additional Director General of Police (Jails), Punjab, Chandigarh in the case of*

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Head Warder against an order of dismissal from service but it is pointed out from page 19 of the paper book that the appellate authority has himself granted approval to dismiss the petitioner and, therefore, the statutory appeal would be from Ceasar to Ceasar's wife. The petitioner would have retired in April, 2021 but for the punishment inflicted.

Notice of motion, returnable by 9.4.2015.

Notice re.: stay.

Process dasti as well."

2. The State has appeared and filed written statement contesting the case taking various pleas including preliminary objections as discussed hereafter.

3. Briefly put, the petitioner was convicted in FIR No.74 dated 4th October, 2001 under Sections 447, 323, 342, 506, 148 & 149 IPC, registered at Police Station Sohana, District Mohali. The petitioner was released on probation of good conduct for one year on furnishing surety bond in a sum of Rs.30,000/-. He was convicted to undergo sentence of imprisonment for one year by the order dated 9th July, 2013 passed by the learned Judicial Magistrate Ist Class, Mohali in complaint case titled 'Agya Singh & another Vs. Gurmeet Singh & others'.

4. The petitioner is in appeal in Sessions Division Mohali against the judgment of conviction and order of sentence, wherein he had moved an application for suspension of sentence. The sentence has been suspended and the petitioner admitted to bail to the satisfaction of the trial Court. It is argued that the conviction has not been set aside so far and, therefore, the Additional Director General of Police, Jails, Punjab, Chandigarh was within his jurisdiction to accord approval on 5th October, 2014 to dismiss the petitioner invoking the provisions of Article 311 (2)(a) of the Constitution of India read with Appendix B, Column 4(A), Column-3(J) of the Punjab Jail Department State Services Class-III Executive Rules, 1963 (for short 'the Rules').

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5. The respondent-State relies on the decision of the Supreme Court in Deputy Director of Collegiate Education (Administration) Madras Vs. S. Nagoor Meera, (1995) 3 SCC 377 and the instructions of the Punjab Government issued on 5th August, 1998 providing that in case an employee is convicted in a criminal case and there is no stay of conviction by higher Court, then services are liable to be terminated. Accordingly, the petitioner was dismissed from service vide order dated 8th September, 2014. The State has raised a preliminary objection that as per Appendix 'B' read with Rule 15 of the Rules, an appeal against the dismissal order lies to the State Government and not to the Inspector General of Prisons, Punjab. Such an appeal has not been preferred and, therefore, the alternative remedy available has not been exhausted. As a result, it is pleaded that the writ petition is pre-mature and deserves to be dismissed on this count.

6. If the stand of the State is to be accepted that dismissal follows conviction automatically then the learned counsel for the petitioner contends that it may serve no useful purpose in filing an appeal to the State Government. He further submits that in appeal, in the circumstances, would not be an equally efficacious and speedy remedy and the writ Court is not precluded from exercising jurisdiction if the demands of the case require intervention in an extreme case of punishment to prevent injustice and to secure to the petitioner what belongs to him in a case of conviction not involving the petitioner's employment under the State.

7. To examine whether the Court should intervene or not at this stage, a few things would need to be considered. Firstly, whether the offence involves moral turpitude and exhibits base character which justifies convict not to be retained in government service. The other aspect to be considered would be the nature of offence committed upon which the conviction is based.

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Secondly, the authority competent to dismiss also has to consider whether resort should inevitably be had to Article 311(2)(a) automatically and mechanically, when the Department contemplates dismissal or removal form service. Then it can only be on the ground of conduct which led to the conviction on a criminal charge. Therefore, conduct which led to the conviction is the guardian angel against excessive, unreasonable and arbitrary action. To examine the issue, whether the test in Article 311(2)(a) has been satisfied, it may become necessary to peruse the order of dismissal dated 8th September, 2014.

8. A perusal of the impugned order of dismissal reveals that the dismissing authority has not considered the question of conduct which led to the conviction. Not even lip service has been paid to the Constitutional protection afforded by Article 311(2) (a) which minimum protection has been flagrantly breached in the instant case. When authority considers a case for dismissal based on conviction it becomes necessary to go into the judgment of conviction and order of sentence and the evidence of the witnesses to discover the role of the person in the dock put to trial to see his conduct if justifies outright the extreme penalty of dismissal and send the man home without pay and pension.

9. The only relevant consideration, thus, is to evaluate the conduct of the government servant in the dock, which led to his conviction on a criminal charge. Following *S. Nagoor Meera's* case and the instructions dated 5th August, 1998 issued by the Punjab Government, which have been appended as Annexure P-2 to the petition the present case deserves to be examined if relief prayed is capable of being granted by side stepping objection as to presence of an alternative remedy available. These instructions prescribe the procedure to be followed in a case where Article 311(2)(a) is sought to be invoked. The

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2016.04.23 17:12
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instructions cite passages from the decision in *S. Nagoor Meera's* case and become relevant for the consideration of this case. The Supreme Court held 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. The fate of the government servant would depend upon the result of the appeal or other proceedings and the dismissal 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. But this rule is hedged in by the predominant protection guarded by conduct which led to conviction and is such that it deserves action prescribed in Article 311(2). The Supreme Court held that the second proviso to Article 311(2) of the Constitution confers on the Government the power to dismiss a person from service alone 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. The right to impose a penalty carries with it the duty to act justly. The major terms of Article 311(2)(a) has not been satisfied in the impugned order which is silent on the vital ingredient, since the petitioner's conduct which led to the conviction has neither been considered nor dealt with and therefore, the dismissal order is not sustainable in the eyes of law.

10. It cannot be gainsaid that citation of offences committed, on the basis of which the FIR was registered against the petitioner and others and the criminal charge framed are such as do not ex facie involve moral turpitude. The act is private and the case involves mostly simple injuries in a village scrap in

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defence of property which is not unusual in these parts of the country amongst agriculturists. The petitioner asserts that no overt act is specifically attributed to him in the criminal case. The conviction relates to a fight in the village involving 13 persons along with the petitioner. The second occurrence involved is in the complaint case of 19th June, 2005 in the same village between the same parties and transaction, where under the petitioner along with others have been convicted and sentenced to one year imprisonment. The first judgment is dated 16th May, 2013, whereas the second is dated 9th July, 2013.

11. Mr. A. K. Walia appearing for the petitioner submits that the procedure laid down in the instructions – 1998 have not been adhered to and the petitioner has been dismissed from service without just cause or legal justification. He cites the law laid down by the Division Bench of this Court in Kaur Singh & another Vs. Punjab State Electricity Board, 2007 (4) RSJ 780 holding in a case of offences committed under Sections 225 & 186 IPC that the conduct of delinquent employee; the gravity of the misconduct committed by him; the impact of misconduct likely to have on the administration and other extenuating circumstances or redeeming features and all other mitigating factors are not paid attention to, then the adverse order is liable to be quashed.

12. Learned counsel would also rely on the ruling of the Division Bench in Hari Ram Vs. Dakshin Haryana Bijli Vitaran Nigam Limited, 2006 (2) RSJ 327, in which the law is reaffirmed that termination does not follow automatically on conviction on a criminal charge. It is necessary for the punishing authority to examine the judgment of the criminal court and to assess the conduct of the delinquent to reach a conclusion as to whether it would be undesirable to keep him in service. The decision must be based on relevant considerations by keeping aside irrelevant ones. The petitioner also cites the decision of the Supreme Court in State of M.P. Vs. Hazir Lal, 2008 (2) RSJ

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2016.04.23 17:12
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507, where the Supreme Court dealt with Rule 19 of the Madhya Pradesh Civil Services (Classification, Control & Appeal) Rules read with Article 311 of the Constitution in a case involving a conviction under Section 323 IPC. The Court applied the doctrine of proportionality and held that such an offence does not involve moral turpitude and a punishment order based on such an offence is improper. The view expressed by the Tribunal and the High Court was affirmed by the Supreme Court and it was held that no interference was called for against the setting aside of the order of removal from service.

13. In Union of India Vs. Parmanand, AIR 1989 SC 1185, the Supreme Court held that even in a case where an enquiry is dispensed with, if the penalty imposed is apparently unreasonable and uncalled for, having regard to the nature of criminal charge, the Administrative Tribunal may step in to render substantial justice or may remit the matter to the competent authority for reconsideration or itself substitute one of the penalties. Moreover, Rule 3 of the Punjab Jail Department Executive Staff (Punishment & Appeal) Rules, 1943 provides safeguards to a government servant with the following prescription:

> *"(ii) The penalty of dismissal should only be inflicted for the gravest misconduct, or as the culminating result of continued misconduct, indicating complete unfitness for the public service. A person who succeeds in obtaining employment in Government service by the concealment of his antecedents would also merit dismissal on discovery of the true facts. In inflicting this penalty regard should be paid to the length of service of the offender and his claim to pension."*

14. Even Rule 3 has not been applied, which renders the order of dismissal as suffering from yet another perversity, irrationality and unfair discrimination and is, therefore, not sustainable in law. There is still another important facet which has not been considered which is that the petitioner was appointed to service on 3rd March, 1986 and his normal date of retirement on

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2016.04.23 17:12
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superannuation would have been 30th April, 2021. The petitioner had rendered by the time he was dismissed, twenty eight years of qualifying service for pension and his service record was clean there being nothing adverse against him in the service record to merit deprivation of his future salary, pension and pensionary benefits and continued right to livelihood. I do not think in these facts and circumstances that the petitioner should be relegated to his alternative remedy when substantial justice can be handed down. Neither would it be fair to await the result of the criminal appeal which may take long time. Besides, the offences are not ex facie such as to warrant dismissal when they are not as to render the petitioner completely unfit for service. No moral turpitude is involved in causing simple injuries in a free fight in a land dispute, even if they were inflicted upon the complainant as alleged; alleged-I say since the appeal is pending against the conviction and sentence. The decision in *S. Nagoor Meera's* case is distinguishable for the reason that in the present case conduct was not gone into at all and the impugned order was passed without observing the procedural safeguards in the Constitution relating to public servants.

15. For the many reasons recorded above, this Court is convinced that the petitioner has been dealt with unfairly at the hands of the Jail Administration. The question remaining is of the nature of relief to be granted in case the dismissal order is set aside and whether any further riders are required to be put to serve the ends of justice. One way would be to remit the matter back for reconsideration on the issue of conduct which led to the conviction since that aspect has not been considered or whether the Court itself should step in and do substantial justice at Godspeed.

16. The nature of the charges on which the conviction is based are such which ex facie do not disclose a character or conduct of a reprehensible or base kind and one involving moral turpitude. The main offence under Section

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2016.04.23 17:12
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323 IPC does not involve moral turpitude and there is sufficient judicial weight of precedents in favour of the petitioner. One of which has been cited above. When this is the position, then I do not think it would serve the interest of justice to remit the case for passing a fresh order only to dwell on a thing by which there may be not two opinions formed or for a reasonable doubt which should be cleared first at the hands of the disciplinary authority exercising primary review.

17. Moreover, the petitioner did not commit any offence unrelated to service misconduct, which was a very necessary aspect to be considered before imposing the extreme penalty of dismissal from service.

18. The order of dismissal is found wholly disproportionate, unreasonable and beyond the margins of 1963 Rules and the provisions of Article 311(2)(a) of our Constitution and, therefore, the impugned order is not sustainable either on facts or in law.

19. For the foregoing reasons, this petition is allowed and the impugned order is set aside. This is not a fit case to remit to the competent authority to examine the issue of conduct which led to the conviction, which is ex facie apparently in favour of the petitioner justifying retention in service albeit the petitioner's sentence has been suspended and he is on regular bail. Consequently, a writ of mandamus is issued to the respondents to reinstate the petitioner in service.

20. However, nothing said in this order will affect or influence the pending criminal appeal in Sessions Division which will be decided strictly in accordance with law. The present order is also made subject to pending appeal since the appeal after all cannot be wished away. Similarly, the consequential benefits by reason of setting aside the order of dismissal will also await

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outcome of the appeal in order to equitably balance the interests of the State and the petitioner.

30.03.2016 **[RAJIV NARAIN RAINA]**
Vimal **JUDGE**

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