

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.3924 of 2015

Date of decision: 09.09.2016

Chand Singh

..Petitioner

Versus

**Punjab State Power Corporation Limited
and others**

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Sapan Dhir, Advocate
for the petitioner.

Mr. Parveen Garg, Advocate
for the respondents.

Daya Chaudhary, J.

The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of impugned orders dated 15.09.2011 (Annexure P-4) and 27.11/02.12.2014 served upon the petitioner vide letter dated 15.12.2014 (Annexure P-8), whereby, the petitioner has been dismissed from service. A further prayer has also been made for issuance of direction to respondents to reinstate the petitioner into service along with all consequential benefits.

Briefly, the facts of the case as made out in the present writ petition are that the petitioner joined the services with erstwhile Punjab State Electricity Board (now Punjab State Power Corporation Limited) in the month of August 1997. An FIR No.139 dated 30.07.2007 was registered at Police Station Sadar Kotkapura under Sections 452 and 324 IPC against him at the instance of his brother. The petitioner faced trial before Judicial

Magistrate Ist Class, Kotkapura and was convicted and sentenced vide judgment and order dated 16.05.2011. He was awarded one year rigorous imprisonment for offence punishable under Section 324 IPC and two years rigorous imprisonment for offence punishable under Section 452 IPC. During pendency of the trial, the petitioner was placed under suspension vide order dated 30.08.2007 but subsequently, he was reinstated in service on 07.09.2007. The judgment of conviction and order of sentence was challenged before Additional Sessions Judge, Faridkot by way of filing criminal appeal and the petitioner was released on probation. By considering the conviction of the petitioner and without issuing any notice, charge sheet or inquiry, the petitioner was dismissed from service vide order dated 15.09.2011. The impugned order of dismissal from service is subject matter of challenge in the present writ petition.

Learned counsel for the petitioner submits that the impugned orders have been passed without issuing any show cause notice, charge sheet and without holding any regular inquiry as stipulated in the Employees (Punishment and Appeal) Regulations, 1971 (hereinafter called as 'the 1971 Regulations'). The dismissal from service is a major penalty and the same cannot be imposed without holding any inquiry. The impugned orders have been passed in violation of Articles 14, 16 and 311 of the Constitution of India. Learned counsel also submits that the appellate Court granted probation to the petitioner and while granting probation, it was specifically observed that the order of probation shall not affect his service career. In such a situation, the petitioner cannot be awarded major penalty of dismissal from service. Learned counsel for the petitioner has relied upon

judgments rendered by this Court in *Jai Singh vs. Haryana State Cooperative Apex Bank Limited and another*, 2014 (4) PLR 280, *Balkar Singh Nagra S/o Shri Bhagwan Singh vs. State of Punjab through Secretary to Government of Punjab*, 2013(2) Law Herald 1795 as well as judgment rendered by Hon'ble the Apex Court in *Punjab Water Supply and Sewarage Board & Anr. vs. Ram Sajivan & Anr.*, 2007(3) SCT 213 in support of his contentions.

Learned counsel for the respondents opposes the submissions made by learned counsel for the petitioner and submits that the petitioner was convicted by the trial Court and thereafter, his appeal was also dismissed. By considering the conduct of the petitioner, he was dismissed from service. Learned counsel also submits that the appeal was not decided on merits and the petitioner was released on probation, which does not remove the stigma of conviction and the case of the petitioner for reinstatement in service cannot be considered.

Heard arguments of learned counsel for the petitioner as well as learned counsel appearing on behalf of the respondents and have also perused the impugned orders as well as other documents available on the file.

Admittedly, the petitioner was dismissed from service after conviction in the aforesaid FIR. It is also not disputed that the petitioner was convicted and thereafter, in appeal, he was released on probation. It is also not disputed that no departmental proceedings/inquiry was initiated against him but he was dismissed from service only on the basis of conviction.

Regulation 5 under part III of the 1971 Regulations of the respondent-PSPCL provides for the penalties to be imposed upon its employees, which reads as under: -

“5. The following penalties may, for good and sufficient reasons, and as hereinafter provided, be imposed on an employee, namely: -

Minor Penalties

- (i) Censure;*
- (ii) Withholding of his promotions;*
- (iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Board by negligence or breach of orders*
- (iv) Withholding of increments of pay without cumulative effect.*

Major Penalties

- (v) Withholding of increments of pay with cumulative effect or reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the employee will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect postponing the future increments of his pay;*
- (vi) Reduction to a lower time-scale of pay, grade, post or service, which shall ordinarily be a bar to*

the promotion of employee to the time scale of pay, grade, post or service, from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post or service from which the employee was reduced and his seniority and pay on such restorations to that grade, post or service;

(vii) Compulsory retirement;

(viii) Removal from service which shall not be a disqualification for future employment under the Board;

(ix) Dismissal from service which shall ordinarily be a disqualification for future employment under the Board.

Explanation

xxx xxx xxx”

Regulation 8 in part IV of the 1971 Regulations stipulates procedure for imposing major penalties, which is as under: -

“8. (1) No order imposing any of the penalties specified in clauses (v) to (ix) of Regulation 5 shall be made except after an inquiry held, as far as may be in the manner provided in this regulation and regulation 9 or in the manner provided hereinafter.

(2)xxx xxx xxx

Explanation

xxx

xxx

xxx”

Admittedly, neither any show cause notice was issued to the petitioner nor any inquiry has been conducted. As per principles of natural justice, for imposition of major penalties, the regular inquiry is must. The petitioner was convicted by the trial Court but he was released on probation by the Additional Sessions Judge, Faridkot under Section 360 Cr.P.C. by modifying the order of sentence. It is also mentioned in the order passed by the Appellate Court that the order shall not affect the service career of petitioner-Chand Singh.

Section 12 of the Probation of Offenders Act, 1958 (hereinafter called as 'the Act, 1958') provides the removal of disqualification attaching to conviction, which is reproduced as under: -

“12. Removal of disqualification attaching to conviction.—Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of Section 3 or Section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law:

Provided that nothing in this section shall apply to a person who, after his release under section 4 is subsequently sentenced for the original offence.”

In **Balkar Singh Nagar's case (supra)**, the conviction of the petitioner in criminal case was modified as one by discharge on probation.

The respondent was directed to consider his case for continuing in service along with all consequential benefits. The relevant portion of the said judgment is reproduced as under: -

“xxx xxx xxx

2. The issue of whether there could have been a termination of service on the ground of conviction in criminal case essentially depends on the relevant conduct rules and there is nothing inherently wrong about a management dismissing an employee from service for conviction in a criminal case, if the Rules permitted such a course. In this case, the conviction was modified as one for discharge on probation. Section 12 of the Probation of Offenders Act removes the stigma of conviction and consequently, the basis of removal from service itself would stand discharged. Even at the time when the Court was passing an order in criminal revision case, the Court has observed that the revision petitioner must have crossed the age of superannuation. In these circumstances, there is no scope for directing reinstatement.

3. The respondent is directed to take note of the order of release of the petitioner on probation and if the termination of service was without reference to any enquiry, but only on the basis of criminal court

conviction, the modification of conviction on being let off on probation must be considered as relevant for recalling the order of termination and treating the petitioner as having been continued in service for working out the terminal benefits. On the principle of 'no work no pay', the petitioner shall not be entitled to any salary for the period when he was not in service. The accrued terminal benefits would be calculated and paid to the petitioner with interest at 9% within a period of 12 weeks from the date of receipt of copy of this order. The liability for interest shall arise only from the date of passing of this order, since the petitioner himself could have taken steps to have the case listed for disposal on the basis of change of circumstance that was brought about by the reversal of order of conviction."

Hon'ble the Supreme Court in ***Girraj Prasad Meena vs. State of Rajasthan and others, 2014 (13) SCC 674*** held that in case, the person is released on probation as per provisions of Section 12 of the Act, 1958 the effect of conviction for the purpose of service will be there and the employee cannot claim a right to continue in service merely on the ground that he had been given benefit of probation under the Act, 1958. In said judgment, the earlier judgment rendered by Hon'ble the Apex Court in ***Shankar Dass vs. Union of India & Anr., 1985(2) RCR (Criminal) 117*** has been relied.

Similarly in another judgment of Hon'ble the Supreme Court in ***State of UP vs. Ranjit Singh, 1999 (2) RCR (Criminal) 40***, it was held that the High Court while deciding the criminal case and giving the benefit of the U.P. First Offenders' Probation Act, 1938, or similar enactment, has no competency to issue any direction that the accused shall not suffer any civil consequence. It was held as under: -

“5. 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...”(Emphasis added)

Similarly in **Shankar Dass's case (supra)**, the observation made by Hon'ble the Apex Court is reproduced as under: -

“4. ... There are statutes which provide that persons who are convicted for certain offences shall incur certain disqualifications. For example, Chapter III of the Representation of the People Act, 1951, entitled 'Disqualifications for membership of Parliament and State Legislatures' and Chapter IV entitled 'Disqualifications for Voting' contain provisions which disqualify persons convicted of certain charges from being members of legislatures or from

voting at elections to legislatures. 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.]”

The provisions of the Act, 1958 have been dealt with by Hon’ble the Apex Court in ***Sushil Kumar Singhal vs. Regional Manager, Punjab National Bank, 2010 (4) SCT 241*** wherein after considering the judgments of Hon’ble the Apex Court in ***Aitha Chander Rao vs. State of A.P., 1981 Supp SCC 17, Harichand vs. Director of School Education, 1998(1) RCR (Criminal) 639, Divisional Personnel Officer, Southern Railway & Anr. vs. T.R. Chellappan, AIR 1975 SC 2216 and Trikha Ram vs. V.K. Seth & Anr., AIR 1988 SC 285***, has observed as under: -

“In view of the above, the law on the issue can be summarised 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 1958 Act 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 1958 Act.”

Similar issue was before this Court in RSA No.6038 of 2015 titled as State of Punjab and others vs. Head Constable Ravinder Kumar decided on 17.03.2016. In that case, five years' service of the respondent-employee for increments was forfeited with permanent effect. The trial Court ordered conviction and sentence. Thereafter, the respondent-employee was released on probation under Section 4(1) of the Act, 1958. In revision, the conviction was maintained and the respondent was ordered to be released on probation as per Section 12 of the Act, 1958. It was held that the employee was not to suffer any disqualification attached to his conviction as punishment was passed without holding any departmental inquiry. The major penalty was imposed whereas departmental inquiry was necessary to be conducted. In that case, direction was issued to pass afresh order after adopting due procedure of law and RSA filed by the State of Punjab was dismissed.

In the present case, the conviction was upheld but the petitioner was released on probation as per Section 12 of the Act, 1958. He was not to suffer any disqualification, if any, attached to his conviction. Under the circumstances, the petitioner cannot be imposed a major penalty without following due process of law and without holding any department inquiry against the petitioner. The major penalty has been imposed upon the petitioner whereas the respondents were required to hold inquiry against the petitioner.

Accordingly, the present writ petition is allowed and the impugned order dated 15.09.2011 (Annexure P-4) is set-aside. The respondents are directed to re-consider the case of the petitioner after holding regular inquiry by giving proper opportunity of hearing to the petitioner. The necessary order be passed in accordance with law within a period of three months from the date of receipt of certified copy of this order.

09.09.2016
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	√ Yes/No
Whether Reportable	√ Yes/No