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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition No. 3365 of 2004**

Vipin Tiwari, S/o Shri Padman Prasad Tiwari, Aged about 42 years, R/o Near Bawli Kuwa, Baikunthpur Colony, Distt: Raigarh (C.G.)

---- Petitioner**Versus**

1. State of Chhattisgarh, Through the Secretary, Home Department (Police), D.K.S Bhawan, Raipur, Distt: Raipur (C.G.)
2. The Director General of Police, Police Headquarter, Raipur, Distt: Raipur (C.G.)
3. Inspector General of Police, Bilaspur Range, Bilaspur (C.G.)
4. Superintendent of Police, Raigarh, Distt. Raigarh (C.G.)

---- Respondents

For Petitioner: Mr. Ashish Surana, Advocate.
For Respondents/State: Mr. Aditya Sharma, PL

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****10/05/2017**

(1) The petitioner was appointed as Police Constable. He was convicted on 21.08.2001 for the commission of offence punishable under Sections 294, 323 read with Section 34 of the Indian Penal Code (henceforth "IPC") and sentenced to undergo imprisonment for six months and fine. On the basis of his conviction in the aforesaid offences, he was terminated from service on 21.11.2001 by disciplinary authority.

(2) On appeal being preferred, the learned Session Judge partly allowed the appeal while maintaining the conviction of the petitioner and reduced the sentence of six months 'till rising of the Court'.

(3) The petitioner preferred Criminal Revision there-against before this Court. The Court by order dated 29.03.2003 extended the benefit of Probation of Offenders Act, 1958 and released him on probation.

(4) Thereafter, petitioner filed a representation before the respondent No. 4- Superintendent of Police, Raigarh, District Raigarh and appeal before respondent No. 3- Inspector General of Police, Bilaspur Range, Bilaspur stating that since his sentence has been reduced by the appellate Court and he has also been extended the benefit of Probation of Offenders Act, 1958 by this Court in the Criminal Revision No. 96/2003, therefore, he be reinstated in service with all consequential service benefits.

(5) Respondents authorities finally by order dated 03.08.2004 rejected the appeal filed by the petitioner finding no merit, against which instant writ petition has been filed questioning the same.

(6) Learned counsel for the petitioner would submit that by virtue of Regulation 238 of the Police Regulation, Chhattisgarh punishment of dismissal from service on the basis of petitioner's conviction is shockingly high as the petitioner has been granted benefit of Probation of Offenders Act, 1958 and, therefore, the petitioner ought to have been reinstated by the respondents authorities in view of Regulation 240 of the Police Regulation,

Chhattisgarh .

(7) Per contra, counsel for the State would support the order impugned.

(8) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and gone through the order impugned with utmost circumspection.

(9) The petitioner was convicted on 21.08.2001 for the offences punishable under Sections 294, 323 read with Section 34 of the IPC and sentenced to undergo imprisonment for six months and fine. On the basis of which, he was terminated from services on 21.11.2001. Upon termination, the petitioner could have challenged the order of termination invoking proviso to Regulation 238 of the Police Regulation, Chhattisgarh stating that the offences were not of serious in nature and, therefore, he be taken back in service but he did not do so and he preferred appeal before the Sessions Court. The Sessions Court maintained the conviction of the petitioner and reduced the sentence "till rising the Court". However, the Revisional Court also granted benefit of probation Probation of Offenders Act, 1958 to petitioner.

(10) As per Regulation 240 of the Police Regulation, Chhattisgarh, if conviction of the delinquent employee is set aside, the delinquent employee is entitled to be reinstated in service by reversing the order of dismissal. But in the present case, petitioner's conviction was maintained by the appellate Court and even in the revision, this Court has also maintained his

conviction by extending the benefit of probation by releasing him on probation and, therefore, regulation 240 of the Police Regulation, Chhattisgarh cannot be invoked into by the petitioner as his conviction was never set aside by the appellate Court or this Court in revision.

(11) Benefit of Section 12 of the Probation of Offenders Act, 1958 cannot be granted to the petitioner as Section 12 of the Act of 1958 states that 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. The Supreme Court in the matter of **Shankar Dass Vs. Union of India and another**¹ has clearly held that the order of dismissal from service consequent upon a conviction is not a “disqualification” within the meaning of Section 12 of the Act, 1958, therefore, this Court is of the considered opinion that the petitioner cannot get advantage of Section 12 of the Probation of Offenders Act, 1958. Even otherwise, the order of dismissal from service is an order of punishment under the relevant rules.

(12) As a fall out and consequence of the aforesaid discussion, writ petition is liable to be and is hereby dismissed leaving the parties to bear their own costs.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

¹ (1985) 2 SCC 358

