

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

CWP No. 14166 of 2016 (O&M)
Date of decision: April 21, 2017

Kulwant Singh

...Petitioner

Versus

Punjab State Power Corporation Limited and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Sandeep Sharma, Advocate,
for the petitioner.

None for the respondents.

JAISHREE THAKUR, J.

1. The present writ petition has been filed seeking to set aside office order dated 26.10.2012 passed by respondent No.3, by which the petitioner has been dismissed from service on account of conviction in a criminal case as well as seeking a writ in the nature of Mandamus directing the respondents to reinstate the petitioner in job as Assistant Lineman.

2. In brief, the facts are that the petitioner was appointed as Assistant Lineman on 2.2.1978 with the Punjab State Electricity Board on work charge basis. His services were regularized with effect from 24.4.1994. An FIR No. 121 dated 4.11.2004 under Sections 323, 324, 326/34 IPC at Police Station Noormahal was lodged against him and his brother at the behest of one Bhawandeep Singh, in which he, along with his brother, was convicted by judgment dated 8.9.2012 and sentenced to

undergo rigorous imprisonment for three years for offence under Section 326 read with Section 34 IPC and for six months rigorous imprisonment each under Sections 323 and 324 read with Section 34 IPC. The sentences were ordered to run concurrently.

3. Aggrieved against the said judgment of conviction, the petitioner along with his brother filed a Criminal Appeal No. 29900/2013. It was during the pendency of the criminal appeal before the learned Additional Sessions Judge, Jalandhar, that the petitioner was dismissed from service, vide office order dated 26.10.2012, solely on account of his conviction by the Judicial Magistrate Ist Class, Phillaur. The Additional Sessions Judge, Jalandhar, while deciding the appeal set aside the punishment imposed under Sections 326 and 324 IPC and held them guilty for the commission of offence under Section 323/34 IPC and while taking lenient view, ordered the release of the petitioner and his brother on probation on furnishing bond of sum of Rs. 20,000/- with one surety in the like amount for a period of two years. On decision of the criminal appeal, whereby the petitioner was acquitted for the offences under Sections 326 and 324 IPC, the petitioner made a representation to the department with a request to reinstate him, which did not yield any result. Thereafter, the petitioner served a legal notice against the dismissal from service and for reinstatement in services, which was also not dealt with. Aggrieved against the instant writ petition has been filed.

4. Mr. Sandeep Sharma, learned counsel appearing on behalf of the petitioner, submits that the impugned office order dated 26.10.2012

issued solely on account of the conviction order passed by the Judicial Magistrate Ist Class, Phillaur. It is argued that the departmental proceedings of removal or dismissal from government service is not essential and automatic consequences of a criminal case. In this regard, reliance has been placed on a judgment rendered in **Union of India and another Versus Tulsiram Patel, reported as AIR 1985 Supreme Court 1416**, wherein it has been held that where disciplinary authority becomes aware that a government servant has been convicted on a criminal charge, it becomes obligatory for the competent authority to consider the conduct of such employee which has led to his conviction and thereafter to form a view as whether it would be expedient to hold a departmental inquiry or not. Reliance has also been placed upon the judgment rendered by this Court in **CWP No. 14835 of 2011 titled Surinder Pal Versus State of Punjab and others decided on 30.10.2013**. It is further argued that the Department did not take into consideration that the petitioner stood acquitted of the charges under Sections 326 and 324 IPC.

5. A reply has been filed by the respondents wherein it is submitted that the services of the petitioner were dismissed on account of FIR No. 121 dated 4.11.2004 having been registered against the petitioner and this fact was not disclosed by him to the office. The action was taken only in the year 2012 after receiving a copy of the judgment of the court by which the petitioner had been convicted and sentenced. It is argued that action has been taken against the petitioner in terms of Rule 5 (9) of the

Punjab State Electricity Board Employees (Punishment and Appeal) Regulations, 1971.

6. I have heard learned counsel for the petitioner and have also perused the reply as filed.

7. The issue with regard to dismissal of an employee solely on the basis of conviction and without holding a regular inquiry is no longer res-integra. While dealing with the issue of holding inquiry, the Hon'ble Supreme Court in **Tulsiram Patel's case (supra)** held as under:-

“133. The second condition necessary for the valid application of clause (b) of the second proviso is that the disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Article 311 (2). This is a Constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional.

134. It is obvious that the rerecording in writing of the reason for dispensing with the inquiry must precede the order imposing the penalty. The reason for dispensing with the inquiry need not, therefore find a place in the final order. It would be usual to record the reason separately and then consider the question of the penalty to be imposed and pass the order imposing the penalty. It would, however, be better to record the reason in the final order in order to avoid the

allegation that the reason was not recorded in writing before passing the final order but was subsequently fabricated. The reason for dispensing with the inquiry need not contain detailed particulars, but the reason must not be vague or just a repetition of the language of clause (b) of the second proviso. For instance, it would be no compliance with the requirement of clause (b) for the disciplinary authority simply to state that he was satisfied that it was not reasonably practicable to hold any inquiry. Sometimes a situation may be such that it is not reasonably practicable to give detailed reasons for dispensing with the inquiry. This would not, however, per se invalidate the order. Each case must be judged on its own merits and in the light of its own facts and circumstances.”

8. The law, as settled in **Tulsiram Patel's case (supra)**, has been followed in a number of judgments by this Court and reference may be made to the Division Bench judgment in **Kaur Singh and another V. Punjab State Electricity Board and others reported as 2007 (4) RSJ 780**. In the case in hand, the impugned order dated 26.10.2012 would show that the order of dismissal of the petitioner is entirely based upon his conviction under FIR No. 121 dated 4.11.2004 under Sections 323, 324, 326/34 IPC, registered at Police Station Noormahal. There is nothing in the said order which would show application of mind by the punishing authority towards the conduct of the petitioner that led to his conviction. The punishing

of conviction and thereafter having formed a view of imposing the extreme penalty of dismissal upon the petitioner by examining his conduct. There has to be consideration and satisfaction of the disciplinary authority as to why it is not reasonably practicable to hold an inquiry as has been held in **Tulsiram Patel's case (supra)**, which consideration is missing. Furthermore, the order of dismissal has been passed on the premise as if the petitioner has been convicted and sentenced under Sections 323, 324, 326 IPC and lost sight of the fact that on appeal the petitioner was acquitted of the charges under Sections 326 and 324 IPC and convicted only under Section 323/34 IPC and thereafter released on probation.

9. In view of the above, I am of the considered view that the ratio of the judgment of the Supreme Court in **Tulsiram Patel's case (supra)** and followed by the Division Bench of this Court in **Kaur Singh's case (supra)**, pertaining to the same Department, is fully applicable to the facts of the present case and as such, the impugned order of dismissal dated 26.10.2012 is not sustainable.

10. For the reasons recorded above, the writ petition is allowed, the impugned order dated 26.10.2012 is set aside and the matter is remanded back to the respondent-authorities to consider the case of the petitioner afresh and pass an appropriate order thereafter strictly in accordance with the law by taking account the conduct of the petitioner that led to his conviction, vide order dated 8.9.2012 and also the judgment rendered in appeal whereby the petitioner had been acquitted of the charge under

Sections 326 and 324 IPC and held him guilty under Section 323/34 IPC.
The respondents are directed to undertake the exercise of consideration and passing of an appropriate order thereafter within a period of three months from the date of receipt of a certified copy of this order.

April 21, 2017
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No