

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

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CWP No.2487 of 2013 (O&M)

Date of Decision: July 13, 2017

Pritam Singh

....Petitioner

vs.

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. Vivek Suri, Advocate
for the petitioner.

Mr. Avinit Avasthi, AAG, Punjab.

TEJINDER SINGH DHINDSA, J. (Oral)

Petitioner who was working on the post of Art and Craft Teacher, under the Department of Education, State of Punjab, assails the order dated 11.01.2013 (Annexure P-3), whereby, he has been dismissed from service. Writ of mandamus is also sought to direct the respondents to reinstate the petitioner back in service along with all consequential benefits.

Brief facts that would require notice, are that the petitioner was appointed as Art and Craft Teacher on 03.12.1981 and subsequently vide order dated 24.09.1992, he was confirmed on such post w.e.f. 01.04.1985.

FIR No.290 dated 29.09.2001, was registered against the petitioner as also other family members under Sections 302, 324,

323, 148, 149 of Indian Penal Code at Police Station Dhuri. FIR was registered at the instance of Bharpur Singh in relation to an occurrence that took place on 28.09.2001. Deceased in such occurrence is stated to be Jora Singh. After completion of investigation, submission of challan, charges were framed on 16.12.2002 against the petitioner and other co-accused under Sections 302, 324, 323, 148 & 149 IPC. The trial culminated in terms of judgment dated 04.09.2006 (Annexure P-2), passed by the learned Additional Sessions Judge, Sangrur and wherein, present petitioner was convicted for offence under Section 323 IPC and was sentenced to undergo rigorous imprisonment for a period of one year. Appeal having been preferred by the petitioner, his conviction stands affirmed by this Court.

It is during the pendency of the appeal, the impugned order dated 11.01.2013 (Annexure P-3) has been passed imposing the major penalty of dismissal from service upon the petitioner.

Learned counsel appearing for the petitioner would submit that the petitioner was appointed as Art and Craft Teacher in the year 1981 and possessed a service record of 32 years approximately to his credit and without holding any departmental enquiry, the petitioner has been dismissed solely on the basis of conviction in criminal proceedings. It is argued that such course of action cannot sustain as the respondent-authorities/Competent Authority was obligated to consider the conduct of the

petitioner/employee which had led to his conviction. Precise submission raised is that the conviction alone cannot constitute the basis of a dismissal order. Further submission as regards quantum of punishment has also been raised. It is argued that against the backdrop of 32 years length of service, and conviction of the petitioner for an offence which does not involve moral turpitude the imposition of major penalty of dismissal is highly inappropriate.

Per contra, learned State counsel adverts to the circular issued by the State Government, Department of Personnel and Administrative Reforms dated 05.08.1998, appended as Annexure R-2 along with the written statement and would submit that such circular had been issued on the subject of action to be taken in cases where Government employees are convicted on a criminal charge and which, in turn were on the strength of a judgment of the Apex Court in “**Deputy Director, Collegiate Education Administration Madras vs. S. Nagoor Meera, 1995(2) SCT 717**” and would submit that the order of dismissal is in-consonance with the decision taken by the State Government as contained in such circular. Learned State counsel argues that the petitioner is a convict having been held guilty in a criminal trial and as such, the decision of the Competent Authority, dismissing him from service would not call for any interference.

Counsel for the parties have been heard at length and

the pleadings on record have been perused.

There is no dispute as regards the fact that the petitioner had rendered 32 years of service under the Punjab State Education Department and as a Art and Craft Teacher. There is nothing forthcoming in the written statement filed on behalf of the State that would adversely reflect on his work and conduct. The impugned order dated 11.01.2013 (Annexure P-3) would in itself disclose the basis of imposition of major penalty of dismissal i.e. conviction of the petitioner in criminal proceedings initiated in the light of FIR No.290 dated 29.09.2001, registered at Police Station Dhuri. Even though, charges had been framed against the petitioner as also co-accused under Sections 302, 323, 148 & 149 IPC, it stands un-controverted that the conviction of the petitioner was for offence under Section 323 IPC and he has been sentenced to undergo rigorous imprisonment for a period of one year. The judgment of conviction dated 04.09.2006, recorded by the trial Court and affirmed by this Court, has been placed on record and appended as Annexure P-2 along with writ petition. Perusal of such judgment would reveal that one solitary injury has been attributed to the present petitioner and on the person of Paramjit Singh and such injury had been declared to be simple in nature.

The impugned order of dismissal from service dated 11.01.2013 (Annexure P-3) does not carry any discussion that would reflect application of mind of the punishing authority as

regards the conduct of the petitioner which had led to his conviction. Apparently the punishing authority has proceeded on the premise that every case of conviction would entail automatic dismissal. Such course of action and the decision to dismiss the service of the petitioner in the light of the impugned order cannot sustain in the eyes of the law.

The Hon'ble Supreme Court in the case of “***Union of India and another vs. Tulsi Ram Patel and others, 1985(2) SLR 576***” had clearly held that where a disciplinary authority becomes aware about a government servant having been convicted on a criminal charge, it would be imperative to consider whether the conduct of such employee, which led to his conviction was such as would warrant the imposition of a penalty and as to what, such penalty should be. It was further observed that for such purpose, the disciplinary authority would have to peruse the judgment of the Criminal Court and to consider all the facts and circumstances of the case prior to reaching a conclusion as to whether the conduct of the Government servant was such as would require his dismissal, removal from service, reduction of rank or any other appropriate penalty.

This Court would have no hesitation in holding that the dictum of the Supreme Court as laid down in the case of ***Tulsi Ram Patel's case (supra)*** has not been followed by the disciplinary authority.

The passing of the impugned order on the strength of Government of Punjab, circular dated 05.08.1998 is not well founded. The circular which has been appended at Annexure R-2 along with the written statement reveals that the same is towards compliance of the judgment of the Hon'ble Supreme Court in ***Nagoor Meera's case (supra)***. Even a reading of such judgment would reveal that it had been categorically held therein that the issue of relevance would be the conduct of the government servant which had led to his conviction on a criminal charge. In the case of ***Nagoor Meera***, the respondent was working as Superintendent in the office of Regional Deputy Director, Collegiate Education, Madurai and had been convicted on the charge of corruption.

In the instant case, the allegations and occurrence that led to the registration of FIR No.290 dated 29.09.2009 at Police Station Dhuri against the petitioner and other co-accused were pertaining to an occurrence that took place in the village of the petitioner and had no relation whatsoever to his course of employment and discharge of duties or responsibilities. That apart, the conviction is for offence under Section 323 IPC that is of having caused a simple injury. There would be sufficient merit in the contention raised by counsel for the petitioner that offence under Section 323 IPC does not involve moral turpitude. Such aspect of the matter has been completely overlooked by the disciplinary authority while passing the impugned order dated

11.01.2013 (Annexure P-3).

For the reasons recorded above, the writ petition is allowed. Order dated 11.01.2013 at Annexure P-3 imposing the major penalty of dismissal from service upon the petitioner is set aside.

The Secretary-cum-Director General, School Education Punjab, is directed to reconsider the matter and to pass an order afresh within a period of three months from the date of receipt of a certified copy of this order. It would be appreciated if prior to passing of the order afresh, an opportunity of personal hearing is granted to the petitioner.

It is further clarified that the grant of consequential relief upon setting aside of the dismissal of the petitioner in the nature of reinstatement etc. in favour of the petitioner would be subject to the outcome of the fresh order that has been directed to be passed.

Petition is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

13.07.2017

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Whether speaking/reasoned : **Yes/No**
Whether reportable : **Yes/No**