

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

CWP 203 of 2017

Date of Decision: January 27, 2017

Prahlad Singh Solanki

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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**Present:- Mr.S.K. Nehra, Advocate
for the petitioner.**

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M.M.S. BEDI, J.

Respondents No.3 and 4 are Doctors and have been convicted by the trial court vide judgment dated May 17, 2016 on the complaint of petitioner on the charge of having prepared forged documents in a criminal case bearing FIR No. 621 dated October 29, 2007 under Sections 147, 148, 323, 452 and 506 IPC registered at Police Station City Bhiwani. The petitioner himself is an employee in the office of Civil Surgeon, Hisar. He was posted as Clerk in the office of Civil Surgeon, Bhiwani in the year 2004. The petitioner being a complainant in the above said FIR in State case and respondents No.3 and 4 having been convicted, during the pendency of their

appeal before the Sessions Court, the petitioner has filed the present writ petition for issuance of a direction to the official respondents to immediately terminate the services of respondents No.3 and 4 in view of the fact that they have been convicted under Sections 465, 466, 471, 120 B IPC by the Magistrate vide judgment dated May 17, 2016.

Counsel for the petitioner Mr. S.K. Nehra has vehemently urged that if an employee is convicted for an offence, the provisions of Article 311 (2) (a) of the Constitution of India, would warrant dismissal of the accused from government service and if the conviction is set aside, the only proper course will be to re-instate the culprits. He has placed reliance on the judgment of **Deputy Director of Collegiate Edu. (Admn.) Madras Vs. S. Nagoor Meera**, AIR 1995 SC 1364 wherein in context to the provisions of Article 311 (2) (a) of the Constitution of India in a case of conviction under Section 5 of the Prevention of Corruption Act, it was held that under Article 311 (2) (a) of the Constitution of India, the order of suspension of sentence will not be a bar for following the provisions of Article 311 (2) (a) of the Constitution of India. He has also relied on the judgment of **Anil Sandhir Vs. State of Punjab and another**, 2013 (3) SCT 60.

This case also does not lay down absolute rule of law that conviction simplicitor will entail disciplinary proceedings.

I have carefully gone through the said judgment and I am of the opinion that the ratio of the said judgment is not applicable to the facts of the

present case as no rule of law has been laid down that in all cases of conviction of government officials, the conviction order would ultimately warrant disciplinary proceedings or dismissal from service. No doubt, the disciplinary proceedings can be launched for the purpose of punishment on the basis of the conduct which has led to the conviction but conviction simpliciter will not entail termination.

Counsel for the petitioner also relies upon the compendium of instructions on disciplinary matters which contain a letter dated July 8, 1957 issued vide circular letter No.4819-G.II-57/11919 issued by Chief Secretary to Government of Punjab to all the Heads of Departments. The said instructions have been issued in context to Rule 7.6 of the Punjab Civil Services Rules, Volume I Part I, pertaining to a circumstance in which a person should be suspended but the instructions also mention that the action should be taken under clause (ii) of Rule 7.6 Punjab Civil Services Rules, Volume I Part I on merits of each case as in some cases it may not be necessary to take any departmental action at all. The said instructions are neither applicable to the facts of the present case nor said instructions lay down any statute superseding the constitutional provisions under Article 311 (2) (a) of the Constitution of India.

Counsel also relies upon the judgment in **Mohinder Singh Vs. State of Punjab and others**, 2007 (1) RSJ 378.

The said judgment is also not applicable to the facts of the present case as the said judgment permits the departmental proceedings as

well as the criminal proceedings on the basis of same conduct but said judgment does not lay down an absolute principle of law that in all criminal cases of conviction the order of dismissal should be passed. The gravity, the nature of the offence, the circumstances and the judgment of conviction can always be considered before launching any departmental proceedings or punishing a Government servant on the basis of the conduct which has led to conviction. No ground is made out for any direction to the official respondents to dismiss respondents No.3 and 4 for the following grounds:-

- i) The petitioner has personal vendetta against respondent Nos. 3 and 4 though the conviction of said respondents has not been finalized as an appeal is pending.
- ii) Unless and until the statutory remedy available to a person is exhausted, the petitioner cannot enforce a disciplinary action against private respondents.
- iii) The locus standi of the petitioner is a seriously debatable issue as it is for an employer to consider the misconduct of its employee for the purpose of disciplinary proceedings.
- iv) The ratio of the judgments relied upon by the counsel for the petitioner, do not lay down an absolute rule of law that conviction simplicitor would entail major penalty; and

v) The petitioner having not been able to satisfy this

Court that he has got a legally enforceable right

against the private respondents.

In view of the above, the petition is dismissed.

January 27, 2017
sanjay

(M.M.S.BEDI)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether Reportable:	Yes/No.