

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

CWP No. 26051 of 2014 (O&M)

Date of decision: May 8, 2017

Jagroop Singh

...Petitioner

Versus

The Punjab State Power Corporation Limited and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. DS Nigha, Advocate,
for the petitioner.

Mr. RL Sharma, Advocate,
for respondents No. 1 to 3.

None for respondent No.4.

JAISHREE THAKUR, J.

1. A short question involved in the instant case is, whether order of termination of the petitioner dated 10.12.2014 (Annexure P/1), who was regularized as ALM on 7th August, 1987, can be upheld on the ground of his conviction under Section 138 of the Negotiable Instrument Act, 1881?

2. The petitioner, who was regular employee with the Punjab State Electricity Board, was convicted by the Judicial Magistrate Ist Class, Ludhiana, for an offence punishable under Section 138 of the Negotiable Instrument Act (for short '**the Act**') and sentenced to undergo imprisonment of one year with fine of ₹5000/-. The said judgment of the JMJC was challenged before the Sessions Court and the appeal was dismissed.

However, the period of sentence was reduced from one year to six months. On his conviction, the petitioner was removed from service by the respondent-Corporation on 19.5.2005. Against the order of the Sessions Court, the petitioner preferred a Criminal Revision No. 1933 of 2004 before this Court and the conviction was stayed. After conviction was stayed by this Court, removal of the petitioner from service was revoked by the respondent by order dated 4.7.2005 and he was posted against a vacant post. Ultimately, the criminal revision preferred by the petitioner was dismissed by this Court on 23.2.2010 upholding the conviction but reducing the sentence to the period what was already undergone. After this Court upheld the conviction, by order dated 10.12.2014 the service of the petitioner were again dispensed with. Aggrieved against the said order of removal from service without holding any regular inquiry, the instant writ petition has been filed.

3. Mr. D.S. Nigha, learned counsel appearing on behalf of the petitioner, contends that there has been gross violation of the rules of natural justice in so far as the petitioner has been dismissed from service without holding regular inquiry. It is argued that the dispute was of private nature as it pertained to not honouring a cheque that was issued by the petitioner and as such the action of the petitioner does not amount to moral turpitude. The said offence would not reflect upon the work and conduct of the petitioner for such adverse action to be taken.

4. Per contra, Mr. R.L. Sharma, learned counsel appearing on

behalf of the respondents, contends that in the Punjab State Electricity Board Employee Punishment and Appeals Rules, a procedure has been prescribed for imposing major penalty. In this regard, there is a special procedure prescribed which allows the Board to dispense with holding of an inquiry while taking into consideration any penalty imposed on an employee on the ground of conviction which led to his conviction of a criminal charge.

5. I have heard learned counsel for the parties and have also perused the record of the case.

6. Admittedly, the petitioner was convicted under Section 138 of the Act. The dispute was of private nature not emanating from the work and conduct of the petitioner with the department concerned. The offence at best, though has a criminal colour to it, would be an offence arising out of criminal dealings and cannot be held to be an offence involving moral turpitude. In **C. Saseendran Nair Versus General Manager, State Bank of Travancore, Thiruvananthapuram 1996 Cri. L.J. 4289**, the Kerala High Court held that an act of issuing a cheque without sufficient funds is generally regarded as to be morally wrong.

Similarly is the view taken by the Bombay High Court in **Krishna Versus Gujrathi Urban Coop. Society 2013 (22) R.C.R. (Criminal) 433** where in similarly circumstances it was held as under:-

“6. The offence punishable under Section 138 of the Negotiable Instruments Act does not involve any moral turpitude. It is basically a breach of an agreement to repay. It is a deemed offence. There is nothing to indicate that the applicant had

committed similar offences in the past. The object of the relevant provisions is to ensure credibility to cheque transactions by making recovery of the cheque amount by payee of the cheque, easier. The trial Court failed to understand the aforesaid aspect and also failed to achieve the desired results.

7. Our own High Court in the case of **Om Pal Versus State of Haryana and others 2015 (4) L.A.R. 452** held that termination of service on the ground of conviction under Section 138 of the Act is highly excessive not arising out of the offence of moral turpitude.

8. A perusal of the judgments, referred to above, would show that conviction under Section 138 of the Act, though having a criminal colour would be nothing else other than a dispute arising out civil transaction and an employee convicted under that offence could not be held guilty of an act which would amount to moral turpitude warranting his dismissal from service. Even otherwise, this Court is of the opinion that without regular inquiry being conducted in the matter as prescribed under the rules, a regular employee could not have been terminated summarily. Rule 14 of the Punjab State Electricity Board Employee Punishment and Appeals Rules invoked by the respondents to dispense with holding of a regular inquiry would not come to the rescue of the respondents. A reading of the said rule would show that there has to be satisfaction recorded by the punishing authority giving adequate and cogent reason as to why it is not reasonably practicable to hold an inquiry under the regulations and how the interest or the security of the State would be jeopardized in case an inquiry is to be

held. The satisfaction has to be in writing since Rule 14 (iii) mandates *“where the Board is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these regulations, the punishing authority may consider the circumstances of the case and make such orders thereon as it deems fit.”* In the instant case, there is no such satisfaction recorded by the punishing authority as to why the inquiry has been dispensed with before passing the termination order.

9. The issue with regard to dismissal of an employee solely on the basis of conviction and without holding a regular inquiry is no longer resintegra. While dealing with the issue of holding inquiry, the Hon'ble Supreme Court in **Union of India and another Versus Tulsiram Patel**, reported as AIR 1985 Supreme Court 1416, 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.”

10. 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**.

11. In the instant case, a perusal of the impugned order would show that dismissal from service is simplicitor on the ground of conviction under Section 138 of the Act being upheld by this Court. Therefore, any adverse order passed without holding a regular inquiry, as envisaged under the Rules, is not sustainable and deserves to be set aside.

12. Consequently, the writ petition is allowed, the impugned order of removal from service is set aside. The petitioner would be deemed to be in service with all consequential benefits. The respondents, however,

would be at liberty to take a decision with regard to the period of suspension and emoluments admissible to the petitioner, as per rules.

May 8, 2017
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No