

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

**CWP-6139-2013(O&M)
Date of Decision : 06.03.2017**

LAL CHAND

..... Petitioner

Versus

STATE OF HARYANA AND OTHERS

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Ms. Upasana Dhawan, Advocate
for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

AJAY TEWARI, J. (Oral)

By this petition the petitioner has challenged the dismissal orders dated 20.01.2005 (Annexure P-1) and 11.10.2006 (Annexure P-2).

The brief facts of the present case are that the petitioner was appointed as a Driver and was involved in FIR No. 57 dated 16.05.1996 registered under Sections 323, 324, 326, 506, 34 IPC. A cross case was also registered. Vide order dated 20.01.2005 the respondent No.3 dismissed the petitioner from service. The accused in the FIR were the petitioner and his two brothers and in the cross case another family of the same village, (also brothers) were accused. The petitioner was found guilty under Section 326 of the IPC by order 17.12.2002 of the trial Court and he was sentenced to undergo rigorous imprisonment for 2 years and a fine of Rs. 3000/-. The accused in the cross case were acquitted. He filed an appeal which was

rejected. In the meantime, the respondent No.3 terminated the services of the petitioner vide order Annexure P-1 on the sole basis that the petitioner has been held guilty by the trial court. The petitioner filed an appeal against the said order termination which was also dismissed vide order Annexure P-2. The petitioner had also earlier filed writ petition against the order Annexure P-1 which was disposed of with a direction to the respondents to decide the appeal within two months. In the meantime, the criminal revision filed by the petitioner against the judgment of the Courts below was heard and finally decided by judgment and order dated 11.07.2011. This Court found that in fact both the parties were armed with deadly weapons and were fully prepared for the fight in which serious injuries were inflicted on both sides. This Court also came to the conclusion that genesis of the fight could not be established. Ultimately this Court convicted the accused in the cross case also. The revision of the petitioner against the conviction was also dismissed. However on the issue of punishment this Court interfered and set aside the sentence of imprisonment and released the petitioner on probation. Learned counsel for the petitioner has argued that the petitioner having been released on probation the order of dismissal has to be set aside and the petitioner be reinstated in service. She has relied upon the decision of judgment in the matter of **Krishan Dev vs. State of Haryana 2003(2) SLR 658**. In Krishan Dev's case this Court held as follows:

“3. At the time of hearing, the learned State counsel conceded that the offence under Section 325 of the Indian Penal Code does not involve moral turpitude as the convicts of offences involving moral

turpitude are not covered under instructions dated 17/26.3.1975. Even otherwise, the dispute was sudden fight between two brothers. The allegations against the petitioner are not involving any moral turpitude and, therefore, he has been released on probation under the Probation of Offenders Act. Thus, there is no impediment. He was dismissed from service only on account of conviction by a criminal court. In view of fact that he has been released on probation and such release on probation has removed the disqualification in terms of Section 12 of the Act, therefore, the State Government is duty bound to reinstate the petitioner in service.”

On the other hand, learned AAG relies upon the decision of this Court in **Ashok Kumar vs. Union of India and others 2012 LIC 438 .**

In that case the petitioner was convicted by the trial Court but was ordered to be released on probation. It was after that that the notice was issued to him and after consideration of his reply he was dismissed from service. Para 12 of the judgment is as follows:

*"12. A perusal of the order dated 13.07.2002 imposing upon the petitioner the major penalty of dismissal would clearly show that the competent authority has applied its mind and has come to a conclusion that the petitioner has committed a grave act of misconduct and such conclusion is based on his conviction at the hands of the trial court, under Sections 323 & 509 Indian Penal Code. There is no merit in the contention raised by Sh. R.K.Sharma, counsel for the petitioner in CWP No. 20140/CAT of 2008 to contend that the petitioner having been released on probation under Probation of Offenders Act, 1958, he could not have been imposed the penalty under Rule 16.2 of Punjab Police Rules. Precisely this issue has been dealt with minutely by this Court in a judgment rendered in CWP No. 13228 of 2009 titled as **Dilshad Ali v. State of Punjab and another decided on 30.05.2011** and it was so held :*

*"In so far as the question of impact of release on probation is concerned, there is catena of judgments wherein it has been held that release on probation does not wash away his conviction. In **Hari Chand v. Director School Education, (1998)2 SCC 383**, Hon'ble the Supreme Court observed as under:-*

"In our view, Section 12 of the Probation of Offenders Act would apply in respect of a disqualification that goes with a conviction under the law which provides for the offence and its punishment. That is the plain meaning of the words "disqualification, if any, attaching to a conviction of an offence under such law" therein. Where the law that provides for an offence and its punishment also stipulates a disqualification, a person convicted of the offence but released on probation does not, by reason of Section 12, suffer the disqualification. It cannot be held that, by reason of Section 12, a conviction for an offence should not be taken into account for the purpose of dismissal of the person convicted from Government service."

*In **Divisional Personnel Officer, Southern Railway and another v. T.R. Chellappan, 1976(3) SCC, 190 : (AIR 1975 Supreme Court 2216)**, it has been observed by the Hon'ble Supreme Court that conviction of an accused for the finding of the Court that he is guilty, does not stand wash away i.e. sine qua non, for the order of release on probation. The order of release on probation is merely in substitution of the sentence to be imposed by the Court. The factum of guilt on the criminal charge is not swept away merely by passing order under 1958 Act.*

*A similar view has been taken in **Trikha Ram v. V.K. Seth and another, 1987 (Suppl) Supreme Court Cases 39**.*

In view of the above, release of the petitioner on probation cannot come to his rescue nor does it provide a ground for

setting aside his conviction which otherwise stands even on release on probation."

In view of this judgment, learned AAG prays that the present petition be dismissed.

In my opinion the fact which is distinguishable is that in that case the disciplinary authority had considered the effect of the final order of conviction and the order releasing the petitioner on probation.

In this case, the impugned orders were passed before the decision of the criminal revision by this Court. The decision of the criminal revision has completely changed the complexion of the case against the petitioner. The trial Court and the Appellate Court had held the petitioner and his brothers guilty of causing grievous injuries to the accused in the cross-case and had acquitted those accused persons. The effect of those judgments was that the entire blame for the occurrence had been pinned on the shoulders of the petitioner and his brothers despite the fact that there were serious injuries on them also. This Court on the other hand, over turned those findings of the Courts below and held that it was a case of free fight and convicted the accused in the cross case also. Once that is so the impugned orders which have been passed on the erroneous premise that only the petitioner and his brothers were guilty have to be set aside. It cannot be lost sight of that the respondents did not institute any independent enquiry and have passed the impugned orders only on the basis of the judgment of the Criminal Court.

Consequently, the impugned orders are set aside. Respondent

No.-3, the competent authority i.e General Manager, Haryana Roadways, Kurukshetra is directed to pass a fresh speaking order after hearing the petitioner. The setting aside of the punishment of dismissal would not entail immediate relief to the petitioner so as to enable the respondent No.3 to pass the fresh order in terms of the above judgment of this Court in Criminal Revision. It is made clear that in case fresh speaking order is not passed within a period of 3 months from the date of receipt of certified copy of this order the petitioner would be entitled to all consequential benefits of the setting aside of his punishment order.

Petition stands disposed of in the above terms.

Since the main case has been decided, the pending Civil Misc. Application, if any, also stands disposed of.

06.03.2017
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No