NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION (S) NO.1183 OF 2011

Uttam Bangde S/o Lt. Sallikram Bangde, R/o Ganjiwara, Ward No.3, PS Khairagarh, District Rajnandgaon (CG).

…Petitioner(s)

Versus

1. State of Chhattisgarh through its Secretary, Public Works Department, Mantralaya, DKS Bhawan Raipur (CG).
2. Superintendent Engineer PWD Durg Mandal, Distt. Durg (CG).
3. Executive Engineer PWD (B&R), Sub Division Office, Khairagarh, Distt. Rajnandgaon (CG).

… Respondent(s)

For Petitioner(s)	:	Shri HS Ahluwalia, Advocate.
For Respondent-State	:	Shri Arvind Dubey, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

29.08.2018

1. Challenge in this petition is to the order of punishment dated 12.08.2010 whereby the services of the petitioner has been terminated.

2. The counsel for the petitioner assailing the impugned order of termination submits that the said termination is in contravention to the service rules governing the service conditions of the petitioner. According to him, the order of termination has been passed without conducting any sort of enquiry or any show cause notice has been issued or right to represent before the order of termination was passed and therefore, the same is illegal. Before issuance of the order of termination, the authorities concerned ought to have considered the aspect whether the gravity of the offence was such which require an order of termination and whether the act for which the petitioner has been convicted would be one which would fall

within the ambit of moral turpitude or not. Only after making these assessments, could the respondents have passed the order of termination.

3. The petitioner in support of his contention relied upon the decision of this court in case of Chhedi Lal Gupta Vs. Branch Manager, State Bank of India, WP No.2021 of 1999, decided on 16.08.2005. In addition, he relied upon the Full Bench decision of MP High Court in case of Laxmi Narayan Hayaran Vs. State of Madhya Pradesh, 2004(4)MPHT 343 and also the decision of Supreme Court in case of State of Madhya Pradesh & Ors. Vs. Hazarilal, 2008(3)SCC 273.

4. The counsel for the petitioner referring to the circular of the State dated 15.09.1997 and also 06.10.1980 drew the attention of the court that the government itself has taken a decision that only because there is an order of conviction by itself would not be sufficient for terminating the services of an employee whereas, the authorities concerned should assess whether the act for which the employee stood convicted would fall within the ambit of moral turpitude and whether the act is one which could be said to be an act unbecoming of a government employee, only then the order of termination could have been passed. Thus, prayed for setting aside the order of termination.

5. The State counsel on the contrary opposing the petition submits that a plain reading of impugned order itself would reveal that the termination order was passed in the light of the fact that the petitioner stood convicted for the offence under Section 489(c) IPC which is too serious an offence. The charge against the petitioner was that he was

found in possession of forged and counterfeit currency notes. Though the petitioner tried to submit that it is only a case of the petitioner being found in possession of fake currency notes, but the fact remains was that he was not using the same and therefore unless the same is used by the petitioner, the offence may not be one which could be termed to be a serious offence. However, what is undisputed is the fact that the offence against the petitioner of being found in possession of the fake currency notes stood established and he stood convicted by the trial court. His conviction was maintained by the High Court and also by the Supreme Court. Thus, the conviction of the petitioner for the offence under Section 489 (C) has attained its finality.

6. Now the issue left is whether in the light of the conviction which has attained finality till Supreme Court, whether the termination order issued by the respondents can be said to be bad in law in any manner.

7. As regards the judgments which have been cited and relied upon by the petition is concerned, so far as judgment of this court in case of Chhedilal (Supra) is concerned, perusal of paragraph 13 of the said judgment clearly reveals that the act which led to filing of criminal case against the petitioner therein was a dispute in respect of a drain which was flowing in front of two houses on account of which there was a dispute which later culminated in a fight and a complaint was lodged for the offence under Sections 3(1)(ii) and 3(1)(v) of the Scheduled Castes and Scheduled Tribes Act, 1989. High court in the said case was of the view that dispute was more in the nature of civil

dispute and it was also too trivial a case for which the petitioner's services could have been terminated. Thus, the facts of that case is quite distinguishable from the facts of the present case.

8. Also in case of Laxmi Narayan (Supra) the view of the court again was that before passing of an order of termination on conviction what is paramount to be considered by the authorities concerned is that whether the act would be one which could be said to be one under moral turpitude and one where the act was such which can be said to be an act unbecoming of a government employee. The Full Bench of MP High Court in the said judgment itself has upheld the order of termination without enquiry in the case where the applicant was terminated on account of conviction for the offence under Prevention of Corruption Act. Though the present is not a case of Prevention of Corruption Act, but the offence of being found in possession of fake and counterfeit currency notes also is an equally serious offence which directly and indirectly affects the entire economic system of the nation coupled with the fact that the order of conviction has been upheld by the High Court as well as by the Supreme Court. The view that has been taken by the Full Bench would also be applicable in the present case and as the Full Bench has dismissed that petition, the present petition also deserves same treatment.

9. So far as the judgment of Supreme Court in case of Hazarilal (Supra) is concerned, the facts and factual matrix of the case under which the said judgment was decided also is quite distinguishable from the facts of the present case. Moreover, what is culled out from the said judgment is again the fact that before issuance of order of termination

the authorities must kept in mind the gravity of the offence for which the employee has been convicted.

10. The judgment of Supreme Court also was in the context where the conviction was only for the offence under Section 323/34 IPC and the sentence awarded was one month of simple imprisonment.

11. In the instant case the facts which is not in dispute is that the petitioner was found in possession of fake and counterfeit currency notes. The prosecution has established the case of conviction and sentence was for a period of three years. The said conviction has been maintained up till the Supreme Court.

12. Given the aforesaid facts if we look into the impugned order, it would reveal that the authorities concerned had taken into consideration the nature of offence and conviction while deciding the same.

13. At this juncture it would be relevant to refer to proviso (a) of the Section 311 (2) of the Constitution of India which again draws an explanation to the general principle of termination without enquiry. The proviso categorically envisages that in the event if there is a conviction of a government employee then the proviso to the Article can be given a go bye.

14. Under the circumstances, this court is of the opinion that judgments which have been cited by the petitioner would not come either to the aid of the petitioner or to his rescue.

15. Thus, the writ petition being devoid of merit deserves to be and accordingly stands dismissed. Sd/-

(P. Sam Koshy)
Judge

inder