

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3695 OF 2016

Narendra Ramdas Borse	...Petitioner
Versus	
The State of Maharashtra	...Respondent

Mr. Shantanu Chandratre for Petitioner.
Mr. C. P. Yadav – AGP for State - Respondent.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

Date of Reserving the Judgment : 31 July 2018
Date of Pronouncing the Judgment : 06 August 2018

JUDGMENT :

- 1] Heard the learned counsel for the parties.
- 2] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.
- 3] The challenge in this petition is to the judgment and order dated 5th January 2016 made by the Maharashtra Administrative Tribunal (MAT) dismissing petitioner's Original Application No. 561 of 2013 questioning the order dated 23rd September 1997 by which he came to be dismissed from service.
- 4] Criminal Case No. 296 of 1994 was registered against the

petitioner in connection with the death of his wife alleging offences under Sections 304(B), 306 and 498-A of the Indian Penal Code. On 17th September 1994, consequent upon registration of the criminal case, the petitioner was placed under suspension. The Sessions Court, Dhule, in Sessions Case No. 62/1995 convicted the petitioner and sentenced him to undergo rigorous imprisonment for two years and pay fine of Rs.5,000/-.

5] The petitioner's appeal to this Court was dismissed. The petitioner appealed to the Hon'ble Supreme Court vide Criminal Appeal No. 106 of 2000. The appeal was allowed in part vide judgment and order dated 4th May 2005. The conviction and sentence awarded to the petitioner under Section 304(B) of the IPC was set aside but the conviction under Section 498-A of the IPC was maintained.

6] In the meantime, by order dated 2nd February 1996, the respondent based upon the conviction by the Sessions Court, issued a show cause notice to the petitioner requiring him to show cause as to why he should not be dismissed from service in terms of clause (a) of the proviso to Article 311(2) of the Constitution of India.

7] The petitioner submitted his response dated 28th February

1996, in which he pointed out that though he has been convicted by the Sessions Court, he has instituted an appeal before the High Court, in which, he has also secured interim relief. He pointed out that it is possible that he is acquitted in the High Court and therefore, no action be taken in pursuance of the show cause notice dated 2nd February 1996.

8] The respondent, upon consideration of the petitioner's response, by order dated 23rd September 1997 dismissed the petitioner from service.

9] The petitioner, did not institute any departmental appeal immediately against the order of dismissal. In the meanwhile, this Court, by judgment and order dated 25th August 1999, dismissed the petitioner's Criminal Appeal No. 434 of 1995, thereby, confirming the conviction and sentence imposed by the Sessions Court. Further, by judgment and order dated 4th May 2005, the Hon'ble Supreme Court, also confirmed the conviction under Section 498-A of the IPC though, sentence of imprisonment was reduced.

10] It is only in the year 2006, that the petitioner instituted a departmental appeal against the order of dismissal dated 23rd September 1997, even though, the appeal was delayed, the same

was considered but rejected. The petitioner then instituted a Review Petition which was also dismissed on 13th May 2013. The petitioner then instituted OA No. 561 of 2013, which has since been dismissed by the impugned judgment and order dated 5th January 2016. Hence, the present petition.

11] Mr. Shantanu Chandratre, the learned counsel for the petitioner submits that there is no mandate in Article 311 of the Constitution of India to impose penalty upon a government servant no sooner a government servant suffers a conviction in a criminal case. He further submits that imposition of penalty is also not automatic upon conviction in a criminal case. He submits that the appointing authority is duty bound to consider several aspects including the nature of the charge, the sentence imposed, the nexus of the offence with the discharge of duties by the government servant, quantum of punishment and such other relevant factors. Mr. Chandratre submits that in the present case, the dismissal order dated 23rd September 1997 came to be made without consideration of all such relevant factors. He therefore submits that the dismissal order warrants interference. He relies on unreported decision of the Punjab and Harayana High Court in **CWP No. 8241 of 2011 decided on 3rd December 2013 [Saroj Kumari vs. State of Haryana & Ors.]**. He also relies on **Union of India & Anr. vs.**

Tulsiram Patel (1985) 3 SCC 398 (paragraph 127) in support of his contentions.

12] Mr. Chandratre, without prejudice to the aforesaid contentions and in the alternate submits that the penalty of dismissal from service is grossly disproportionate. He submits that the petitioner has instructed him to state that in case the penalty is reduced to that of reduction in rank, then, the petitioner will not insist upon payment of any back-wages or other consequential benefits.

13] Mr. Yadav, the learned AGP submits that the dismissal order is entirely consistent with the provisions of Article 311 of the Constitution of India. He points out that in such a situation neither any enquiry nor show cause notice is necessary. He points out that despite this, show cause notice was in fact issued to the petitioner and his response has been duly considered. Mr. Yadav points out that the decisions relied upon by the petitioner are of no assistance to the petitioner. He points out that there are GRs which clarify that a government servant who is convicted for offence involving moral turpitude can be always under clause (a) of the proviso to Article 311(2) of the Constitution of India. He submits that the penalty imposed is not at all disproportionate. For all these reasons, Mr. Yadav submits that the impugned judgment and order made by the

MAT warrants no interference.

14] The rival contentions now fall for our determination.

15] As noted earlier, there is no dispute that the petitioner stands convicted for offences punishable under Section 498-A of the IPC. This conviction is in the context of the demise of his wife. The circumstances in which such offence was committed are referred to in the judgments and orders made by the Sessions Court, this Court and the Hon'ble Supreme Court. For the purposes of the present petition, there is no necessity to restate such circumstances, particularly as the conviction under Section 498-A has attained finality.

16] From the perusal of the material on record, it cannot be said that the penalty imposed upon the petitioner suffers from any non application of mind. In fact, even though it may not be strictly necessary, the respondent, did issue a show cause notice to the petitioner requiring him to show cause as to why he should not be dismissed from service on the ground of his conduct which has led to his conviction of a criminal charge. The response of the petitioner was duly considered by the disciplinary authority and it is only thereafter that the penalty of dismissal came to be imposed upon

the petitioner. In the facts and circumstances of the present case therefore, we are unable to uphold Mr. Chandratre's contention that the disciplinary authority ignored the relevant consideration referred to by him or took into account any irrelevant considerations.

17] The conviction under Section 498-A of the IPC, certainly amounts to conviction for offence involving moral turpitude. In such circumstances, it is not possible to hold that action under clause (a) of the proviso to Article 311(2) of the Constitution was not competent. There are GRs to supplement the constitutional powers, which suggest that action of this nature is permissible. The ruling in *Saroj Kumari* (supra) turns on its own facts. In that case, the incident which led to the conviction of the petitioner, essentially arose on account of a quarrel with the neighbour in the village where both the warring families reside. The learned Single Judge of the Punjab and Haryana High Court, merely remanded the matter for reconsideration to the disciplinary authority.

18] In *Saroj Kumari* (supra) the State had in fact relied upon the decision of the learned Single Judge of the Punjab and Haryana High Court in ***CWP No. 13228 of 2009 (Dilshad Ali vs. State of Punjab & Anr. decided on 30th May 2011)***. That was a case where a government servant had convicted under Sections 406 and 498-A

of the IPC. The issue raised before the learned Single Judge was whether it was necessary for the parties to hold an enquiry against a person after his conviction and before passing the order of dismissal. The learned Single Judge in the said case, held that there was no such necessity. In *Saroj Kumari* (supra), the learned Single Judge distinguished *Dilshad Ali* (supra) by observing thus:-

“The case is clearly distinguishable even on the issue of moral turpitude since the Court found that a person convicted for misappropriation of his wife's property and demanding dowry by using coercive methods, definitely indulges in an act of dishonesty which is contrary to all canons of modesty and good morals. In such circumstances, conviction under S.498-A read with S. 406 of the Indian Penal Code was held to be an act of moral turpitude.”

19] From the aforesaid, it is quite clear that even *Saroj Kumari* (supra) relied upon by the petitioner accepts the position that conviction under Section 498-A of the IPC amounts to a conviction for an act involving moral turpitude. *Dilshad Ali* (supra) accepts the position that the dismissal of a government servant consequent upon his conviction under Section 498-A of the IPC, even without conduct of any enquiry is valid in terms of clause (a) of the proviso to Article 311(2) of the Constitution of India. Thus construed, the ruling in *Saroj Kumari* (supra) far from assisting the case of the petitioner, in fact, assists the case of the respondent in the present matter.

20] In *Tulsiram Patel* (supra), the Constitution Bench of the Hon'ble Supreme Court in the context of clause (a) of the proviso to Article 311(2) of the Constitution, at paragraph 127 observed thus :

"127. Not much remains to be said about clause (a) of the second proviso to Article 311(2). To recapitulate briefly, where a disciplinary authority comes to know that a government servant has been convicted on a criminal charge, it must consider whether his conduct which has led to his conviction was such as warrants the imposition of a penalty and, if so, what that penalty should be. For that purpose it will have to peruse the judgment of the criminal court and consider all the facts and circumstances of the case and the various factors set out in Challappan's case. This, however, has to be done by it ex parte and by itself. Once the disciplinary authority reaches the conclusion that the government servant's conduct was such as to require his dismissal or removal from service or reduction in rank he must decide which of these three penalties should be imposed on him. This too it has to do by itself and without hearing the concerned government servant by reason of the exclusionary effect of the second proviso. The disciplinary authority must, however, bear in mind that a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of the concerned government servant. Having decided which of these three penalties is required to be imposed, he has to pass the requisite order. A government servant who is aggrieved by the penalty imposed can agitate in appeal, revision or review, as the case may be, that the penalty was too severe or excessive and not warranted by the facts and circumstances of the case. If it is his case that he is not the government servant who has been in fact convicted, he can also agitate this question in appeal, revision or review. If he fails in all the departmental remedies and still wants to pursue the matter, he can invoke the court's power of judicial review subject to the court permitting it. If the court finds that he was not in fact the person convicted, it will strike down the impugned order and order him to be reinstated in service. Where the court finds that the penalty imposed by the impugned order is arbitrary or grossly excessive or out of all proportion to the offence committed or not warranted by the facts and circumstances of the case or the requirements of that particular government

service the court will also strike down the impugned order. Thus, in [Shankar Dass v. Union of India and another](#), [1985] 2 S.C.C. 358, this Court set aside the impugned order of penalty on the ground that the penalty of dismissal from service imposed upon the appellant was whimsical and ordered his reinstatement in service with full back wages. It is, however, not necessary that the Court should always order reinstatement. The Court can instead substitute a penalty which in its opinion would be just and proper in the circumstances of the case.”

21] The aforesaid passage also makes it clear that there is no requirement of hearing the concerned government servant before taking any action under clause (a) of the proviso to Article 311(2) of the Constitution of India. No doubt, it is held that conviction on a criminal charge does not automatically entail dismissal. There is necessity of passing a requisite order after deciding which of the three penalties as prescribed are to be imposed. It is further held that the penalised government servant is entitled to agitate the matter in appeal, revision or review by pointing out he was not a person convicted or that the penalty imposed is disproportionate or excessive. Thereafter, limited judicial review is also available to such a penalised government servant.

22] In the facts of the present case, it cannot be said that there has been some automatic dismissal of the petitioner or that there is no application of mind on the part of the disciplinary authority before the penalty came to be imposed upon the petitioner. Further, the petitioner has availed the remedies of appeal, as well as review.

Taking into consideration the treatment meted out by the petitioner to his own wife, it cannot be said that the penalty imposed is shockingly disproportionate. The MAT, has considered all the aspects of the matter and there is no perversity or unreasonableness demonstrated.

23] Mr. Yadav has placed reliance upon the decision of the Hon'ble Supreme Court in the case of ***Deputy Commissioner, Kendriya Vidyalaya Sangathan & Ors. vs. J. Hussain (2013) 10 SCC 106*** to point out that the scope of interference with penalty imposed by disciplinary authority is extremely limited. Unless the Courts and Tribunals come to the conclusion that the penalty is shockingly disproportionate, outrageous, in defiance of logic, or irrational suggesting lack of good faith, there is no question of interference on the sole ground that a lesser punishment would have been more appropriate.

24] Upon cumulative consideration of the aforesaid factors, there is no good ground made out to interfere with the impugned judgment and order. This petition is therefore dismissed. Rule is discharged. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

Sunita
Kishandas
Chandka

CHANDKA

Digitally signed by
Sunita Kishandas
Chandka

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