

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP No. 15068 of 2017

Date of decision : 04.12.2018

Jitender Kumar @ Jitender Singh

...Petitioner

versus

State of Haryana and ors.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. R.N. Lohan, Advocate
for the petitioner.

Mr. Hitesh Pandit, Addl. A.G. Haryana

RITU BAHRI, J.

In the present civil writ petition, the petitioner is seeking issuance of writ in the nature of certiorari for quashing order dated 06.06.2017 (P-5) passed by respondent No. 2 and further prayer is for issuance of direction to the respondents to reinstate the petitioner on the post of Clerk w.e.f 26.07.2012 with all consequential benefits.

The petitioner was working as Clerk. Subsequently, an F.I.R No. 104 dated 13.10.2003 was registered against him. He was convicted under Sections 326/325/324/323/148/149/506 IPC and was sentenced to rigorous imprisonment substantially for a period of three years, vide judgment dated 14.05.2010/15.05.2010. He filed an appeal against the judgment of conviction and order of sentence, which was also dismissed on 10.04.2012. Then he filed revision before this Court and this Court vide order dated 23.07.2012 suspended the sentence of the petitioner.

Respondent No. 2 vide order dated 26.07.2012 (P-1) dismissed the

petitioner from service on the basis of conviction without holding any enquiry. Against order dated 26.07.2012, petitioner filed an appeal dated 11.09.2012 (P-2) before respondent No. 1 stating therein that the offence alleged to be committed by the petitioner does not involve moral turpitude and therefore, do not call for extreme action of dismissal. Further the sentence of the petitioner was also suspended by this Court. The appeal was also dismissed on 16.01.2013 and the petitioner then filed CWP No. 14945-2013, which was disposed of by this Court on 07.03.2017 (P-4) by setting aside impugned orders and direction was given to the respondents to pass fresh speaking order within a period of three months. But vide order dated 06.06.2017 (P-5), the petitioner was dismissed from service on the basis of conviction under provisions of Article 311 (2) (b) of the Constitution of India.

Learned counsel for the petitioner contends that the order dated 06.06.2017 is contrary to the instructions dated 08.07.1957 (P-6) issued by the Chief Secretary to Government of Punjab and are applicable to State of Haryana wherein it is not necessary to dismiss or remove a Government employee from service when the charge is not connected with his position as Government servant or is likely to prove embarrassing in the discharge of his duties or involves moral turpitude.

Learned counsel for the petitioner is relying upon a judgment of this Court in a case of ***Jai Singh vs. Haryana State Cooperative Apex Bank Ltd and another, passed in CWP No. 2685-2009, decided on 01.05.2014*** to submit that in identical circumstances, the petitioner therein was ordered to be reinstated in service.

Learned counsel is further relying upon instructions dated

17/26.03.1975 (P-7) wherein the Sections of the Indian Penal Code concerning offences involving moral turpitude, were given

On the other hand learned State counsel contends that it is well settled law that an employee can be dismissed from service without following the mode of inquiry, as mandatorily provided in Principle of Natural Justice, within preview of proviso to Article 311 (2) of Constitution. Further the State Government has also circulated instructions from time to time, which provide that ex-convict who was convicted of offences involving moral turpitude should not be retained in Government service. The term “moral turpitude” has not been defined in the rules of anywhere else but it generally implies an Act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen or to society in general, contrary to the accepted and customary rights and duties between man and man.

Learned State counsel has further argued that the letter/policy dated 17/26.03.1975 did not provide the list of offences in the exhaustive manner, rather kept it open that in certain situations and circumstances, the offence may involve moral turpitude, which however not been provided in the list. Learned State counsel further submits that while passing impugned order dismissing the petitioner from service, the service record of the petitioner has also been gone through by the competent authority.

Heard learned counsel for the parties at length and had gone through the facts of the case with the assistance of learned counsel for the parties.

Reference at this stage can be made to instructions dated

08.07.1957 (P-6) which reads as under:-

“2. Rule 7.6 of the Punjab Civil Services Rules, Volume I, Part I, requires that a Government servant against whom a criminal charge is pending should be placed under suspension, if (i) the charge is connected with his position as a Government servant or (ii) is likely to prove embarrassing in the discharge of his duties as such, or (iii) involves moral turpitude. The implication of this rule is that if the criminal charge does not fall under any of these three categories, it will not be necessary to suspend the Government servant. It follows that on conviction in the case of such a charge, it will also not be necessary that the Government servant should be dismissed or removed from service. Thus rule 7.6 of the Punjab Civil Services Rules, Volume I, Part I had the effect of dividing cases in which Government servants have been convicted of criminal charge into two classes :- (i) Cases in which dismissal or removal from service should follow automatically; (ii) Cases in which it need not so follow.”

The petitioner after relying upon the above instructions filed CWP No. 14945-2013 in which learned State counsel stated that it was incumbent upon the authorities to have considered these instructions while considering whether the petitioner had to be retained in service or not.

After this, now again vide impugned order dated 06.06.2017, the petitioner has been dismissed from service while relying upon judgment of Hon'ble the Supreme Court of India in a case of ***Union of India vs. Tulsi Ram Patel, AIR 1985 SC 1416***. The petitioner has been dismissed from service keeping in view his past service record and further on the ground that he was a person leading a group of un-social elements, who inflicted sharp injuries after entering into the house of victim.

The present petition deserves to be allowed as firstly the offence under which the petitioner convicted does not involve moral

turpitude, as per letter/policy dated 17/26.03.1975. The policy circular dated 17/26.3.1975 dealt with the subject of rehabilitation of ex-convicts released from jails and of making them eligible for appointment under Government.

The relevant part of the instructions read as follows:-

“This matter has been further considered by the Government and it has been decided that instructions issued in para 2 of Haryana Government's letter dated the 2nd February, 1973 referred to above should be modified as follows:-

(i) Persons who are detained under the Borstal Act or who, after conviction under the offences which do not involve moral turpitude, are released under the probation of offenders Act instead of being confined to Jail, should not suffer any disability in respect of obtaining Government service.

(ii) With regard to the employment of ex-convicts on release from Jail, a uniform policy will not be possible and each case should be considered on its own merits. The appointing authority should, in such cases, make detailed enquiries and satisfy himself fully that the ex-convict has reformed himself after release from Jail and nothing adverse about his conduct has come to notice after his conviction, and he is thus suitable for Government service. The enquiries should invariably be made through Manju the 2013.11.21 14:39 I attest to the accuracy and integrity of this document Chandigarh CWP No.18472 of 2011 (O&M) Police Department and, if the Police Department consider it necessary to obtain a report from any other Department, they should proceed to do so.

(iii) Ex-convicts convicted of offences involving moral turpitude should neither be taken nor retained in Government service. The following tests should ordinarily be applied in judging whether a certain offence involves moral turpitude or not:-

(1) Whether the act leading to a conviction was such as could shock the moral conscience of society in general.

(2) Whether the motive which led to the act was a base one.

(3) Whether on account of the act having been committed the perpetrator could be considered to be depraved character or a person who was to be looked down upon by the society.

Decision in each case will however, depend upon the circumstances of case

and the competent authority has to exercise its discrete on while taking a decision in accordance with the above mentioned principle. A list of offences which involve moral turpitude is enclosed for your information and guidance. However, cannot be said to be exhaustive and there might be offences which are not include in---, which in certain situations and circumstances may involve moral turpitude."In matters of rehabilitation, the State is at liberty to consider which cases involve moral turpitude or not and to consider each case on its own merits.

A perusal of the above policy/letter shows that the ex-convicts convicted of offences involving moral turpitude should not be taken nor-retained in Government service. However, with regard to offences involving moral turpitude, the person should not suffer any disability in respect of obtaining Government service. Further with regard to cases where conviction is there, the appointing authority make detailed enquiries and satisfy himself fully that ex-convict has reformed himself after release from jail and nothing adverse about his conduct has come to notice after his conviction and is suitable for Government Job. The inquiries should be made through the police department and if the police department consider it necessary to obtain report from any other department.

In the present case, the offence under Section 326 IPC does not fall involving moral turpitude and the impugned order dismissing the petitioner from service has been passed under Article 311 (2) (b) without making any enquiry from the police department. The petitioner has wrongly been dismissed from service while relying upon clause 9iii) of instructions dated 17/26.03.1975 involving moral turpitude.

As per Rule 7.6 of Punjab Civil Services Rules, Volume I Part I, in the case of offences not involving moral turpitude, the dismissal or removal need not to be followed. Further the department as per letter/policy

dated 17/26.03.1975 was required to make enquiries from police department if the petitioner was to be dismissed from service, which they have not done. The department instead of making an enquiry has wrongly held that offence under Section 326 IPC involves moral turpitude.

In *Jai Singh's case (supra)*, the petitioner was a Clerk and was convicted under Section 302 IPC but later on the offence under Section 302 was set aside and the petitioner was only sentenced under Section 326/149 IPC. But despite this, he was not reinstated in service. This Court allowed the writ petition on the ground that the offence under Section 326 does not figure in the list of offences constituting moral turpitude.

Applying the ratio of the above said judgment to the facts of the present case, the present writ petition is allowed and order dated 06.06.2017 (P-5) is set aside. Petitioner is entitled to be reinstated in service. Petitioner is not entitled for any pay during the period he remaining out of service on the doctrine of no work no pay.

04.12.2018

G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No