

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

CWP No. 22868 of 2016

Date of decision : 08.08.2018

Ram Niwas

...Petitioner

versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vivek Khatri, Advocate
for the petitioner.

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

RITU BAHRI, J.

In the present civil writ petition, petitioner is seeking quashing of order dated 04.10.2016 whereby the services of the petitioner has been terminated.

Brief facts of the case are that the petitioner was appointed on the post of Multipurpose Health Worker (Male) in March, 1987 and his services were thereafter regularized in March 1988. As his work and conduct was satisfactory, he was also promoted to the post of Multipurpose Health Supervirsor (Male) in October, 2010.

On 13.07.2011, the son of the petitioner lodged an F.I.R against the accused person bearing F.I.R No. 132 dated 13.07.2011 under Section 324/341/506/34 IPC at P.S. Uklana, District Hisar. In counter blast, the accused in the aforesaid F.I.R also registered an F.I.R No. 136 dated 18.07.2011 under Sections 323/325/506 IPC at P.S. Uklana against the petitioner. The petitioner was then arrested on 25.07.2011 and was released

on bail by the trial Court on 27.07.2011. The department considered the aforesaid period of 25.07.2011 to 27.07.2011 of the petitioner as deemed suspension and allowed the petitioner to continue in the department on the same post. Vide judgment dated 17.10.2015, learned JMIC Hisar convicted the accused in both the above mentioned F.I.R's substantially for a period of one year. Petitioner along with other accused preferred an appeal against the order of conviction under Section 323/325/34 IPC and sentence. On 09.11.2015, the sentence of the petitioner along with other co-accused was suspended. During this period, complainant namely Ramesh who was accused in the F.I.R filed by the son of the petitioner, moved a complaint to the department of the petitioner informing the department that the petitioner has been convicted. On the basis of this complaint, respondent No. 2 passed the impugned terminating the service of the petitioner.

Learned counsel for the petitioner contends that although the petitioner was convicted in offences under Sections 323, 325 and 506 IPC, which do not constitute moral turpitude, respondent No.2, without application of mind and without consideration of relevant facts and circumstances, has passed the impugned order dated 04.10.2016 (Annexure P4), dismissing the petitioner from service. In support of his submission, learned counsel has placed reliance upon judgment of Division Bench of this Court in the case of **State of Haryana and another vs. Ram Chander** reported as **2013 (2) SCT 95**.

On the other hand, learned State counsel while referring to the written statement filed on 24.04.2017 stated that since only sentence of the petitioner was suspended and not conviction, the petitioner has rightly been

terminated from service under Article 311 (2) of Constitution of India. It has further been argued that if an employee is convicted on criminal charges, he need not to be given an opportunity to be heard before his dismissal from service.

Reference has been made to a judgment of Hon'ble the Supreme Court of India titled as *Union of India and another v. Tulsi Ram Patel (1985) 3 SCC 398* wherein it has been held that the dismissal, removal or reduction in rank of a person convicted on criminal charges is in public interest and therefore not violative of Article 311 (2) of the Constitution.

Now the question for consideration before this Court is that whether the services of the petitioner can be terminated by the department merely on the ground that he was convicted under Sections 323/325/506 IPC and whether the service of the petitioner can be terminate without giving him any opportunity of hearing.

The fact which is not in dispute that the department terminate the services of the petitioner on the complaint made by one Ramesh, who himself was an accused in the F.I.R filed by the son of the petitioner. Further the F.I.R registered against the petitioner was counter blast to the F.I.R filed by son of the petitioner.

This issue has come up for consideration before Division Bench of this Court in a case of *State of Haryana and another v. Ram Chander, 2013 (2) SCT 95* wherein the respondent was appointed as skilled worker in the year 1978 and in the year 1984, one F.I.R under Section 323/324/34/452 was registered against him. The respondent was acquitted by the learned Addl. District and Sessions Judge Delhi. After his acquittal,

he was taken back in service on 09.08.1996. However, on appeal filed by the State, the same was allowed and the conviction of the respondent was upheld but the sentence has been reduced to the period already undergone by him, as he had remained in jail for some period at the trial stage. Thereafter, he was served with a show cause notice dated 01.01.2010 that why his services be not terminated because of his conviction. His reply was not found satisfactory and vide order dated 11.02.2010, his services were terminated. He challenged the termination order by way of filing a writ, which was allowed. Thereafter, an appeal was filed, which was dismissed by Hon'ble the Supreme Court by relying upon various judgments. In para 19 to 22, it has been observed as under:-

“19. In No. 871181334 Ex. Ct. Sheo Govind Singh son of Sri Ram Singh Vs Inspector General of Police, CS, CRPF and The Principal, C.R.P.F., 2005(6) ACW 6032, the Supreme Court has taken note of certain judgements of the High Courts with approval which explain the meaning of moral turpitude. Following passages from this judgement would bring home the conceptual parameters of 'moral turpitude':-

"28. The meaning of term 'turpitude' and 'moral turpitude' has been given in Black's law Dictionary, Fourth Edition, as follows:-

"Turpitude - In its ordinary sense, inherent baseness or vileness of principle or action; shameful wickedness; depravity. In its legal sense, everything done contrary to justice, honesty, modesty, or good morals. State Vs Anderson 117 Kan 230; Hughes Vs State Board of Medical Examiners, 162 Ga. 246; 134 S.E. 42, 46. An action showing gross depravity. Traders & General Ins. Co. Vs Russell, Te & Civ. App. 99; S.W. 2-d 1079, 1084."

"Moral Turpitude - A term of frequent occurrence in statutes, especially those providing that a witness; conviction of a crime involving moral turpitude may be shown as tending to impeach his credibility. In general, it means neither more nor less than "turpitude", i.e. anything done contrary to justice, honesty, modesty, or good morals."

29. A Division Bench of Rajasthan High Court in Lachuram Vs Inderlal, ILR 1966 Raj. 1168, has considered this aspect and took note of various Indian and foreign judgement and also quoted Bartos Vs United States District Court, for District of Nebraska, C.C.A. Neb., 19 F. 2d 722, 724, wherein the Court held as under:-

"An act of baseness, vileness, or depravity, in the private and social duties, which a man owes to his fellow-men, or to society in genial, contrary to the accepted and customary rule of right and duty between man and man" and "conduct contrary to justice, honesty, modesty or good morals."

The Court further observed as under:- "It would appear from the above that the meanings given to the terms ;'turpitude' and 'moral turpitude' indicate almost the same type of failing in the man's character or moral make-up. In our view, no absolute standard or no hard and fast rule can be laid down for deciding whether a particular act should be considered as one involving moral turpitude, because it could mostly depend on the facts and circumstances in which the act or omission is committed whether it involves moral turpitude or not."

30. The Court placed reliance on the judgement of Allahabad High Court in Buddha Pitai Vs Sub-Divisional Officer, Malihabad, Lucknow and others, AIR1965All382, wherein the Allahabad High Court held as under:-

"Now, coming to the second question, learned counsel has urged that in deciding the question whether an offence involves moral turpitude, the Court should confine its consideration only to the nature of the offence and it should not be swayed in its opinion by the facts and circumstances in which it was committed."

"Whether an offence involves moral turpitude, will depend on its nature and circumstances in which it is committed. An offence of a certain class may generally be considered to involve moral turpitude but it may not be so if committed in particular circumstances, for example, an offence of murder may ordinarily involve moral turpitude but if it is committed in a spirit of patriotism or with a laudable object, it may not shock the public conscience and instead of being decried by the public the offender may be considered a hero. Again an offence of theft will generally be considered mean, vile and anti-social and a thief would be simply scorned at. However, if a starving and emaciated person steals food is caught, prosecuted and convicted, people will take a charitable and sympathetic offender's conduct and his offence may not be considered as involving moral turpitude. Thus, the case of every offence will have to be judged in the light of the circumstances in which it is committed. It is not the gravity of the offence or the quantum of punishment imposed on a person which will determine such question."

20. The Supreme Court in *Pawan Kumar Vs State of Haryana and another, MANU/SC/0887/1996 : (1996) 4 SCC 17* at page 21 dealt with the question as to what is the meaning of expression "moral turpitude" and it was observed as follows:-

"Moral turpitude" is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile depraved or having any connection showing depravity.

21. This elaboration has been more elaborately explained in ***Baleshwar Singh Vs District Magistrate and Collector, Banaras, MANU/UP/0025/1959 : AIR 1959 All 71***, where it was observed as follows:

"The expression 'moral turpitude' is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and weakness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellowmen or to the society in general, if, therefore, the individual charged with a certain conduct owes a duty, either to another individual or to the society in general; to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man."

22. When we scan through the facts of the present case, we find that the FIR lodged against the respondent herein was of the year 1984. He was initially acquitted by the learned Additional District and Sessions Judge, Delhi. However, he was convicted by the High Court of Delhi in appeal vide judgement dated 16.04.2007. Thus, this conviction came 23 years after the incident in which the respondent was implicated. Because of this lapse of time, even the High Court of Delhi chose not to put him in jail again, but it felt contented with awarding the sentence of imprisonment already undergone and for [Section 452](#) of the Indian Penal Code, fine of Rs. 500/- was imposed.

The spirit behind such an order of sentence itself is indicative of the fact that the respondent did not deserve the order of termination from service in the

year 2010, by which date, he had rendered 32 years of service on the basis of offence committed by him in the year 1984. That too which did not involve moral turpitude.

The ratio of above mentioned judgment is directly applicable to the facts of the present case as the petitioner in the present was convicted under Sections 323/325/34 IPC but was released on bail. The offence under Sections 323/325/34 IPC do not constitute moral turpitude. Merely on conviction, the termination could not be automatic and the disciplinary authority was supposed to exercise its discretion keeping in view the circumstances under which the petitioner was convicted and was supposed to record satisfaction to the effect that such a conviction had rendered the petitioner unsuitable for Government Service. Further no show cause notice was issued to the petitioner. The petitioner before termination has served the department for almost 23 years. The complaint was made by co-accused Ramesh. The services of the petitioner has been terminated merely on the fact that he was convicted.

In view of the discussion made above, the present writ petition is allowed. Order dated 04.10.2016 is hereby set aside. The petitioner is entitled to all consequential benefits along with 8% interest.

08.08.2018
G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No