

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 03.12.2018****CWP No.6895 of 2012 (O&M)**

Civil Surgeon Ludhiana & others

...Petitioners

Vs.

Bansi Lal & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Ms. Jasleen Kaur Sidhu, Advocate, for the petitioners.

Mr. Sharwan Sehgal, Advocate, for respondent No.1.

RAJIV NARAIN RAINA, J. (ORAL)

The petitioner is a convicted thief with the stamp of the criminal court of competent jurisdiction, a conviction which has attained finality. The Civil Surgeon, Ludhiana as the competent authority dismissed him from service in 2005 on conviction for committing a criminal act of chain snatching as his retention in service was not in public interest. The conviction stands till today. Ms. Sidhu argues for the State that the Department had lost confidence in the petitioner and there is no question that he should be taken back in service as wrongly awarded by the Labour Court by the impugned award dated 09.11.2011 setting aside the dismissal. The Labour Court has in making the award not understood the import of Article 311(2)(a) of the Constitution that upon conviction, dismissal will follow provided the punishing authority goes into the question of the conduct which led to the conviction on a criminal charge and is of opinion that that conduct is such as not to warrant reinstatement to service in public interest. The

Labour Court has wrongly assumed that before dismissal on the basis of conviction recorded by the criminal Court, the petitioner should have been issued show-cause notice to enable him to file objections against the proposed action, then to charge-sheet him if the objections were not found satisfactory and thereafter hold a departmental enquiry to go into the guilt or innocence of the petitioner. This is a wholesale misreading of the Constitutional provision. No such opportunity or hearing is required to be given at that on any stage. It matters little whether the conviction of the petitioner was for an occurrence which did not involve his employment or was not employment related and was a private offence nothing to do with his job as a government servant.

In view of the above, the instant petition is allowed. The impugned award dated 09.11.2011 is held to be erroneous as it is based on a fallacious assumption of law and fact and thus deserves to be set aside. It is ordered accordingly. Payments made under section 17-B of the Industrial Disputes Act, 1947 following stay of the award are not refundable. Misc applications stand disposed of with the main case.

03.12.2018
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>Yes</i>