

**220 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 4252 of 2015 (O&M)

Date of Decision: 13.12.2018.

Sukhdarshan Singh

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. Jatin Salwan, Advocate,
for the petitioner.

Ms. Bhawna Gupta, DAG Punjab.

JITENDRA CHAUHAN.J.

The petitioner seeks quashing of the order dated 31.03.2005 (Annexure P-2) passed by respondent No.2 vide which the services of the petitioner were terminated and the order dated 07.05.2012 (Annexure P-7) vide which, on re-consideration, the claim of the petitioner for reinstatement was rejected.

The brief facts of the case are that the petitioner was appointed as Multipurpose Health Worker in Primary Health Centre Tapa District Barnala on 24.11.1972. On 22.03.1999 a co-villager with nefarious motive had got the entire family of the petitioner roped in one dispute which resulted in registration of a case u/s 323/324/34 IPC. The petitioner was put to trial and was convicted by Judicial Magistrate First Class, Barnala on 08.01.2001 and was sentenced to undergo imprisonment for 2 years. In appeal, the Court of Additional Sessions Judge, Barnala vide its order dated 02.02.2002. upheld the decision of

the Judicial Magistrate, Barnala but reduced the sentence to one year. The petitioner preferred a Criminal Revision No.562 of 2002 wherein his conviction and sentence were suspended and on 28.03.2005 the petitioner was promoted as Multipurpose Health Worker Supervisor. Ultimately the revision petition was dismissed and the sentence was upheld till Hon'ble the apex Court. Thereafter, vide impugned order 31.03.2005 (Annexure P-2) passed by respondent No.2, the services of the petitioner were terminated.

Aggrieved against the order dated 31.03.2005 the petitioner filed CWP No.16808 of 2010 wherein the respondent-State took a stand that the Govt. vide letter No.3/23/98-IPP-2-10394 dated 05.08.1998 had issued instructions to deal with such like cases. The respondent State had substantiated its stand that it is very clear that when a Government Servant is convicted, he should immediately be removed from service, and in case of acquittal on appeal or other proceedings, the order can always be revised by re-instating the Govt. employee. The relevant para of the instructions dated 05.08.1998 (Annexure P-5) reads as under:-

“What is really relevant thus is the conduct of the government servant which has led to his conviction on a criminal charge. Now, in this case, the respondent has been found guilty of corruption in this case, the respondent has been found guilty of corruption by a Criminal Court. Until the said conviction is set aside by the appellate or other higher Court, it may not be advisable to retain such person in service. As stated above, if he succeeds in

appeal or other proceeding, the matter can always be reviewed in such a manner that he suffers no prejudice.”

The co-ordinate bench of this Court observed that the decision of terminating the services of the petitioner requires re-consideration by the competent authority in the light of the Govt. Policy. The offence u/s 324 IPC ex-facie does not involve moral turpitude, hence, the petitioner's case can be considered at par with ex-convicts, for the purpose of his re-instatement in service with notional service benefits only and with a substituted punishment.

In compliance to the direction of this Court dated 01.02.2012 rendered in CWP No.16808 of 2010, the respondents instead of considering the case afresh again relied upon the instructions dated 05.08.1998 (Annexure P-5) and practically reiterated the order which they had passed on 31.03.2005 (Annexure P-2).

It is contended that the services of the petitioner were terminated primarily on the ground that because of a private scuffle the petitioner had been convicted under Sections 323 and 324 read with Section 34 IPC, whereas it has nothing to do with the State as such the petitioner cannot be given major penalty in the light of the fact that the offences alleged have no shades of moral turpitude. Though the State was under legal obligation to look into the attendant circumstances leading to the conduct of such employee. Moreover, the conduct which led to his conviction was not an act of baseness, vileness or depravity

in the private and social duties which a man owes to his fellowman or to society in general. As such his conduct which led to his conviction cannot be presumed to be of moral turpitude.

On the other hand, the stand of the respondents is that in the instructions issued by the State Government vide memo dated 05.08.1998 (Annexure P-5) with respect to Government employee convicted on criminal charge, it is clearly provided that when a government employee is convicted on a criminal charge, he should immediately be removed from service and if however, the government servant is acquitted on appeal or other proceedings, the order can always be revised but in this case the petitioner has not been acquitted by the Court of law, therefore, the petitioner is not entitled for reinstatement in service/retiral benefits.

Heard.

The same question as to whether the offence in issue has the shades of moral turpitude has been considered by Hon'ble Division Bench of this Court in **"State of Haryana and another Vs. Ram Chander' 2013 (3) SLR 624** wherein it has been held that the offences under Sections 323, 324 and 452 of the Indian Penal Code would not constitute moral turpitude on the touchstone of the test laid down in the instructions dated 26.03.1975. It was further held that the disciplinary authority is supposed to exercise its discretion keeping in view the circumstances under which official was convicted and also is

supposed to record satisfaction to the effect that such a conviction had rendered him unsuitable for Govt. Service.

Since the petitioner had been convicted for an offence which does not come under moral turpitude and he had rendered 33 years of outstanding service, therefore, should not be inflicted with any major punishment as he has a large family to support and was the sole bread winner and in addition thereto except the job in question he had no other source of income for his as well as his family livelihood. The order has been passed in a mechanical manner. The case of the petitioner is fairly covered by the ratio of law laid down in **Ram Chander's case(supra)** wherein the circumstances under which the instructions can be applied and the duty of the Government/Employer to judiciously consider the conduct which has led to the conviction have been discussed in detail.

Keeping in view the aforesaid position of law and the factual aspect of the matter including that the conviction under Sections 323/324/34 IPC still subsists, it is ordered that instead of terminating the services of the petitioner, he be compulsorily retired.

In view of above, the present civil writ petition is allowed. The impugned order dated 31.03.2005 (Annexure P-2) and order dated 07.05.2012 (Annexure P-7) are hereby set aside. The State is directed to pass consequential order of compulsorily retiring the petitioner.

It is submitted by the learned counsel for the petitioner that the petitioner was to superannuate on 30.03.2007 but his services were terminated on 31.03.2005. Learned counsel, on instructions, makes a statement that he will not claim any back wages or interest except the retiral benefits and pension only.

Accordingly, it is ordered that the petitioner shall not be entitled to any back wages or interest except the retiral benefits and pension for the years he actually served. The necessary exercise be done within a period of two months from the date of receipt of copy of the judgment.

13.12.2018.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No