

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.30785 of 2018
Date of Decision: December 17, 2018

Om Parkash (deceased) through his legal heirsPetitioner
versus
State of Haryana and othersRespondents

CORAM: HON'BLE MR.JUSTICE HARSIMRAN SINGH SETHI

Present: Dr.Anmol Rattan Sidhu, Senior Advocate with
Mr.Manhar S.Saini, Advocate, for the petitioner.

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Harsimran Singh Sethi, J. (Oral)

In the present case, the petitioner has approached this Court for the release of the subsistence allowance to the petitioner w.e.f. 27.12.2004 till 01.02.2011, when Sh.Om Parkash died. Further, the legal heirs of the petitioner are also challenging the order dated 24.12.2004, by which services of Om Parkash were terminated by the respondents after he was held guilty in a criminal case and sentenced to life imprisonment.

The factual matrix of this case is that the petitioner was appointed as a Clerk in the respondent-department in the year 1999. While the petitioner was serving as Clerk, an FIR No.281 dated 28.05.1999 under Sections 302/34 IPC was registered against him at Police Station Sadar, Hisar. On the basis of said FIR, the petitioner was arrested and was placed under suspension w.e.f. 01.06.1999.

The petitioner continued under suspension till he was found guilty by the Sessions Court at Hisar on 11.03.2002 and he was sentenced to undergo life imprisonment. Thereafter, said Om Parkash filed an appeal against the order of conviction being CRA-DB No.367 of 2002.

Learned senior counsel representing the petitioners states that

as of now, even appeal stands dismissed and conviction was upheld.

After Om Parkash was convicted, the respondents passed an order dated 24.12.2004 dismissing him from service. The said order was not challenged by Om Parkash during his life time. Unfortunately, Om Parkash died on 01.02.2011.

In the present writ petition, legal heirs of Om Parkash are seeking subsistence allowance w.e.f. 27.12.2004 till 01.02.2011, i.e., from the date of dismissal till Om Parkash died. It is an admitted fact, which is even clear from the order dated 10.01.2006 that subsistence allowance was paid to Om Parkash from 01.06.1999 till the date of his dismissal, i.e., 27.12.2004 and there is no dispute qua the same.

Senior counsel for the petitioner states that the order of dismissal passed by the respondents on 24.12.2004 is bad in law for the reason that though Om Parkash was convicted by the Sessions Court, but he had filed an appeal in the year 2002 itself, which was pending. Therefore, during the pendency of appeal, Om Parkash could not have been dismissed from service on the basis of his conviction. In fact, under Article 311(2) of the Constitution, an employee, who has been convicted for criminal charge, can be removed from service without holding an enquiry. In the present case, after the conviction of Om Parkash, which was under Section 302 IPC, Om Parkash was dismissed from service. Pendency of appeal does not take away the fact that Om Parkash remained a convicted employee till he died on 01.02.2011. Therefore, no fault can be found with the order dated 24.12.2004, by which Om Parkash was dismissed from service after he was convicted by the competent Court of law under Section 302 IPC.

With regard to grant of subsistence allowance, which is being claimed by legal heirs of Om Parkash w.e.f. 27.12.2004 till 01.02.2011, the

same is also not tenable. The subsistence allowance is only being paid to an employee who is under suspension. Om Parkash was dismissed from service on 24.12.2004, therefore, after that date he was no longer employee of the department. So, the claim of subsistence allowance as being claimed by legal heirs of Om Parkash is not at all tenable and is hereby rejected.

Further, once Om Parkash during his life time never challenged the order of dismissal, it does not give authority to his legal heirs to challenge the said order after 14 years. If Om Parkash was aggrieved by the order of his dismissal, he had full right to challenge the same within a reasonable time. After a period of 14 years, his legal heirs have approached this Court challenging the said order, which cannot be entertained at this stage otherwise.

Learned senior counsel for the petitioner states that as the subsistence allowance was paid to Om Parkash after he was dismissed from service, therefore, his conviction was bad in law and as his conviction was bad in law, the order dismissing Sh.Om Parkash from service, passed on 24.12.2004 is also bad. In this regard, reliance is being placed on a judgment of the Hon'ble Supreme Court in State of Maharashtra versus Chandrabhan, 1983 AIR (SC) 803. Learned senior counsel argues that non-payment of subsistence allowance would render the criminal trial violative of Article 311(2) of the Constitution of India and, therefore, as the conviction of Sh.Om Parkash in criminal trial is bad in view of the above-said judgment, the order passed of dismissal on the basis of said conviction cannot be sustained.

The above-mentioned judgment will not cover the case of the petitioner in respect of the relief which has been claimed by the petitioner in

the present writ petition, i.e, for setting-aside the order passed on 24.12.2004 dismissing Sh.Om Parkash from service. The argument that conviction of the petitioner by the criminal court is to be held violative of Article 311(2) of the Constitution of India as no subsistence allowance was paid to the petitioner, cannot be considered by this Court as the conviction of Sh.Om Parkash has already attained finality. The said ground should have been taken by Sh.Om Parkash while the criminal trial was going on or during the appeal filed by the petitioner against conviction. Once conviction of Sh.Om Parkash has attained finality and no such plea of prejudice was raised at that time, this plea cannot be taken before this Court in the challenge to an order of dismissal which has been passed on the basis of conviction. Secondly, no prejudice has been shown by the petitioner, which Sh.Om Parkash might have suffered due to non-payment of subsistence allowance. The prejudice has to be pleaded and proved on record. Sh.Om Parkash remained behind the bars after the registration of FIR and there is no pleading at all that there was any request made by Sh.Om Parkash for the release of subsistence allowance before he was convicted by the criminal court on 11.03.2002. The order dated 24.12.2004 dismissing Sh.Om Parkash from service was passed on the basis of conviction order dated 11.03.2002 which has already attained finality. In these circumstances, the judgment mentioned above will not help the petitioner in any manner in the present case, keeping in view the facts and circumstances mentioned above.

Keeping in view the fact recorded above, there is no merit in the present writ petition, the same is dismissed.

December 17, 2018

(HARSIMRAN SINGH SETHI)

mohinder

JUDGE

Whether speaking/reasoned

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Yes/No

Whether Reportable

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Yes/No