

LPA No. 935 of 2019 (O&M)

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

**LPA No. 935 of 2019 (O&M)
Date of decision: 17.05.2019**

Bansi Lal

... Appellant

Versus

Civil Surgeon Ludhiana and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE KRISHNA MURARI,
CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

Present: Mr. Lakshay Bajaj, Advocate,
for the appellant.

KRISHNA MURARI, CHIEF JUSTICE (Oral)

CM-2235-LPA-2019

This is an application seeking condonation of delay of 82 days in filing the accompanying appeal.

For the reasons set out in the application, which is duly supported by an affidavit, the same is allowed. Consequently, the delay of 82 days in filing the accompanying appeal is condoned.

Application stands disposed of.

LPA No. 935 of 2019

This intra-court appeal, under Clause X of the Letters Patent, is directed against the judgment and order dated 3.12.2018, passed by the learned Single Judge, allowing the petition filed by the respondent-employer.

Undisputedly, the appellant was charged with an offence of theft. After trial, he was convicted and the order of conviction attained

LPA No. 935 of 2019 (O&M)

finality. As a result, the appointing authority dismissed the appellant from service, on the ground that he was convicted in a criminal case, for committing a criminal act of chain snatching and as such, his retention in service would not be in public interest. Aggrieved, appellant raised an industrial dispute and the matter was referred to the Labour Court, which passed the award directing reinstatement of the appellant-employee with continuity of service and 40% back wages. The sole ground on which the award was passed by the Labour Court was that the order of dismissal was passed without holding any enquiry or giving an opportunity to show cause.

Against the award of the Labour Court, the employer approached this Court by way of a writ petition. The learned Single Judge allowed the writ petition, on the ground that in view of the provisions of Article 311 (2) (a) of the Constitution, where a punishment is inflicted on a person on account of conduct, which led to his conviction on a criminal charge, any enquiry, notice or opportunity of hearing is not at all required.

Learned counsel for the appellant vehemently contends that when infliction of punishment on an employee is based on the conviction in a criminal case, then the conduct of the delinquent, leading to his conviction, is necessarily to be taken into consideration by the competent authority before inflicting the punishment. Reliance in support of the contention has been placed on a judgment of the learned Single Judge in **Kulwant Singh Ex. Driver No. 136 Vs. State of Punjab and others**, passed in CWP No. 23306 of 2010 (decided on 11.7.2012), which, in turn, is based on the pronouncement of the Hon'ble Supreme Court in the case of **Union of India Vs. Tulsi Ram Patel, 1985 (2) SLR 576**, wherein it has been held:-

“Where a disciplinary authority comes to know

that a government servant has been convicted on a criminal charge, it must consider whether his conduct which has led to his conviction was such as warrants the imposition of a penalty and, if so, what that penalty should be.”

There cannot be any dispute with the proposition of law being canvassed before us. The appointing authority, after considering the judgment passed by the criminal court convicting the appellant, returned the following findings:-

“As per details given above, it stands established that offence under Section 379 IPC has been proved against Sh. Bansi Lal. Punishment is awarded under Section 379 IPC in case the following charges stands proved:-

- (1) Dishonest intention to take property.*
- (2) The property must be movable.*
- (3) It should be taken out of possession of another person.*
- (4) It should be taken without the consent of that person; and*
- (5) There must be some moving of the property in order to accomplish the taking of it.*

As such, Sh. Bansi Lal, Health Assistant was found guilty of theft under Section 379 IPC. As per provisions of Punjab Civil Services (Punishment & Appeal Rules) and Conduct Rules, no Government employee shall indulge in an act, which is unbecoming of a Govt. Employee and for this his retention in service is not possible Sh. Bansi Lal, Health Assistant, has been found guilty of theft and this charge stands fully established against him. His retention in Govt. service is not in the interest of Government, because his appeal in Hon’ble High Court has also been dismissed.

From a perusal of the aforesaid facts, as recorded in the dismissal order, it is more than clear that the judgment was examined and the conduct of the appellant, which led to his conviction in a criminal case, was

LPA No. 935 of 2019 (O&M)

considered before passing the order of dismissal from service. The law laid down by the Hon'ble Apex Court in **Tulsi Ram Patel's (supra)**, stands satisfied in the present case and the petitioner cannot be permitted to urge that his conduct was not at all considered before inflicting the punishment of dismissal from service.

In view of the above facts and discussion, we do not find any reason or ground to take a different view than the one taken by the learned Single Judge. The appeal is devoid of any merit and accordingly stands dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

May 17, 2019
AK Sharma

Whether speaking / reasoned:	YES
Whether Reportable:	NO