

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP NO. 19079 of 2010(O&M)
DATE OF DECISION : 24.07.2019

Baldev Singh

... Petitioner

versus

The Punjab State Power Corporation Ltd. & Anr.

... Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. J.S. Manipur, Advocate,
for the petitioner.

Mr. Sukhmeet Singla, Advocate for
Mr. S.S. Mattewal, Advocate
for the respondents.

ARUN MONGA, J. (ORAL)

1. Challenge herein is to the dismissal of the petitioner from service as Assistant Lineman on the basis of his conviction under Section 304-II IPC. Question of law, *inter alia*, posed herein is, whether the said dismissal is contrary to the Regulation 14(i) of the Punjab State Electricity Board Employees Punishment and Appeal Regulations, 1971(for brevity, Regulations 1971) read with the principles of law enunciated by the Apex Court in **Union of India Vs. Tulsi Ram Patel, AIR 1985(SC) 1416**.

2. The petitioner joined as Work Charge Chowkidaar on 01.06.1979 in the erstwhile Punjab State Electricity Board(Punjab State Power Corporation Limited-successor in interest and hereinafter referred to as PSPCL, for short). He was later re-designated as Motor Mate on 01.10.1979 and continued to work as such until 13.05.1994 when his services were regularized as Assistant Lineman.

3. An FIR No. 146 dated 14.10.1994 under Sections 302 read with Section 34 of Indian Penal Code(for short, IPC) was registered against the petitioner for allegedly inflicting “*sangal*” blow on the head of Jaspal Singh, resulting in his death. The petitioner was arrested on 19.10.1994 and was also suspended from service with effect from the same date. Later, on conclusion of trial, the competent criminal Court on 15.04.1996 held the petitioner guilty under Section 304-II IPC and sentenced him to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1000/-. Upon conviction, the petitioner was taken in custody on the same date.

4. The petitioner preferred a criminal appeal before this Court. During pendency of the appeal, he was released on bail on 15.05.1996. Legal Cell of PSPCL, opined vide letter dated 17.10.1996(Annexure P-7) that conviction of the petitioner under Section 304-II IPC does not involve moral turpitude. Accordingly, the petitioner was reinstated into service vide order dated 22.10.1996(Annexure P-6). The punishment of the petitioner was reduced by this Court vide judgment dated 20.01.2009(Annexure P-1) from seven years to three years. The petitioner did not prefer any further challenge to the judgment of this Court and underwent the sentence as awarded. While he was in jail, he was dismissed from service with retrospective effect i.e. 03.08.2009 vide impugned order dated 08.02.2010 (Annexure P-2). The petitioner after undergoing the sentence was released on 18.02.2010 and vide letter dated 22.02.2010(Annexure P-3) requested the respondents PSPCL to allow him to join duty. Legal Officer of respondent PSPCL vide his letter dated 09.06.2010(Annexure P-8) opined that conviction under Section 304-II IPC does not entitle the petitioner to seek reinstatement in service. Based on the said advice, the request of the

petitioner to allow him to join the duty has been declined vide impugned order/ letter dated 05.09.2010(Annexure P-9). Hence the writ petition.

5. When the petition came up for hearing on 27.10.2010, this Court without issuing notice to the respondents admitted the same. Though, service was effected on the respondents, yet no return has been filed. During pendency of the writ petition, learned counsel for the petitioner filed civil miscellaneous application bearing No. 11550-CWP of 2015, *inter alia*, praying that the case of the petitioner be heard on actual date and being squarely covered by a Division Bench judgment of this Court rendered in **State of Haryana and another Vs. Ram Chander**, reported as 2013(3) RSJ 11 and the petition be disposed of in terms thereof. With the consent of learned counsel for both the parties, request for actual hearing was allowed and the main case was taken on Board.

6. I have heard the rival contentions of learned counsel appearing for the parties and for the reasons stated hereinafter I am of the opinion that the impugned orders are not sustainable in the eyes of law and are liable to be set aside.

7. The only reasoning adopted by the punishing authority while passing impugned order dated 08.02.2010(Annexure P-2) is as below:-

“Whereas when any Board employee is involved in criminal case and is held guilty by the Hon'ble Court and is sentenced, then the said employee cannot be retained in Government service.”

8. On a plain reading of the impugned order, I am of the view that the same does not meet the parameters envisaged under Regulation 14(i) of 2007 Regulations, *ibid.* for ready reference, said 2007 Regulation is reproduced as under:-

“Special Procedure in Certain Cases- 14. Notwithstanding anything contained in Regulations 8,9,10,11,12 and 13:-

(i) where any penalty is imposed on an employee on the ground of conduct which has led to his conviction on a criminal charge: or

(ii) where the punishing authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an enquiry in the manner provided in these regulations; or

(iii) where the Board is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these regulations, the punishing authority may consider the circumstances of the case and make such orders thereon as it deems fit.”

9. A perusal of the impugned order reveals that the same has been passed in a most mechanical manner merely on the basis that conviction of the petitioner under Section 304-II IPC dis-entitled him to seek continuation in service. It is nowhere borne out whether the disciplinary authority considered and found the petitioner's conduct being unworthy so as to warrant imposition of punishment of dismissal. Particularly when, on earlier occasion, the disciplinary authority accepted the view of the Legal Officer that the conviction of the petitioner does not involve moral turpitude, it was incumbent upon the disciplinary authority to record reason as to how and why the same very conviction after the sentence was reduced from 7 years to 3 years constitutes moral turpitude. It is rather intriguing that when the petitioner was originally sentenced for 7 years he was reinstated into service opining that the conviction of seven years does not amount to moral turpitude, but when the sentence was reduced to three years, he has been dismissed from service, that too without considering the petitioner's conduct and concluding that the same constituted moral turpitude. The petitioner

had rendered about 30 years of service when he was dismissed vide order dated 08.02.2010(Annexure P-2). The said order does not reflect if the disciplinary authority considered as to what was the origin of the occurrence, whether the petitioner was victim of circumstances, whether his conduct constitutes moral turpitude or not. Disciplinary authority did not also consider whether the extreme penalty of dismissal of the petitioner was the only just answer or else he could have been leniently dealt with qua quantum of punishment in order to enable him to get pensionary benefits, given that he had unblemished service record of 30 years prior to his conviction.

10. Even otherwise, having perused the impugned order, I am of the view that the same is not only very general in nature, but is also as vague as it can be. The same appears mechanical in nature and is indicative of the fact that there has been complete non-application of mind and/ or improper application by the disciplinary authority to say the least. It was incumbent upon the punishing authority to apply its mind in order to determine whether the conduct of the petitioner constitute moral turpitude or not. Furthermore, the punishing authority also does not seem to have applied its mind as to what were the mitigating and aggravating circumstances which led to conviction of the petitioner. It was also incumbent on the punishment authority to record its reasons that the punishment of dismissal of service was the only option as the petitioner did not deserve any leniency. However, it failed to do the same.

11. It was precisely in similar context that a Constitution Bench of Hon'ble the Supreme Court rendered a judgment in the case of Tulsi Ram (supra). The observations made in para No.127 of the judgment, which are

relevant to the issue in hand read as below:-

“To recapitulate briefly, when 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 penalty and, if so, what that penalty should be. For the purpose it will have to peruse the judgment of the Criminal Court and consider all the facts and circumstances of the case and the various factors set out in Challapan's case. This, however, has to be done by it ex-parte and by itself. Once the disciplinary authority reaches the conclusion that the Government servant's conduct was such as to require his dismissal or removal from service or reduction in rank, he must decide which of these three penalties should be imposed on him. This too it has to do by itself and without hearing the concerned Government servant by reason of the exclusionary effect of the second proviso. The disciplinary authority must, however, bear in mind that a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of the concerned Government servant.”

12. Furthermore, reference may be had to the following observations made by Division Bench of this Court in Ram Chander's case (supra), wherein A.K. Sikri, CJ of this Court(As His Lordship then was) speaking for the Division Bench observed as below:-

“14. It follows from the above that merely on conviction, termination could not be automatic and the disciplinary authority was supposed to exercise its discretion keeping in view the circumstances under which the respondent was convicted and was supposed to record satisfaction to the effect that such a conviction had rendered him unsuitable for government service. However, in the present case, reading of the show cause notice dated 01.01.2010 demonstrates that after recording the factum of conviction of the respondent by

the High Court of Delhi, the show cause notice was issued only because of his conviction. It would be of significance to note that in reply to the show cause notice, the respondent had submitted in detail that mere conviction is not a ground to impose the punishment. He had referred to the judgement of the Supreme Court in State of M.P. and others Vs Hazarilal, JT 2008(2) SC 390 and the judgement of this Court in Kulwant Singh Vs The Deputy District Primary Education Officer, Gurdaspur and another, 1997(1) PLR 228. He had also categorically submitted that he was convicted for an offence which does not come under moral turpitude; that he had rendered 32 years' outstanding service and, therefore, should not be inflicted with any major punishment; and that he had a big family and was the sole bread earner and except the job in question he had no other source of income. However, none of these submissions of the respondent were considered while passing the termination order dated 11.02.2010. In a parrot like manner, the language of show cause notice is repeated and in so far as the reply is concerned, with bald observation that the same is considered and not found satisfactory, the order of termination has been passed. Such an order would not stand judicial scrutiny."

13. In somewhat similar circumstances this Court rendered a decision dated 09.07.2010 in CWP No. 10652 of 1999(Annexure P-10), wherein an employee (JBT Teacher in a School) was sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1000/- for an offence under Section 307 IPC and the said conviction was upheld right up to the Apex Court. Consequently, the employee was dismissed from service. This Court while setting aside the order of dismissal remanded the case back to the punishing authority to pass fresh orders while affording the petitioner an opportunity of hearing.

14. In the premise, impugned orders dated 08.02.2010(Annexure P-2) and 05.09.2010(Annexure P-9) are set aside and the respondent PSPCL is directed to pass fresh orders, keeping in view the observations made in this order in the preceding paragraphs and after affording opportunity of being heard to the petitioner. In the event proposed fresh order is favorable to the petitioner, it is made clear that on the principles of “no pay no work”, the petitioner shall not be entitled to any financial benefits for the period he did not perform his duties. The respondents shall conclude the proceedings within 60 days from the date of receipt of certified copy of this order.

15. With the aforesaid observations and directions, the writ petition stands disposed of.

(ARUN MONGA)
JUDGE

July 24, 2019
Jiten

- | | |
|--------------------------------|---------|
| 1. Whether speaking/ reasoned: | Yes/ No |
| 2. Whether reportable: | Yes/ No |