

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

CWP No.12669 of 2015

Date of decision : 18.11.2019

Rambhaj

...Petitioner

Versus

State of Haryana and others

...Respondents

Coram: Hon'ble Mr. Justice B.S. Walia

Present: Mr. I.D. Singla, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

B.S. Walia, J.

1. Prayer in the writ petition is for the issuance of a writ of Certiorari for quashing order Annexure P/3 dated 19.06.2015, whereby the petitioner was removed from the rolls of the department on account of his conviction in case FIR No.322 dated 13.08.2010, U/s 323, 324, 452 read with Section 34, Indian Penal Code, by the Court of Ms. Neelam Kumari, learned Judicial Magistrate 1st Class, Gohana.

2. Brief facts of the case leading to the writ petition are that the petitioner was appointed as Chowkidar on daily wage basis on 02.11.1988 in Haryana Roadways and was brought on the regular establishment w.e.f. 01.01.1996. On 13.08.2019, FIR No.322 dated 13.08.2010, for offences punishable under Sections 323, 324, 452 read with Section 34, IPC was registered against the petitioner and his family members at Police Station Gohana, on the basis of a complaint made by the petitioners neighbor.

Pursuant to trial, the petitioner and his family members were convicted under Sections 323, 324, 452 read with Section 34 of IPC, vide judgment dated 08.12.2014 and sentenced to undergo imprisonment and pay fine vide order dated 09.12.2014.

3. Learned counsel contends that the conviction of the petitioner under Section 323, 324, 452 read with Section 34 of IPC does not constitute an offence involving moral turpitude, besides the impugned order was passed solely on the basis of conviction and that too without issuing any show cause notice, therefore the impugned order is unsustainable and liable to be set aside. Reliance is placed on the decision of a Division Bench of this Court in case titled as **State of Haryana and another versus Ram Chander 2013 (2) SCT 95** as well as of a Coordinate Bench in **Ram Niwas versus State of Haryana and others 2018 (4) PLR 615**.

4. Learned Sr. Deputy Advocate General on the other hand contended that the petitioner was rightly removed from service in terms of Article 311 (2) (a) of the Constitution of India, without issuance of show cause notice, on account of his conviction of a criminal offence, therefore, the impugned order did not warrant interference.

5. I have considered the submissions of learned counsel.

6. Article 311 of the Constitution of India is reproduced as under:-

Article 311 of the Constitution Of India :

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State

(1) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by a authority subordinate to that by which he was appointed

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges :

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed :

Provided further that this clause shall not apply

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

7. A perusal of the proviso to Article 311(2)(a) of the Constitution of India reveals that no person who holds a civil post under the State can be dismissed or removed except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of said charges provided that the aforementioned clause does not apply to a person who is dismissed or removed or reduced in rank on account of conduct which led to his conviction on a criminal charge.

8. A perusal of the impugned order reveals that after recording the operative part of the judgment of conviction and of order of sentence, besides referring to Article 311 of the Constitution of India, the General Manager, Haryana Roadways, Sonapat, recorded that being the competent authority in

terms of Appendix-C read with Rule 6 and 14 (1) of the Haryana Transport Department (Group D) Haryana Roadways Services Rule, 1998, he had no option except to remove the petitioner from the rolls of the department.

9. It is settled law that conviction does not entail automatic removal. Decision to impose punishment can be only after considering the employees conduct which led to his conviction and forming an opinion that the conduct of the employee was unbecoming of a government servant rendering him liable to be punished. Thus, before imposing any of the three major punishments, i.e. dismissal, removal or reduction in rank, the competent authority has to apply its mind to the facts of the case to examine the conduct of the public servant concerned which had led to the conviction of the government servant and to determine the nature or quantum of punishment which his conduct calls for. Reference in this context is made to the Full Bench decision of this Court in **Om Parkash versus The Director, Postal Services and others 1972 (2) ILR (Punjab)** as well as Division Bench Judgment in **Ram Chanders case (supra)**. Relevant extract of the decision in Om Parkash's case (supra) is reproduced as under :-

“8A. As already stated that there is no provision in the relevant rules providing for anybody being dismissed or removed from service in view of or on account of a conviction on a criminal charge. Disciplinary action can be taken for the conduct which had led to conviction or a criminal charge if such conduct constitutes misconduct according to the relevant service rules. An apt illustration was given in this connection by my learned brother Tuli J. during the hearing of this petition it was pointed out that if a Government Servant assaults his neighbour and is convicted for the same, it may not be possible to take any departmental action against him (unless the competent authority holds that the conduct of the delinquent official was unbecoming a Government Servant), but if the official was convicted for assaulting his immediate officer in his office, he would be liable to be dealt with departmentally. This illustration shows that the

rule-making authorities have justifiably not provided for disciplinary action being taken in every case of conviction, and have left the matter to be decided by the competent authority in relation to the original conduct and not the conviction.

19. A Division Bench of this Court (Gurudev Singh and A. D. Koshal JJ.) has also held in Rajinder Singh v. the Punjab State and another 1969 Cur. LJ 821 that neither the language of Article 311(2) of the constitution, nor the relevant service rules indicate that as soon as a public servant is convicted on a criminal charge, he must suffer one of the prescribed punishments. On that basis it was observed that before inflicting any of the three major punishments, namely, dismissal, removal or reduction in rank, the competent authority has to apply its mind to the facts of the case to examine the conduct of the public servant concerned which had led to his conviction and to determine the nature or quantum of punishment which his conduct calls for. We are in respectful agreement with the view expressed by the Division Bench in that regard. In as much as the petitioner before us has been dismissed from service on account of the conviction alone without any finding about his conduct (which led to his conviction) justifying his dismissal, the impugned order cannot be sustained.)”

10. No rule has been referred to by the learned Sr. Deputy Advocate General, Haryana that the petitioner was liable to removal from service automatically on his conviction by a criminal court. Since removal on conviction is not automatic, the competent authority is required to record a satisfaction that the conduct of the petitioner which led to his conviction is such that the same is unbecoming of a government servant, thereby rendering him liable to be punished as also the punishment warranted in the facts and circumstances of the case. No such satisfaction was recorded by the competent authority nor was any show cause notice issued to the petitioner and the petitioner was removed from service solely on account of his conviction. Besides the offences under Sections 323, 324, 452 of IPC do not constitute moral turpitude. Reference in this context can be made to the decision of a Division Bench of this Court in **Ram Chander’s case (supra)**.

In Ram Chanders case (supra) the respondent was acquitted of the charges

under Sections 323, 324, 34 and 452, IPC registered against him by the learned Addl. District & Sessions Judge, Delhi, whereupon he was taken back in service. However, on appeal filed by the State, the acquittal was set aside and the employee convicted and sentenced to imprisonment already undergone by him on account of his having remained in custody for some time during the trial stage. Said employee was thereafter served with a show cause notice as to why his services be not terminated on account of his conviction. Reply submitted by him was found unsatisfactory, where after, vide order dated 11.02.2010, services of said employee were terminated. On challenge, the order of termination was set aside and appeal filed by the State was dismissed by relying upon various decisions of Hon'ble the Supreme Court. Relevant extract of the decision in **Ram Chander's case (supra)**, is reproduced as under :

9. *It is clear from the above that when it is proposed to impose major penalty upon a person on the ground of conduct, which led to his conviction on a criminal charge, it is not necessary to hold the inquiry. So far so good. The question is as to whether, the major penalty can be imposed on every kind of criminal charge leading to conviction. That aspect is regulated by instructions dated 26.03.1975. We would like to point out at the outset that these instructions relate to rehabilitation of ex-convicts released from jail and deal with the question of making them eligible for appointment under Government. It is stated in these instructions that under certain circumstances, the conviction would not be a bar for making such convicts eligible for appointment. Obviously, therefore, when a person is eligible for appointment inspite of such a conviction, as a fortiorari, if he is already in the employment his services cannot be terminated in those cases of conviction, which do not make a person ineligible for appointment. What are these cases? Instructions dated 26.03.1975 stipulate such cases.*
10. *A reading of these instructions indicate that spirit behind these instructions is based on reformation and rehabilitation of ex-convicts so that every kind of*

conviction does not render such ex convicts ineligible for appointment and to ensure that they are able to secure employment on their own merits after release from jail. Relevant portion of these instructions reads as under:-

"(i) Persons who are detained under the Borstal Act or who, after conviction under the offences which do not involve moral turpitude, are released under the Probation of Offenders Act instead of jail, should not suffer any disability in respect of obtaining Government service.

(ii) With regard to the employment of ex-convicts on release from jail, a uniform policy will not be possible and each case should be considered on its own merits. The appointing authority should in such case, make detailed enquiries and satisfy himself fully that the ex-convict has reformed himself after release from jail and nothing adverse about his conduct has come to notice after his conviction and he is thus suitable for Government service, the enquiries should invariably be made through the Police Department and if the Police Department consider it necessary to obtain a report from any other department, they should proceed to do so.

(iii) Ex-convicts convicted of offences involving moral turpitude should neither be taken nor retained in Government service. The following tests should ordinarily be affled in judging whether a certain offence involves moral turpitude or not:-

(a) Whether the act leading to a conviction was such as could shock the conscience of society in general.

(b) Whether the motive which led to the act was a base one.

(c) Whether on account of the act having been committed the perpetrator could be considered to be of depraved character or a person who was to be looked down upon by the society.

Decision in each case will, however, depend upon the circumstances of the case and the competent authority has to exercise his discretion while taking a decision in accordance with the above mentioned principle. A list of offences which involves moral turpitude is enclosed for your information and guidance. This list, however, cannot be said to be exhaustive and there might be offences,

which are not included in it but which in certain situations and circumstances may involve moral turpitude."

11. *Following principles can be culled out, as contained in the aforesaid instructions:-*

(a) Those who are involved in moral turpitude should not be taken in Government service.

(b) Those who are convicted of offences, which do not involve moral turpitude or those who are released under the Probation of Offenders Act, should not suffer any disability in respect of obtaining Government service.

(c) With regard to those convicted of offence not involving moral turpitude, laying down uniform policy, is not possible and it is left to the appointing authority in each case to make detailed inquiry and satisfy himself fully that ex-convict has reformed himself after release from jail and nothing adverse about his conduct has come to notice after his conviction. Such an inquiry is to be made invariably through Police Department.

(d) What amounts to moral turpitude is also stated in para (iii) of the instructions.

(e) Discretion is given to the competent authority while taking decision in accordance with principle mentioned in these instructions.

12. *On the basis of these instructions, when competent authority is to invoke its power under Rule 7(2)(b) of the P&A Rules, 1978, the first question would be as to whether the offences for which the employee is convicted constitute moral turpitude. If the answer is in the affirmative, it would be open to the competent authority to pass the order of termination without holding inquiry. However, if the offences for which an employee is convicted have no shades of moral turpitude, the disciplinary authority has to look into the attendant circumstances leading to the conduct of such an employee to see whether he is suitable for rejection in Government service or not.*

13. *In the present case, offences under Sections 323, 324 and 452 of the Indian Penal Code for which the respondent was convicted would not constitute moral turpitude on the touchstone of the test laid down in the instructions dated 26.03.1975.*

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 v. Hazarilal, 2008(2) S.C.T. 148 : 2008(2) Recent Apex Judgments (R.A.J.) 379 : JT 2008(2) SC 390** and the judgement of this Court in **Kulwant Singh v. The Deputy District Primary Education Officer, Gurdaspur and another, 1997(1) S.C.T 282 : 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."*

11. Since removal from service is not an automatic consequence of conviction, the competent authority is required to exercise its discretion in the context of conduct of the petitioner which led to his conviction and form an opinion as to whether the conduct of the employee was such as was unbecoming of the government servant thereby rendering such employee unsuitable for retention in government service. No such satisfaction having been recorded as also no show cause notice having been given nor the offences for which the petitioner was convicted involving moral turpitude the

writ petition is disposed of by setting aside the impugned order and reinstating the petitioner with all consequential benefits. However, if so advised, it would be open to the competent authority to take out fresh proceedings in accordance with law.

18.11.2019

rajesh.k.khurana

(B.S. Walia)
Judge

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