

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

**C.W.P 1025 of 2018
Date of decision : 06.02.2019**

NareshPetitioner
versus

State of Haryana and others ...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Gaurav Mohunta, Advocate
for the petitioner.

Ms. Palika Monga, DAG Haryana

RITU BAHRI, J. (Oral)

The present petition is for quashing order dated 06.06.2017 (P-4) whereby respondent No. 3 terminated the services of petitioner as Hindi Teacher in Government Senior Secondary School, Sanga, District Bhiwani.

Brief facts of the case are that petitioner was appointed as JBT Teacher in Government Girls Model School, Amarpura Nangal Chaudhary, Narnaul District Mahendergarh on 10.01.1994 and he joined his duties on 20.01.1994. Subsequently, the petitioner was promoted as Hindi Teacher in Government Girls Senior Secondary School, Seka Narnaul on 13.12.2005. The petitioner was then transferred to Government Senior Secondary School, Sanga, District Bhiwani. On 01.09.2014, F.I.R No. 661 under Sections 147/148/149/307/323/324/325/506 IPC was registered at P.S. Sadar, Bhiwani against the petitioner and others. On the same date, DDR No. 610 was registered against the complainant side. On 30.03.2017, the petitioner and others were convicted in the above mentioned F.I.R by the learned Additional Sessions

Judge, Bhiwani. Against the aforesaid judgment, petitioner along with other co-accused filed CRA-S-1570-SB-2017, which was admitted on 24.04.2017 and sentence of co-accused of the petitioner was suspended by this Court during the pendency of the appeal. Petitioner also filed CRM No. 14903-2017 for suspension of sentence, which was suspended on 19.07.2017 (P-3). However, the services of the petitioner were terminated w.e.f 30.03.2017, vide impugned order dated 06.06.2017 (P-4). The petitioner then filed an application before this Hon'ble Court seeking stay of conviction vide CRM no. 24087-2017, which was allowed on 27.10.2017 (P-5) and conviction of the petitioner was stayed pending disposal of the present appeal. The petitioner then gave a representation dated 31.10.2017 (P-6) to reinstate him back into service on the post of Hindi Teacher but till date no action has been taken. Hence the present writ petition.

Learned counsel for the petitioner is relying upon judgment of this Court in a case of ***Saroj Kumari vs. State of Haryana and others, passed in CWP No. 8241-2011, decided on 03.12.2013***, wherein the petitioner was JBT teacher and was promoted to the post of Head Teacher. However, on account of conviction in F.I.R under Sections 307/323/452/148/149 IPC the petitioner was dismissed from service. This Court allowed the writ petition and impugned order was set aside and liberty was granted to respondent No. 2 to pass a fresh order in accordance with law after examining the conduct of the petitioner which led to her conviction. The operative part of the judgment reads as under:-

In Union of India vs. Tulsi Ram Patel, AIR 1985 SC 1416 the Supreme

Court clarified the position and held as follows:-

"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. For that purpose, it will have to peruse the judgment of the criminal Court and consider all the facts

and circumstances of the case. Once the disciplinary authority reaches the conclusion that the government servants 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 government servant concerned by reason of the exclusionary effect of the second proviso. However, a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of the government servant concerned and, therefore, it is not mandatory to impose any of these major penalties."

It was thus incumbent upon the disciplinary authority to examine the judgment of the criminal Court closely and to have assessed the conduct of the petitioner to arrive at the conclusion if it was desirable or not to keep her in service. Article 311 (2) (a) does not tolerate automatic dismissal, removal or termination of service without anything more to it. In the present case, the impugned order is both silent on the issue of conduct which led to the conviction and whether the offences for which the petitioner was held guilty amounted to offences involving moral turpitude which alone could justify dismissal pending appeal against conviction or where conviction was not appealed against in a superior Court. When both these ingredients are missing in the impugned order, it cannot be sustained in the eyes of law.

In this view of the matter and in the facts and circumstances of the case and looking to the nature of the impugned order passed the same cannot be sustained in the eyes of law as legal and valid. It amounts to automatic dismissal for reason of conviction alone without going into the conduct which led to the conviction or whether those offences involved moral turpitude or not. No effort was made to find out the exact role of the petitioner in that episode. The petitioner was a teacher charged with her some of her family members in an occurrence involving a neighbour's family members and the role attributed to her was that she gave a bite on the waist of one Kaptan of the opposite side and therefore it is said that offences under S.307 IPC has not been invoked against her on account of the offending acts of in the fight that ensued between the two neighbours. It was co-accused Chander Bhan who has fired gun shots with his licensed weapon aiming at Varinder and Wazir. There is no such allegation against the petitioner. The State had admitted in the proceedings before the learned Single Judge while hearing Crl. Misc. No.38187 of 2011 in the criminal appeal in which the petitioner was co-appellant that nothing more than a bite on the waist of Kaptan was ascribed to her and no other injury on any other person.

This Court considered the fact that the petitioner was a government servant as a mitigating circumstance apart from the role ascribed to order an interim stay of conviction pending appeal.

I find merit in the submissions of Mr. Malik that the impugned order when looked from any angle cannot be sustained. Mr. Nehra apart from relying on the three judgments has nothing further to say on the question of want of examination by the disciplinary authority of the conduct which led to conviction. There is thus flagrant abuse of authority to dismiss in passing the impugned dismissal order without due application of mind to the constitutional mandate enshrined in Article 311 2) (a) which protection the petitioner deserved.

For the foregoing reasons, this writ petition is allowed. The impugned order dated 28.04.2011 (P-3) is quashed. The 2nd respondent is at liberty to pass a fresh order in accordance with law after examining the conduct of the petitioner which led to her conviction. The disciplinary authority would now closely examine the judgment of the trial Court to pass a fresh order. The role of the petitioner ascribed and whether it is one such that renders her completely unfit for retention in service or that the only order that ought to be passed in the light of the findings of the trial court is one which supports dismissal from service needs re-examination in the light of the observations made above. The disciplinary authority would observe care and caution in reaching its fresh decision. Let the exercise be done within two months of the date of knowledge of this order. Mr. Malik concedes to the well settled legal position that at the stage of consideration of the case under Article 311(2) (a) opportunity of hearing to the petitioner is not necessary.”

Learned State counsel has argued that the services of the petitioner is not to be reinstated merely on the ground that he got stay order against his conviction. The profession of teaching is a 'Noble Profession' in the society and teacher also play a role model in the society. The offence under Section 307 IPC comes within the definition of Moral Turpitude case.

The ratio of the above said judgment is directly applicable to the facts of the present case, as in the present case as well, the petitioner was convicted and sentenced under Sections 307/323 IPC to undergo rigorous imprisonment substantially for a period of five years. However, the sentence of

the petitioner was suspended and his conviction was also stayed by this Court.

In view of the discussion made above, the writ petition is allowed and order dated 06.06.2017 (P-4) is set aside. Respondent Nos. 2 and 3 are at liberty to pass a fresh order in accordance with law after examining the conduct of the petitioner which led to his conviction. Let the exercise be done within two months of the date of receipt of certified copy of this order.

February 06, 2019
G Arora

(RITU BAHRI)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>