

Sr. No.214

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

CWP No.2186 of 2016 (O&M)

Date of Decision: 06.11.2019

Gurnam Singh

... Petitioner

Versus

Punjab State Power Corporation Limited and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Sandeep Arora, Advocate,
for the petitioner.

Mr. R.L.Sharma, Advocate,
for the respondents.

ARUN MONGA, J.(ORAL)

1. Petitioner herein seeks issuance of a writ in the nature of certiorari to quash an order dated 09.07.2003 (Annexure P-1) vide which he has been dismissed from service on account of his conviction in criminal case bearing FIR No.10 dated 17.01.1996 under Section 304-B of IPC.

2. I have heard rival contentions of the learned counsel and gone through the impugned order of punishment whereby the petitioner was dismissed from service vis-a-vis the judgment dated 14.08.2014 rendered by this Court in criminal appeal No. CRA-S-411-SB-2001.

3. The position that emerges is that at the relevant time petitioner was dismissed from service and he was convicted by the Sessions Court under Section 304-B IPC and a punishment of 10

years was awarded to him.

4. Keeping in view his conviction and role attributed to him as noted by the learned Sessions Judge, he was dismissed from service under Regulation 5 (ix) of Punjab State Electricity Board (Punishment and Appeal) Regulations, 1971.

5. However, the said judgment of the Sessions Court was challenged by the petitioner before this Court in a criminal appeal wherein following clear cut finding was given:-

“21. After perusal of the facts and the law as enunciated by Hon'ble the Supreme Court in the above cited authorities, it is not disputed that a woman whose marriage was solemnized within seven years had died otherwise than under normal circumstances; but the other essential ingredients of Section 304-B IPC, have not been proved by the prosecution. The perusal of the deposition of the complainant, Jagir Singh (PW4), Dalbir Kaur (PW5) and Raghbir Singh (PW9) clearly shows that there was no harassment or maltreatment meted out to Kulwant Kaur @ Gurmit Kaur on account of demand of dowry soon before her death and, as such, the prosecution has failed to show that the appellant had committed the offence of dowry death. The Court by taking help from Section 113-B of the Evidence Act can draw the presumption of commission of dowry death only when all the essential ingredients of Section 304-B, IPC, are proved by the prosecution. Since the fact that the prosecution has failed to substantiate that soon before her death Kulwant Kaur @ Gurmit Kaur was treated with cruelty on account of demand of dowry, therefore, this Court is not agreeing with the finding recorded by the learned Trial Court that the appellant had caused the dowry death of his wife Kulwant Kaur @ Gurmit Kaur.

22. The alternate argument of the learned counsel for the State that the appellant abetted Kulwant Kaur @ Gurmit Kaur to commit suicide, therefore, he could be held guilty for committing the offence punishable under Section 306, IPC, is also not tenable. The prosecution has not been able to prove beyond the shadow of reasonable doubt that the appellant had created such an atmosphere in his house that Kulwant Kaur @ Gurmit Kaur had no other option except to commit suicide. Therefore, there is no force in the submission made by the learned counsel for the State and as such the appellant cannot be held guilty for having committed the offence punishable under Section 306, IPC.

23. However, there is sufficient material on record to show that after about two years of his marriage, the appellant demanded dowry from his wife Kulwant Kaur @ Gurmit Kaur and on that account she was harassed and given beatings which led Kulwant Kaur @ Gurmit Kaur to leave her matrimonial house and to go to the house of her father. In such circumstances, the appellant can be held guilty for the offence punishable under Section 498-A IPC. The charge under Section 498-A IPC, has not been framed against the appellant, but it being a lesser offence of Section 304-B, IPC, the appellant can be convicted and sentenced for lesser offence and, as such, he is held guilty for the offence punishable under Section 498-A IPC.”

6. A perusal of the findings, supra, would reveal that petitioner was clearly acquitted of the charges under Section 304-B of IPC. But this Court while acquitting him under Section 304-B IPC deemed it fit to hold the petitioner guilty under Section 498-A of IPC. Since the period of sentence provided for conviction under

Section 498-A IPC is lesser than the one provided under Section 304-B IPC, his sentence was, therefore, reduced to already undergone.

7. Backed up with the above judgment and acquittal under Section 304-B IPC, the petitioner approached the respondent-Corporation and requested that he be reinstated in his job.

8. A representation dated 10.08.2015 (Annexure P-3) was submitted but no decision on the same was taken and hence the present writ petition.

9. As noted above in the preceding paras since the original punishment order impugned herein was passed on the basis of conviction of the petitioner under Section 304-B IPC, the same is not sustainable in law in view of his having been acquitted in the said section.

10. Concededly, the petitioner was convicted under Section 498-A IPC but the respondent Corporation did not consider his misconduct and role attributed to him to give any finding whether the same is of such a nature so as to impinge in the nature of duties to be performed by him. Neither there is any finding that the same amounts to a moral turpitude of a kind so as to disentitle the petitioner to be reinstated in job.

11. In the premise, the impugned order dated 09.07.2003 (Annexure P-1) is set aside with a direction to the respondent Corporation to pass fresh orders by going through the judgment of this Court contained at Annexure P-2 and give reasons as to why the petitioner is not entitled to be reinstated.

12. It is expected of the respondents to go through the judgment rendered by this Court in case titled as ***Mukhtiar Singh Vs. State of Punjab and others, 2007(2) RCR (Civil) 474***, which as per contention of learned counsel for the petitioner is squarely applicable to the case of the petitioner. He contends that where an employee was convicted under Section 307 IPC yet this Court gave a direction to the employer to induct him back in service since there was no moral turpitude involved.

13. Let the needful be done within a period of 3 months from the date of receipt of a certified copy of this order.

14. Disposed of in the aforesaid terms.

(ARUN MONGA)
JUDGE

06.11.2019

vandana

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No