

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

**Civil Writ Petition No. 21557 of 2017 (O&M)
Pronounced On: 09.01.2019**

Madan Lal

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. K.L. Arora, Advocate
for the petitioner.

Mrs. Sudeepti Sharma, Additional Advocate General, Punjab
for respondent No. 1/State.

Ms. Kavita Arora, Advocate
for **contesting** respondent Nos. 2 & 3/Municipal Committee,
Rajpura, District Patiala.

JASWANT SINGH, J.

1. This petition has been preferred by the petitioner to challenge the direction dated 02.08.2017 (**Annexure P-5**) passed by the Directorate, Local Government Department, Punjab, and the Impugned Order / Resolution dated 04.09.2017 (**Annexure P-6**) passed by Respondent No. 2, i.e., Municipal Committee, Rajpura, whereby the petitioner has been “***Dismissed from Service***” upon his conviction in a case pertaining to the offence punishable under the Prevention of Corruption Act, 1988. The reliance has been placed upon a Division Bench decision dated 23.05.2007 (**Annexure P-7**) of this Court in case ***Kaur Singh and another Versus Punjab State Electricity Board and others*** reported in ***2007 (4) SCT-DB-426***. The decision of the High Court is set to have followed the judgment in

Tulsi Ram Patel's case delivered by the Constitution Bench of the Hon'ble Supreme Court.

2. The factual matrix of the case in brief are that the petitioner joined the services of Municipal Committee as Class-IV Employee / Peon on 20.07.1990 and continued to perform his duties diligently, and was later on promoted to the post of Clerk on 14.11.2006. It was on 10.08.2012 when a case FIR No. 12, under Sections 7 & 13(2), Prevention of Corruption Act, 1988 was registered against the petitioner at Police Station Vigilance Bureau, Patiala, the petitioner was suspended vide order dated 10.08.2012 duly approved through Resolution No. 35/31 dated 29.08.2012. However, during the pendency of the trial, the Municipal Committee passed the Resolution on 29.06.2016 to re-instate the petitioner and utilize his services pending trial. The said Resolution was on the ground of shortage of clerical staff in the Municipal Committee, Rajpura and it was clarified that the employee shall be bound to comply with the orders passed by the Court. The order of reinstatement was passed on 02.11.2016 (**Annexure P-1**).

3. The trial in case FIR No. 12 dated 10.08.2012 ended in conviction on 08.12.2016 (**Annexure P-3**) holding the petitioner 'Guilty' for the offences punishable under Sections 7 & 13(2) Prevention of Corruption Act, 1988. As the sentence awarded by the Ld. Trial Court for these offences were for a period of two years (maximum) and that too concurrently, therefore, the concession of bail was extended. A Criminal Appeal No. 4605/SB of 2016 was preferred by the petitioner and the concession of suspension of sentence was allowed.

On 02.08.2017, a communication was sent by the Directorate,

Committee, Rajpura (Respondent No. 3) intimating the decision of the trial Court regarding conviction of the petitioner. It is further communicated that as per the orders passed by the Additional Chief Secretary, Local Government Department, a resolution be passed by the Committee and Sh. Madan Lal (Petitioner), Clerk, who has been convicted by the Court be “Dismissed from Service” and action be taken accordingly. A copy of the judgment was also enclosed. Upon this, the Resolution No. 29/7 dated 04.09.2017 was passed, dismissing the services of the petitioner.

4. Challenge to the dismissal order is made on the ground that Municipal Committee is the competent authority and therefore, the power to dismiss the services vest with the Municipal Committee and mere conviction is not enough for “Dismissal from Services”. It is alleged that the order of dismissal is not passed by a Competent Authority as the post held by the petitioner is non-provincialized post. Besides violation of principle of natural justice is pleaded as well as the ignorance of the settled law.

Upon notice, **contesting** respondent Nos. 2 & 3 had filed the written statement, wherein the impugned decisions have been justified, by relying upon the previous conduct of the petitioner as well as the conviction recorded in case FIR No. 12 dated 10.08.2016. It is highlighted that on previous occasions, the petitioner was suspended in the year 1993 and was later on reinstated on 11.01.1994, pending enquiry. In 1995, the petitioner was given strong warning on account of giving wrong transit pass at the Octroi Post. It has been elaborated that in the case FIR No. 12, the petitioner was found involved in demand acceptance of bribe from the complainant and the case of the prosecution was based on a trap. Convicting evidence was produced before the trial Court which resulted in conviction of the

petitioner. It is pleaded that in such a situation, conviction alone is sufficient for dismissal of an employee and no enquiry is mandatory. It is added that even in view of the Rule 13 (1) (i) Punjab Civil Service (Punishment & Appeal) Rules, 1970, the employee could be removed from service without any enquiry.

5. In support of the rival pleadings, the arguments of the counsel for the parties were heard.

Admittedly, the petitioner stands convicted for the offences punishable under Sections 7 & 13 (2) of the Prevention of Corruption Act, 1988, vide judgment dated 08.12.2016 (**P-3**). The Appeal against the said judgment of conviction is pending, however, there is no stay on conviction. It was a State case whereupon the Vigilance Bureau had prosecuted the petitioner. The judgment of the Ld. Trial Court is in detail clearly depicting the conduct of the petitioner in demanding and accepting the bribe from the complainant - Mohinder Singh, which has been well established by the Prosecution Witnesses, who testified in the Court to establish the charges. Involvement of an employee in a crime and conviction by Court has to be dealt with by the department in respect of the services of the employee. The communication (**Annexure P-5**) is based on the information delivered by the Vigilance Bureau which has been forwarded to the Executive Officer, Municipal Committee, Rajpura (respondent No. 3). The Vigilance Bureau intimation is 04.07.2017, who had sent the copy of the judgment and thereafter the Additional Chief Secretary, Local Government Department had examined the same to further intimate the concerned department i.e. Respondent No. 3 for the purposes of action to be taken in respect of the services of the petitioner. It was on this information, the department

concerned, i.e., Municipal Committee, Rajpura, passed the resolution dismissing the services of the petitioner on conviction in a criminal case. Accordingly the order dated 04.09.2017 (**P-6**) of dismissal of services of the petitioner has been strictly passed by the competent authority i.e. the Municipal Committee, Rajpura which as per the provisions of Section 39 of the Punjab Municipal Act 1911 read in consonance with Notification dated 01.07.1977 notifying Municipal Committee (Recruitment and Conditions of Service) Byelaws 1977 for the Municipal Committee Rajpura.

6. Regarding the consideration of the conduct of the government servant which lead to his conviction, the appropriate authority has to apply its mind and decide the action to be taken in the peculiar facts and circumstances of each case, the allegations leveled, the charges proved and the role and conduct of the concerned employee on such charges. **Rule 13** of the **Punjab Civil Services (Punishment & Appeal) Rules, 1970** lays down special procedure in certain cases and by enlisting those categories of cases, regular departmental enquiry is not needed before imposing the punishment in those cases. Sub-rule(i) thereof mentions the cases where penalty is imposed on a government employee on the ground of conduct which has led to conviction on a criminal charge.

*"13. Special Procedure in certain cases.-
Notwithstanding anything contained in Rules 8, 9, 10, 11
and 12-*

*(i) where any penalty is imposed on a Government
employee on the ground of conduct which 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 inquiry in the manner
provided in these rules; or*

(iii) where the Governor 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 rules, the punishing authority may consider the circumstances of the case and make such orders thereon as it deems fit:

***Provided** that the Commission shall be consulted where such consultation is necessary, before any orders are made in any case under this rule."*

The second proviso to Article 311 of the Constitution where penalty may be imposed without holding the enquiry in cases where conduct has led to conviction of the government servant on a criminal charge is a similar provisions provided in the Constitution of India. However, it specifically provides that penalty can be that of dismissal or removal or reduction in rank which means, the punishment other than dismissal can also be given.

7. It follows from the above that merely on conviction, termination could not be automatic and the disciplinary authority is supposed to exercise its discretion keeping in view the circumstances under which the concerned Government servant was convicted and was supposed to record satisfaction to the effect that such a conviction had rendered him unsuitable for government service.

In State of M.P. and others Vs Hazarilal, (2008) 3 SCC 273, the Supreme Court reminded the disciplinary authority of its role in such cases, by making the following pertinent observations :-

"8. An authority which is conferred with a statutory discretionary power is bound to take into consideration all the attending facts and circumstances of the case before imposing an order of punishment. While exercising such power, the disciplinary authority must act reasonably and

fairly. Respondent occupied the lowest rank of the cadre. He was merely a contingency peon. Continuation of his service in the department would not bring a bad name to the State. He was not convicted for any act involving moral turpitude. He was not punished for any heinous offence.

9. *The Tribunal, in our opinion, rightly placed reliance upon the decision of this Court in Shankar Das vs. Union of India : (1985) 2 SCC 358 wherein this Court commended the judgment of a Magistrate of Delhi as he had let off the appellant therein under Section 12 of the Probation of Offenders Act stating :- "Misfortune dogged the accused for about a year..... and it seems that it was under the force of adverse circumstances that he held back the money in question. Shankar Dass is a middle-aged man and it is obvious that it was under compelling circumstances that he could not deposit the money in question in time. He is not a previous convict. Having regard to the circumstances of the case, I am of the opinion that he should be dealt with under the Probation of Offenders Act, 1958."*

10. *Despite the said observation Shankar Das was dismissed from service. This Court held :-*

"7. It is to be lamented that despite these observations of the learned Magistrate, the Government chose to dismiss the appellant in a huff, without applying its mind to the penalty which could appropriately be imposed upon him insofar as his service career was concerned. Clause (a) of the second proviso to Article 311(2) of the Constitution confers on the Government the power to dismiss a person from service "on the ground of conduct which has led to his conviction on a criminal charge". But, that power, like every other power, has to be exercised fairly, justly and reasonably. Surely, the Constitution does not contemplate that a government servant who is convicted for parking his scooter in a no- parking area should be dismissed from service. He may, perhaps, not be entitled to be heard on the

question of penalty since clause (a) of the second proviso to Article 311 (2) makes the provisions of that article inapplicable when a penalty is to be imposed on a government servant on the ground of conduct which has led to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act justly. Considering the facts of this case, there can be no two opinions that the penalty of dismissal from service imposed upon the appellant is whimsical."

11. We express similar dis-satisfaction in this case."

In Hazarilal's case (supra) the respondent was convicted in a criminal trial and fined Rs. 500/- only. The Hon'ble Supreme Court found that conviction did not involve moral turpitude or was not a heinous offence. Applying the principle of proportionality, it was held that removal of the respondent from service on the basis of such a conviction was totally unjust. Moral turpitude is not defined statutorily. The expression, however, is explained in various judgments of the Courts. The meaning of term 'turpitude' and 'moral turpitude' has been given in Black's Law Dictionary, Fourth Edition, as follows:-

*"**Turpitude** - In its ordinary sense, inherent baseness or vileness of principle or action; shameful wickedness; depravity. In its legal sense, everything done contrary to justice, honesty, modesty, or good morals.*

State v. Anderson 117 Kan 230, Hughes v. State Board of Medical Examiners, 162 Ga. 246; 134 S.E. 42, 46, An action showing gross depravity. Traders & General Ins. Co. v. Russell, Te & Civ. App. 99; S.W. 2-d 1079, 1084."

*"**Moral Turpitude-** A term of frequent occurrence in statutes, especially those providing that a witness' conviction of a crime involving moral turpitude may be shown as*

tending to impeach his credibility. In general, it means neither more nor less than "turpitude", i.e. anything done contrary to justice, honesty, modesty, or good morals."

In **Pawan Kumar v. State of Haryana, 1996(3) S.C.T 339 :**

the Hon'ble Supreme Court has observed as under: -

"Moral turpitude" is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity."

The aforesaid judgment in Pawan Kumar case, (supra) has been considered by the Hon'ble Supreme Court again in **Allahabad Bank and Anr., v. Deepak Kumar Bhola 1997(2) S.C.T. 643 : (1997) ILLJ 854 SC**, and placed reliance on **Baleshwar Singh v. District Magistrate and Collector, AIR 1959 All 71**, wherein it has been held as under: -

" The expression 'moral turpitude' is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellow men or to the society in general. If therefore the individual charged with a certain conduct owes a duty, either to another individual or to the society in general, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man "

The Full Bench of this Hon'ble Court in "**Om Parkash versus**

The Director, Postal Services", 1973 AIR (Punjab) 1 has held that:

“21. X x x x

For the foregoing reasons, it is held that :-

(i) the departmental punishment of removal or dismissal from Government service is not an essential and automatic consequence of conviction on a criminal charge;

(ii) the authority competent to take disciplinary action under Rule 19(i) of the 1965 rules against a Central Government servant convicted on a criminal charge has to consider all the circumstances of the case and then to decide

(a) whether the conduct of the delinquent official which led to his conviction is such as to render his further retention in public service undesirable;

(b) if so, whether to dismiss him or to remove him from service, or to compulsorily retire him; and

(c) if the said conduct of the official is not such which renders his further retention in service undesirable whether the minor punishment if any, should be inflicted on him;

(iii)-(xii) x x x x x

(xiii) an order imposing a punishment on a Government servant simply because of his conviction on a Criminal charge without reference to the conduct which led to the conviction cannot be sustained.

X x x x x”

Thus from the aforestated principles enunciated by the Hon’ble Full Bench, the authority competent to take disciplinary action against a Government servant convicted on a criminal charge has to consider all the circumstances of the case and then to decide whether the conduct of the delinquent official which led to his conviction is such as to render his further retention in public service undesirable and if so then whether to dismiss him or to remove him from service, or to compulsorily retire him; and if the said conduct of the official is not such which renders his further retention in service undesirable whether the minor punishment if

any, should be inflicted on him.

8. Towards this application of mind, one of the important tests evolved in the aforementioned judgments for deciding as to whether a particular offence involves moral turpitude or not is to find out as to whether the act committed by the individual leading to his conviction was such as it could shock the moral conscience of the society in general or not. The Constitution of India mandates that every civil servant holds his office during the pleasure of the President or the Governor of the State, as the case may be. The Government as a model employer pays wages commensurate to the nature of duties and responsibilities and every Government Employee earns upward revision in his emoluments every year by way of increments etc. to neutralise the inflationary trends. Every Government servant occupies a status of his own and the attached honour of serving the State with duties, powers and function attached to each post. When the basic and essential requirements of the Government Employee are adequately taken care of by the State, the State in turn expects and requires absolute integrity and not to resort to unethical practices of getting privately gratified for performing their official acts and duties. Any such conduct of suspect integrity on the part of a civil servant coupled with acceptance of illegal gratification is bound to have a spillover on the morale of the society at large as also disrespect and awe to the authority vested in the Government employee and the post held by him. Thus when a Government Employee has been found guilty by a judicial adjudicatory process to have committed an offence punishable under the Prevention of Corruption Act is liable to be treated to have committed an offence involving moral turpitude.

9. The Hon'ble Supreme Court in "**K.C. Sareen v. CBI**", (2001) 6 SCC 584 at page 589 in Para 12 of the Judgment held as under:

12. Corruption by public servants has now reached a monstrous dimension in India. Its tentacles have started grappling even the institutions created for the protection of the Republic. Unless those tentacles are intercepted and impeded from gripping the normal and orderly functioning of the public offices, through strong legislative, executive as well as judicial exercises the corrupt public servants could even paralyse the functioning of such institutions and thereby hinder the democratic polity. Proliferation of corrupt public servants could garner momentum to cripple the social order if such men are allowed to continue to manage and operate public institutions. When a public servant is found guilty of corruption after a judicial adjudicatory process conducted by a court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior court. The mere fact that an Appellate or Revisional Forum has decided to entertain his challenge and to go into the issues and findings made against such public servants once again should not even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction, it is public interest which suffers and sometimes, even irreparably. When a public servant who is convicted of corruption is allowed to continue to hold public office, it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction, the fallout would be one of

shaking the system itself. Hence, it is necessary that the court should not aid the public servant who stands convicted for corruption charges to hold only (sic) public office until he is exonerated after conducting a judicial adjudication at the appellate or revisional level. It is a different matter if a corrupt public officer could continue to hold such public office even without the help of a court order suspending the conviction.

The Hon'ble Supreme Court in "**Dr. Subramanian Swamy versus Dr. Manmohan Singh**" reported as **2012(2) Law Herald (SC) 1151** in **Para 45**, while dealing with the issue of corruption held :

" 45. Today, corruption in our country not only poses a grave danger to the concept of constitutional governance, it also threatens the very foundation of Indian democracy and the Rule of Law. The magnitude of corruption in our public life is incompatible with the concept of a socialist, secular democratic republic. It cannot be disputed that where corruption begins all rights end. Corruption devalues human rights, chokes development and undermines justice, liberty, equality, fraternity which are the core values in our preambular vision. Therefore, the duty of the Court is that any anti- corruption law has to be interpreted and worked out in such a fashion as to strengthen the fight against corruption. That is to say in a situation where two constructions are eminently reasonable, the Court has to accept the one that seeks to eradicate corruption to the one which seeks to perpetuate it."

From the aforestated judgments, it is clearly depicted that those convicted of corruption charges and found to be corrupt by the judicial adjudicatory process are to be dealt with sternly. If a public servant, who is convicted for corruption, is allowed to continue to hold public office, it would impair the morale of the other persons manning such office, and consequently, that would erode the already shrunk confidence of the people

in such institutions besides demoralizing the other honest public servants, who would either be the colleagues or subordinates of the convicted person. The honest public servants in such a case would be compelled to take orders from proclaimed corrupt officers which will result in shaking the system itself.

10. In ***Union of India versus Ramesh Kumar***, (1997) 7 SCC 514

the Hon'ble Supreme Court in Para 6 at page 517 held that :

“6 A bare reading of Rule 19 shows that the disciplinary authority is empowered to take action against a government servant on the ground of misconduct which has led to his conviction on a criminal charge. The rules, however, do not provide that on suspension of execution of sentence by the appellate court the order of dismissal based on conviction stands obliterated and the dismissed government servant has to be treated under suspension till disposal of appeal by the appellate court. The rules also do not provide the disciplinary authority to await disposal of the appeal by the appellate court filed by a government servant for taking action against him on the ground of misconduct which has led to his conviction by a competent court of law. Having regard to the provisions of the rules, the order dismissing the respondent from service on the ground of misconduct leading to his conviction by a competent court of law has not lost its sting merely because a criminal appeal was filed by the respondent against his conviction and the appellate court has suspended the execution of sentence and enlarged the respondent on bail. This matter may be examined from another angle. Under Section 389 of the Code of Criminal Procedure, the appellate court has power to suspend the execution of sentence and to release an accused on bail. When the appellate court suspends the execution of sentence, and grants bail to an accused the effect of the order is that the sentence based on conviction is for the time being postponed, or kept in abeyance during the pendency of the

appeal. In other words, by suspension of execution of sentence under Section 389 CrPC an accused avoids undergoing sentence pending criminal appeal. However, the conviction continues and is not obliterated and if the conviction is not obliterated, any action taken against a government servant on a misconduct which led to his conviction by the court of law does not lose its efficacy merely because the appellate court has suspended the execution of sentence. Such being the position of law, the Administrative Tribunal fell into error in holding that by suspension of execution of sentence by the appellate court, the order of dismissal passed against the respondent was liable to be quashed and the respondent is to be treated under suspension till the disposal of criminal appeal by the High Court.”

Thus the facts in the case of the petitioner that against the Order of conviction, the Appeal has been filed by the Petitioner and the sentence having been suspended has no effect on the orders passed towards the termination of service by way of dismissal in peculiar facts of this case. In this regard the reliance by the Respondents on the judgment of Hon’ble Supreme Court in case of “**Union of India vs. V K Bhaskar**” 1997 (11) SCC 383, of Division Bench of this Court in case “**Ashok Kumar versus State of Haryana and others**” 2010(29) SCT 34 and in “**Sham Lal versus State of Haryana and others**” 2012 (2) SCT 71 supports the case of the respondents in sustaining the orders terminating the service of the petitioner.

11. In the case “**Dy. Director of Collegiate Education (Admn.) versus S. Nagoor Meera**, (1995) 3 SCC 377, the Hon’ble Supreme Court decided the similar issue in respect of the similar powers with authorities under provisions of Tamil Nadu Civil Services (CCA) Rules, and in Para 10 at page 382 of the judgment held as under:

“ 10. What is really relevant thus is the conduct of the government servant which has led to his conviction on a criminal charge. Now, in this case, the respondent has been found guilty of corruption by a criminal court. Until the said conviction is set aside by the appellate or other higher court, it may not be advisable to retain such person in service. As stated above, if he succeeds in appeal or other proceeding, the matter can always be reviewed in such a manner that he suffers no prejudice.”

In the case of the petitioner also, the respondent has been found guilty of corruption by a Criminal Court based on evidence of having accepted illegal gratification in a trap case and the petitioner stands convicted for the offences punishable under Sections 7 & 13 (2) of the Prevention of Corruption Act, 1988, vide judgment dated 08.12.2016 **(P-3)**. The judgment of the Ld. Trial Court is in detail clearly depicting the conduct of the petitioner in demanding and accepting the bribe from the complainant - Mohinder Singh, which has been well established by the Prosecution Witnesses, who testified in the Court to establish the charges.

The communication dated 02.08.2017 **(Annexure P-5)** is based on the information delivered by the Vigilance Bureau which has been forwarded to the Executive Officer, Municipal Committee, Rajpura (respondent No. 3). It was on this information, the Authority concerned, i.e., Municipal Committee, Rajpura, passed the resolution dismissing the services of the petitioner based on conduct leading to conviction in a corruption case in the course of performance of duties of the office of which he was appointed. The order dated 04.09.2017 **(P-6)** of dismissal of services of the petitioner has been passed by the competent authority i.e. the Municipal Committee, Rajpura cannot be wronged on the ground of

competency of the Authority passing the orders.

12. To the contention of the Petitioner that the case is covered by decision rendered in ***Kaur Singh's case (supra)*** is misplaced as the facts of that case were entirely different as the conviction in that case was for the offences punishable under Section 225 and 186 of the Indian Penal Code. There were various accused in that case and it was in that context, it was observed that the conduct of each employee, which has led to the conviction, is to be considered by the competent authority for the purposes of ascertaining the required penalty. The reliance was placed upon the case of ***Union of India Versus Tulsi Ram Patel 1985 (2) SLR 576***. It is also observed that the competent authority is to consider all the facts and circumstances of the case and various factors as set out in ***Chellapan's case (1976 Vol. III SCC 190)***. It is also observed that it has to be done *ex parte* and for that purpose, the hearing of the Government servant concerned is not necessary. In ***Chellapan's case***, the following observations need to be extracted to meet the issue raised in the petition:

“ It may be that the conviction of an accused may be for a trivial offence as in the case of the respondent T.R. Chellapan in Civil Appeal No. 1664 of 1974 where a stern warning or a fine would have been sufficient to meet the exigencies of service. It is possible that the delinquent employee may be found guilty of some technical offence, for instance, violation of the transport rules or the rules under the Motor Vehicles Act and so on, where no major penalty may be attracted. It is difficult to lay down any hard and fast rules as to the factors which the disciplinary authority would have to consider, but I have mentioned some of these factors by way of instances which are merely illustrative and not exhaustive. In other words, the position is that the conviction of the delinquent employee would be taken as sufficient

proof of misconduct and then the authority will have to embark upon a summary inquiry as to the nature and extent of the penalty to be imposed on the delinquent employee and in the course of the inquiry if the authority is of the opinion that the offence is too trivial or of a technical nature it may refuse to impose any penalty inspite of the conviction. ”

In view of the above, it is evident that the case of the petitioner is clearly distinguishable from the judgment relied upon by the petitioner, who stands convicted for the offences punishable under the Prevention of Corruption Act, 1988, which are not at all trivial in nature and are serious offences. The petitioner was only accused, who was trapped in demanding and accepting the bribe, therefore, could be “Dismissed from Service” on account of conviction alone in view of the law laid in ***Chellapan's case***. The decision of “Dismissal from Service” cannot be interfered on the ground that no opportunity of hearing was afforded as in the case of conviction, the principle of natural justice and affording the hearing acquires no significance. In this regard the respondents have relied on the judgment of the Division Bench of this High Court in “**Parminder Singh Sodhi versus State of Punjab**” 2009 (1) SCT 687 wherein reliance in similar facts on the judgment of **Kaur Singh** (*supra*) was repelled.

13. There is no illegality in the impugned Order of “Dismissal from Service” and until the said conviction is set aside by the Appellate or other higher court, it may not be advisable to retain such corrupt person in service. If the petitioner succeeds in appeal or other proceeding, the matter can always be reviewed in such a manner that he suffers no prejudice in consonance with the provisions of law.

Dismissed.

14. Before parting with the judgment, it is clear from the legal provisions and the case law referred that the competent Authority / disciplinary authority has to exercise the power / apply his mind to consider the conduct leading to conviction on a criminal charge and pass appropriate orders regarding the retention in service or termination by passing order of dismissal, removal or compulsory retirement or any other lesser punishment as the relevant statute may prescribe but there are no guidelines, parameters or instructions issued by the Government as brought to notice of this court, to follow such guidelines as guiding points while exercising the discretionary powers regarding the disposal of the person based on the conduct leading to conviction.

It is settled principle of law that no public authority has unfettered and absolute discretion. The duties, responsibilities and obligations of a public authority in a system based on rule of law, unfettered discretion or power is an anathema as every public authority is a trustee of public faith. The following **extract** from the **Halsbury's Laws of England, Fourth Edition, Vol.1(1) Administrative Law** provide the foundation of these observations:

“A public authority may be described as a person or administrative body entrusted with functions to perform for the benefit of the public and not for private profit. Not every such person or body is expressly defined as public authority or body, and the meaning of a public authority or body may vary according to the statutory context.”

In his work **Administrative Law (6th Edn.) Prof. H.W.R. Wade** highlighted the distinction between powers of public authorities and those of private persons in the following words:

“ The common theme of all the authorities so far mentioned is that the notion of absolute or unfettered discretion is rejected. Statutory power conferred for public purposes is conferred as it were upon trust, no absolutely —that is to say, it can validly be used only in the right and proper way which Parliament when conferring it is presumed to have intended. Although the Crown's lawyers have argued in numerous cases that unrestricted permissive language confers unfettered discretion, the truth is that, in a system based on the rule of law, unfettered governmental discretion is a contradiction in terms.”

In the realm of service law, the authorities are exercising the powers upon the conviction of the government servant based on the criminal charge but are exercising such discretion on their individual basis and on case to case basis without there being any closeness to uniformity against such action or any parameters being followed to achieve some uniformity in action based on set parameters in similar circumstances to be followed by different authorities in different cases having similar facts, charges and circumstances. The Government is required to issue the parameters and guidelines based on the gravity, elements of moral turpitude and depravity - perversity of action demonstrated by the convicted government employee in its conduct and pass orders in cases involving similar charges and circumstances subject to extenuating factors in each case based on such guiding factors. Thus, a mandamus is issued to the State of Haryana, State of Punjab and the UT Administration to formulate and issue necessary instructions and circular covering the aforementioned aspects so that the same may guide the procedural requirements and relevant consideration in assessing the conduct of the convicted Government employee leading to conviction on a criminal charge.

Such instructions / circulars so made be placed on the Court file within six months from today in acknowledgment of such compliance having been made based on the aforestated mandamus.

Since the main case has been decided, no orders are required to be passed in the pending miscellaneous application(s), if any, and the same stand(s) disposed of.

January 9th, 2019

'dk kamra'

**(JASWANT SINGH)
JUDGE**

<i>Whether Speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>