

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP NO. 8877 of 2015(O&M)
DATE OF DECISION : 03.07.2019

Navjit Singh

... Petitioner

versus

State of Punjab & Ors.

... Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Dhiraj Chawla, Advocate,
for the petitioner.

Ms. Ambika Bedi, AAG Punjab.

None for respondents No.2 to 4.

ARUN MONGA, J. (ORAL)

1. Petitioner herein, *inter alia*, seeks quashing of order dated 08.11.2011(Annexure P-7) vide which he was dismissed from service as Lineman, on account of his conviction under Section 498-A IPC. A direction has been sought for his reinstatement into service with continuity of service and other admissible benefits.

2. Brief facts are that the petitioner was appointed as Lineman on 20.05.1992 with erstwhile Punjab State Electricity Board(for short, PSEB). Petitioner was absorbed in Punjab State Power Corporation Limited(for brevity, Corporation)(successor in interest of PSEB). It is stated that due to disturbance in his matrimonial life, there were multiple litigations going on.

His wife filed a complaint for the offences under Sections 406 and 498-A

IPC against husband and parents-in-law in the Court. Father-in-law died during pendency of the proceedings.

3. Trial in the case culminated into conviction of the petitioner and his mother under Sections 406 and 498-A IPC and they were awarded sentence of one year under both the heads vide judgment dated 02.08.2005 (Annexure P-1). Their conviction was maintained by the Appellate Court vide judgment dated 28.07.2011(Annexure P-2) as well as by this Court, except for reduction in period of sentence, which was reduced to the period already undergone qua his mother and nine months in respect of the petitioner vide judgment dated 22.12.2011(Annexure P-3). In the meanwhile, the respondent Corporation dismissed the petitioner from service vide impugned order dated 08.11.2011(Annexure P-7) It is stated that later a compromise dated 28.12.2011(Annexure P-4 colly.) was effected between the parties. In the light of compromise, the petitioner was granted the benefit of provisions of Section 360 Cr.P.C. and he was released on probation by Hon'ble the Apex Court vide order dated 24.02.2012 (Annexure P-8).

4. It is stated that in the light of above developments, the petitioner filed an appeal dated 19.03.2012(Annexure P-9) and sought reinstatement into service. However, the same was rejected vide order dated 30.07.2012(Annexure P-10). A legal notice dated 02.11.2013(Annexure P-14) was served upon the respondents, but the same was not adverted to.

5. It is stated that under erroneous advice, the petitioner instead of filing a writ petition, instituted a civil suit on 19.02.2014(Annexure P-11). The same was later withdrawn on 20.04.2015(Annexure P-12 colly.) under Order 23 Rule 1(3) of CPC with liberty to file a writ petition for seeking

redressal of his grievances. Thereafter, the petitioner filed the instant writ petition.

6. It is stated that before dismissing the petitioner from service, the respondent Corporation failed to follow the service Rules as neither he has been afforded any opportunity of hearing nor any show cause notice, proposing to impose major penalty of dismissal was served upon him. Rather, the punishment authority as well as appellate authority rejected his plea in a mechanical manner and failed to consider that it was only a matrimonial dispute on account of temperamental differences and has no nexus with his duties and he is entitled to a lenient view especially when the dispute ended peacefully with a compromise effected between the parties and the petitioner has been released on probation of good conduct by the Apex Court.

7. In the return, respondents No.2 to 4 admitted that the petitioner was their employee. But the claim raised by the petitioner is opposed and it is averred that the petitioner is not entitled to any relief after his conviction in a criminal case, involving moral turpitude and confirmation of his conviction by the Appellate as well as Revisional Court. The impugned orders are well reasoned and warrant no interference by this Court.

8. Replication, controverting the averments of the reply and reiterating those of petition, has been filed by the petitioner.

9. Having heard the rival contentions of learned counsels at some length and on perusal of pleadings and the judgments cited by learned counsel for the petitioner, I am of the opinion that writ petition deserves to be allowed as the impugned orders dated 08.11.2011 dismissing the

petitioner from service and consequently the Appellate order dated 30.07.2012(Annexure P-10) rejecting the appeal against the dismissal order dated 08.11.2011(Annexure P-7), do not stand the scrutiny of law and are liable to be quashed.

10. Perusal of the impugned order dated 08.11.2011(Annexure P-7) does not reveal if the petitioner was dismissed on account of his conduct which led to his conviction under Sections 406 and 498-A IPC or his conduct was found to be of such grave magnitude so as to warrant dismissal from service. His conviction simplicitor seems to be the sole ground constituting the basis of dismissal order. Reference may be had to judgment rendered by the Apex Court in **Union of India Vs. Tulsi Tam Patel 1985 (2) SLR 576**, whereby it has been held that disciplinary authority must bear in mind that dismissal on criminal charge alone does not automatically entail dismissal/ removal or reduction in rank of the concerned government employee. Similar view was earlier enunciated by the Apex Court in **The Divisional Personnel Officer Southern Railways and Anr. Vs. T.R. Chellappan, 1976(3) SCC 190**.

11. Following the *dictum* of Hon'ble the Supreme Court, two different Division Benches of this Court in **Hans Raj Vs. State of Punjab, 2002(2) SCT 223** and **Kaur Singh Vs. Punjab State Electricity Board 2007(4) SCT 426**, exercising jurisdiction under Article 226 of Constitution of India quashed the orders passed by disciplinary authority whereby the employees were dismissed from service merely on the basis of their conviction.

12. As far as conduct of the petitioner leading to the conviction in the present case is concerned, the dispute between the petitioner and his

wife arose out of their matrimonial discord. Owing to a dysfunctional marriage between them certain criminal complaints were filed by estranged wife against the petitioner which spiraled into civil/ criminal litigation *inter se* the parties. It must be borne in mind that the petitioner was though convicted by the trial court, yet subsequently, a compromise was arrived at between the petitioner and his wife wherein the wife also deposed on affidavit (Annexure P/4) that she has no objection if the petitioner is acquitted. However, this Court in the criminal revision filed against the conviction of order of the trial Court reduced the sentence of the petitioner and subsequently the petitioner was released on probation by Hon'ble the Supreme Court. The disciplinary authority did not consider the aforesaid peculiar circumstances of the petitioner before dismissing him from service. The impugned dismissal order does not refer to any of this, let alone, giving any reasons of not considering the same, thus, rendering the dismissal of the petitioner from service as completely unreasonable and unsustainable.

13. I am of the view that given the fact that dispute leading to the conviction was essentially matrimonial in nature and was purely a personal dispute and had no connection with the discharge of duties of the petitioner, the disciplinary authority ought to have considered redeeming feature existing in favour of the petitioner before taking the harsh decision of dismissing him from service. Particularly, when the very genesis of the conviction order stood obliterated in view of the compromise executed between the petitioner and his wife, there was, thus, no occasion for the disciplinary authority to impose the extreme punishment of dismissal. The matrimonial allegations made by the wife, in no manner, reflects on the character and conduct of the petitioner with regard to discharge of his duties as Lineman.

of the disciplinary authority in not considering, as to whether there existed any linkage or connection between the conviction of the petitioner on the allegations of his wife and the propriety of his continuing in service.

15. Perusal of the impugned order (Annexure P-7) shows that the disciplinary authority passed it simply and only for the reason that because of the decision of the Courts, the character and conduct of the petitioner does not permit his retention in service. I am inclined to accept the contention of the learned counsel for the petitioner that it was incumbent upon the disciplinary authority to take into consideration the conduct of the petitioner which led to his conviction by Courts and further, to consider the entire conduct of the petitioner, the gravity of the misconduct committed by him, the impact which his misconduct was likely to have on the administration and other extenuating circumstances or redeeming features in the case. The impugned order Annexure P-7 is totally silent and lacking on these aspects. It is, therefore, held to be in violation of the settled law as enunciated in the foregoing judgments of the Hon'ble Supreme Court and of the two Division Benches of this Court and not legally sustainable.

16. For the reasons stated herein, the writ petition is allowed. The respondents are directed to re-instate the petitioner into service with effect from the date he was dismissed along with continuity of service from the same date. The petitioner shall also be entitled to fixation of his seniority and pay and promotion, by deeming him to be in service. However, he shall not be entitled to any pecuniary benefits including salary, for the period he was out of service.

(ARUN MONGA)
JUDGE

July 03, 2019

Jiten/Shalini

1. Whether speaking/ reasoned:

Yes/ No

2. Whether reportable:

Yes/ No