

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

LPA No.2421 of 2016 (O&M)

Decided on : 24.01.2019

Punjab State Power Corporation Ltd. & ors.

..... Appellants

Versus

Chand Singh

..... Respondent

**CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present : Mr. Vinod S.Bhardwaj, Advocate
for the appellants.

Mr. Vikas Sonak, Advocate for
Mr. A.S.Sekhon, Advocate
for the respondent.

Manjari Nehru Kaul, J.

CM-5037-LPA-2016

This is an application under Section 5 of the Limitation Act for condonation of delay of 40 days in filing the appeal. The application is duly supported by an affidavit of the officer concerned.

For the reasons mentioned in the application, delay of 40 days in filing the appeal is condoned.

CM stands disposed of.

LPA-2421-2016

Challenge in the present appeal under Clause X of the Letters Patent is to the order dated 09.09.2016 vide which learned Single Judge had allowed the writ petition i.e. CWP No.3924 of 2015 filed by the respondent.

2. Brief facts of the case, which are relevant for adjudication, are that the respondent herein filed the aforesaid writ petition by laying a

challenge to the orders dated 15.09.2011 and 27.11/02.12.2014 respectively passed by appellant No.1 vide which the respondent was dismissed from service and his request for reinstatement had been rejected on the ground of his conviction in a criminal case i.e. FIR No.139 dated 30.07.2007 registered under Sections 452 and 324 IPC at Police Station Sadar Kotakpura. The said FIR was registered at the behest of his own brother due to a family dispute and he otherwise had an unblemished record of 25 years of service. Thereafter, respondent filed an appeal against the order of conviction dated 16.05.2011 passed by the trial Court but the same was dismissed by the Appellate Court vide its judgment dated 20.09.2013. The respondent was, however, released on probation by the learned Appellate Court, Faridkot by exercising the powers conferred under Section 360 Cr.PC and the order of his sentence was accordingly, modified. The respondent after being released on probation moved an application to the appellant-department for his reinstatement but his request was declined by the department vide order dated 02.12.2014.

3. Learned counsel for the appellant assailed the impugned order by urging that learned Single Judge was in error in not appreciating that in service law the case could be decided on the basis of preponderance of probabilities as against a criminal case where a case has to be proved beyond shadow of doubt. The provisions of the Probation of Offenders Act, 1958 (in short 'the Act') are substantive provisions and the order granting probation must necessarily have to be passed under the aegis of the said Act, in order to extend a benefit under Section 12 thereof but in the present case, probation had been granted under Section 360 Cr.PC. He further

argued that there was no such stipulation under Section 360 Cr.PC by virtue of which the benefit as contemplated under Section 12 of the Act could be extended to the respondent. He further submitted that the learned Single Judge had also erred in not appreciating the provisions of the Employees (Punishment and Appeal) Regulations, 1971 (for short '1971 Regulations') which specifically empowers the authority to impose punishment of removal/dismissal from service in the event of an employee being convicted. In the present case, the respondent had been convicted by the competent court, therefore, his dismissal from service was justified.

4. On the contrary, learned counsel for the respondent submitted that the dismissal from service is a major punishment and the impugned order of dismissal was passed without issuing any show cause notice and chargesheet and even without holding any departmental inquiry as stipulated in the 1971 Regulations.

5.. We have heard learned counsel for the parties and carefully gone through the material available on record.

6. It is not in dispute that while dismissing the respondent from service pursuant to dismissal of his criminal appeal, no departmental proceedings/inquiry had been initiated by the department as stipulated in the 1971 Regulations.

7. Learned Single Judge vide order dated 09.09.2016 while allowing the writ petition rightly observed that in the absence of any show cause notice being issued to the respondent or any inquiry conducted as per the 1971 Regulations coupled with the fact that the respondent had been released on probation as per Section 12 of the Act, he could not be made to

suffer any disqualification, if any, attached with his conviction. The relevant findings of the learned Single Judge reads thus:

“In the present case, the conviction was upheld but the petitioner was released on probation as per Section 12 of the Act, 1958. He was not to suffer any disqualification, if any, attached to his conviction. Under the circumstances, the petitioner cannot be imposed a major penalty without following due process of law and without holding any department inquiry against the petitioner. The major penalty has been imposed upon the petitioner whereas the respondents were required to hold inquiry against the petitioner.”

Further, even the Criminal Court while extending the benefit of probation to the respondent vide judgment dated 26.03.2014 had clearly noted that the order of probation shall not affect the service career of Chand Singh. In other words, the effect of it was that Chand Singh was not to suffer any disqualification if any attached to his conviction.

8. In view of the above discussion, we affirm the order passed by learned Single Judge. In the facts and circumstances of the case, respondent could not have been handed down a major penalty without following due process of law and particularly, without holding any departmental inquiry. The present appeal is therefore, bereft of any merit and hence, does not warrant any interference.

9. Accordingly, the present appeal is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

24.01.2019

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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned:
Whether reportable :

Yes/No
Yes/No