

RSA-1294-2013 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-1294-2013 (O&M)

Date of Decision: 25th February, 2019

Executive Engineer (Operations), UHBVNL & others

...Appellants

Versus

Baldev Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. P.S. Poonia, Advocate,
for the appellants.

Mr. Sanjiv Gupta, Advocate
for the respondent.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree dated 09.02.2011 passed by the Civil Judge (Junior Division), Kaithal, whereby, suit of the respondent – plaintiff has been partly allowed to the extent of setting aside the impugned order of dismissal from service dated 01.12.2008 with liberty to the appellants – defendants to issue a fresh show cause notice to the respondent – plaintiff for the proposed action and thereafter, to pass a fresh order giving account about the conduct of the respondent – plaintiff regarding the allegations, which led to his conviction, which judgment and decree stands upheld by the Additional District Judge, Kaithal, in an appeal preferred by the appellants – defendants, vide judgment dated 07.12.2012.

2. It is the contention of the learned counsel for the appellants that the services of the respondent – plaintiff were terminated w.e.f. 01.12.2008, vide the even dated order, on the ground that the respondent – plaintiff stood convicted in FIR No.85 dated 0204.2002, under Sections 302 and 120-B of the Indian Penal Code. He contends that once an employee has been convicted for an offence, which involves moral turpitude, the provisions of Article 311 (2) of the Constitution of India would not be applicable and therefore, no show cause notice was required to be given to him nor any opportunity of hearing was mandated. He, thus, contends that the judgments and decree as passed by the Courts below cannot sustain and deserve to be set aside with the consequent result of dismissal of the civil suit which was filed by the respondent – plaintiff.

3. On the other hand, learned counsel for the respondent – plaintiff contends that the submissions of the learned counsel for the

appellants cannot be accepted in the light of the fact the the respondent – plaintiff being a regular employee of the appellants – defendants, was required to be given an opportunity of hearing on the basis of the principle of natural justice. He contends that merely because a person has been found guilty by the trial Court would not *ipso facto* amount to he being liable to be dismissed from service. In any case, respondent – plaintiff was required to be given an opportunity so that he could explain the circumstances under which such an incident had taken place and how the situation had occurred. He, thus, contends that the judgments as passed by the Courts below being in accordance with law do not call for any interference by this Court.

4. I have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the impugned judgments and records of the case.

5. As per the Full Bench judgment of this Court in **Om Parkash Vs. The Director Postal Service** AIR 1973 (P&H) 1, the Competent Authority requires to consider all the facts and circumstances of the case and then, pass a speaking order. The provisions of Article 311 (2) of the Constitution of India also mandate consideration of the fact as to whether the commission of offence amounts to moral turpitude or not? Mere conviction is not enough for terminating the services of an employee unless the Appointing Authority considers the conduct of the employee and gives a specific finding to that effect that it would amount to moral turpitude which would render him unfit to continue in service. Perusal of order of dismissal passed by the punishing authority would show that the same is cryptic, non

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– speaking and no reasons have been given except for referring to the fact that legal remembrance of the appellant – Nigam has advised dismissal of the respondent. The judgments as passed by the Courts below, which have been challenged in this appeal, cannot be said to be not in accordance with law.

6. It may be added here that the Courts below have been careful enough to protect the rights of the appellant and therefore, had given an opportunity to the appellant to issue a show cause notice to the respondent and thereafter, on consideration of the response, if any, received, pass a fresh order in accordance with law.

7. There are concurrent findings recorded by the Courts below which are based upon proper appreciation of facts and law, which do not call for interference in this appeal.

8. In view of the above, finding no merit in the present appeal, the same stands dismissed.

CM-3447-C-2013

In the light of the dismissal of the main appeal, the present application for stay has been rendered infructuous.

Disposed of as such.

(AUGUSTINE GEORGE MASIH)
JUDGE

25th February, 2019
Harish

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No