

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

104+242

CM No.1684-CWP of 2020,
CM No.4141-CWP of 2019 in/and
Civil Writ Petition No.11681 of 2005

Date of Decision: February 5th, 2020

Prem Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Jatinder Singh Gill, Advocate
for the petitioner.

Mr. Charanpreet Singh, Assistant Advocate General, Punjab.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.4141-CWP of 2019

Prayer in this application is for fixing an actual date of hearing.

For the reasons mentioned in the application, the same is
allowed.

The writ petition is taken on board for final disposal.

CM No.1684-CWP of 2020

Prayer in this application is for placing on record
Annexures R-1/T to R-3/T.

Application is allowed subject to just exceptions.

Documents Annexures R-1/T to R-3/T are taken on record.

CWP No.11681 of 2005

Petitioner has approached this Court praying for quashing of
the order dated 21.07.2005 (Annexure P-8) passed by the Director,
Water Cell, Irrigation Department, Punjab-respondent No.2, whereby the
petitioner has been dismissed from service with effect from 12.07.2004 with

retrospective effect without affording him any opportunity or application of mind.

2. It is the contention of learned counsel for the petitioner that the petitioner was appointed as a Peon in the Department of Irrigation. He was promoted to the post of Driver in the year 1982. In the year 1999, an FIR under Section 304A IPC was registered against him, where the Judicial Magistrate Ist Class, Jalandhar, convicted him and sentenced him to rigorous imprisonment for a period of one year and fine of ₹500/- with default stipulation. Appeal preferred by the petitioner as also the revision petition preferred by the petitioner stand dismissed. The Director, Water Cell, Irrigation Department, Punjab, in the light of the conviction of the petitioner, had proceeded to pass the impugned order dated 21.07.2005 (Annexure P-8) dismissing him from service without taking into consideration the conduct of the petitioner and simply relying upon the instructions issued by the Personnel Department. His contention is that neither any notice was given to the petitioner nor any personal hearing was given to him prior to passing of the impugned order. Prayer has thus been made that the impugned order cannot sustain in the light of the law laid down by the Hon'ble Supreme Court in the case of *Union of India Versus Tulsi Ram Patel 1985 (2) S.L.R. 576*, which has been relied upon by this Court in two Division Bench judgments i.e. *Hari Ram Versus Dakshin Haryana Bijli Vitran Nigam Ltd. 2006 (2) S.C.T. 112* and *Kaur Singh and another Versus Punjab State Electricity Board and others 2007 (4) S.C.T. 426*.

Reliance has also been placed upon the judgment passed by a coordinate Bench in *Kulwant Singh Ex. Driver Versus State of Punjab and others* 2012 (3) S.C.T. 587 to contend that the disciplinary authority must consider whether the conduct of the employee which led to his conviction was such as would warrant imposition of penalty, which is being sought to be imposed upon the employee. The authority must reach the conclusion that the conduct of the employee was such which would warrant dismissal or removal from service or a lesser penalty depending upon the facts and circumstances of the case. Such aspects have not been taken into consideration by the Director, Water Cell, Irrigation Department, Punjab, while passing the impugned order. He asserts that merely because the petitioner has been convicted and sentenced, the respondents have proceeded to pass the order of dismissal which is not sustainable as per the law referred to above.

3. Counsel for the State, on the other hand, contends that the Director, Water Cell, Irrigation Department, Punjab, while passing the order has taken into consideration the reason as to why the FIR was registered against the petitioner. It is in relation thereto that the conviction and sentence have been taken into consideration while passing the impugned order. It is contended that as per the admitted facts, the conviction and sentence of the petitioner stands and, therefore, the order of punishment which has been passed by the respondents cannot be said to be of such a nature which would indicate non-application of mind. He, however, could not dispute the fact that

prior to passing of the order of dismissal, neither any notice was issued to the petitioner nor was he called upon to explain his conduct.

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

5. In the considered view of this Court, the impugned order dated 21.07.2005 (Annexure P-8) cannot sustain as it does not fulfill the mandate of the law as laid down by the Hon'ble Supreme Court in Union of India Versus Tulsi Ram Patel's case (supra), where it has been held as follows:-

“Where a disciplinary authority comes to know that a government servant has been convicted on a criminal charge, it must consider whether his conduct which has led to his conviction was such as warrants the imposition of a penalty and, if so, what that penalty should be. For that purpose, it will have to peruse the judgment of the criminal court and consider all the facts and circumstances of the case. Once the disciplinary authority reaches the conclusion that the government servant's conduct was such as to require his dismissal or removal from service or reduction in rank, he must decide which of these three penalties should be imposed on him. This too it has to do by itself and without hearing the government servant concerned by reason of the exclusionary effect of the second proviso. However, a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of the government servant concerned

and, therefore, it is not mandatory to impose any of these major penalties.”

6. This judgment, on principle, has been followed by the Division Bench of this Court in Hari Ram's case (supra) and Kaur Singh's case (supra). The punishing authority has, while passing the order dated 21.07.2005 (Annexure P-8), failed to take into consideration the law as has been laid down by the Supreme Court as it does not reflect the application of mind with regard to the conduct of the petitioner. It has also been brought to the notice of the Court by the counsel for the State, on a question being put by this Court, as per the instructions received by him from Mr. Parveen Kumar, Sub Divisional Officer, Jal Sub Division, Jalandhar, that except for this one aberration in his career while performing his duties, there has been no other such act on the part of the petitioner.

7. Another aspect which needs to be taken note of which would dent the legality of the order impugned is that the same has been made effective from 12.07.2004, whereas actual order has been passed on 21.07.2005, which cannot be sustained. The order of punishment cannot be given effect retrospectively as the same will have a prospective operation only.

8. In view of the above, the present writ petition is allowed. Impugned order dated 21.07.2005 (Annexure P-8) passed by the Director, Water Cell, Irrigation Department, Punjab, is hereby set aside.

9. Liberty is, however, granted to the respondents to pass a

fresh order in accordance with law by giving an opportunity to the petitioner of being heard.

10. The said order be passed within a period of six weeks on receipt of certified copy of this Court.

February 5th, 2020
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No