

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

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CWP-18630-2020

Decided on : 05.11.2020

Suraj Bhan

... Petitioner(s)

Versus

State of Haryana and others

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

(Through Video Conferencing)

PRESENT: Mr. N.K. Malhotra, Advocate
for the petitioner(s).

Mr. Pawan Kumar Longia, DAG, Haryana.

MANJARI NEHRU KAUL, J. (Oral)

The instant petition has been filed impugning order dated 10.09.2020 (Annexure P-8) vide which the petitioner was dismissed from service.

The petitioner was appointed as 'Beldar' on 01.10.1975 in the Office of Municipal Committee, Rohtak. On 01.04.1993, the staff of the Municipal Committee was transferred to the Public Health Department on deputation, as maintenance of the water supply and sewerage in all urban areas were taken over by the Public Health Department of Government of Haryana. Subsequently, this staff, which was on deputation from the Municipal Committee, including the petitioner, were absorbed in the Public Health Department w.e.f. 02.04.1993.

While serving in the Public Health Department, a case bearing FIR No. 588, dated 28.02.2004, under Sections 304-B and 498-A IPC, was registered against the petitioner and his family. Vide judgment dated 24th

May, 2006, passed by the learned Additional Sessions Judge, Rohtak, the

petitioner was convicted and sentenced to undergo rigorous imprisonment for a period of 07 years under Section 304-B IPC and 02 years under Section 498-A IPC. Upon conviction, the petitioner was immediately taken into custody to serve out the sentence. Subsequent to his aforementioned conviction, the petitioner preferred Criminal Appeal (CRA No.198-SB of 2006, titled as, “Anil and others Vs. State of Haryana”) to challenge his conviction. Vide judgment dated 17.04.2009, though, this Court acquitted the petitioner for the offence under Section 304-B IPC, it maintained his conviction under Section 498-A IPC. In the wake of the petitioner having already undergone the sentence of 02 years awarded to him under Section 498-A IPC, he was released from jail on 04.05.2009. The petitioner also challenged his conviction under Section 498-A IPC, before the Supreme Court by filing Special Leave to Appeal (Crl.) No. 6607 of 2009, which, however, was dismissed on 07.03.2011.

On his release from the jail, the petitioner moved a representation to the respondent Department on 14.05.2019, for allowing him to rejoin his duties. The respondent Department issued a charge-sheet to the petitioner under Rule 7(2) of the Haryana Civil Services (Punishment and Appeal) Rules, 1987, for misconduct and an enquiry was instituted and conducted *qua* the same. Vide enquiry report dated 14.05.2010, the charges against the petitioner were proved. A show cause notice was then served upon the petitioner by the competent authority on 29.05.2014, with respect to the action being proposed against him. Ultimately vide order dated 19.05.2016 (Annexure P-3), the petitioner was dismissed from service from the date of his conviction i.e. 25.05.2006.

Thereafter, the petitioner filed a Civil Suit bearing Civil Suit

No. 348/1 of 2016, before the Civil Judge (Sr. Divn.), Rohtak, for declaration that his dismissal from service vide order dated 19.05.2016 was bad in law and for setting aside the aforementioned order and treating the petitioner as an employee of the Department with all consequential benefits. The said suit was dismissed by the Civil Judge (Sr. Divn.), Rohtak, on 20th September, 2019 (Annexure P-6), against which the petitioner preferred an appeal. The said appeal was partly allowed by the District Judge, Rohtak, vide order dated 14.07.2020 (Annexure P-7), with directions to the respondent Department to reconsider the imposition of punishment of dismissal imposed upon the petitioner, as to whether his dismissal on account of his conviction under Section 498-A IPC, involved moral turpitude and also whether the punishment of dismissal from service or any other major punishment as prescribed under the Haryana Civil Services Rules, including the punishment of compulsory retirement could be imposed in the facts and circumstances of the case. The relevant para of the order dated 14.07.2020 (Annexure P-7), passed by the District Judge, Rohtak, is reproduced as under:-

“In view of my finding on the aforesaid issues, the appeal is hereby allowed. It is hereby ordered that the competent authority would reconsider the case of the appellant. The competent authority would consider whether the allegations against the appellant are such that his conviction under Section 498-A of Indian Penal Code involves moral turpitude and he should be dismissed from service or he be inflicted of the major penalty prescribed by Haryana Civil Service (Punishment and Appeal) Rules, such as compulsory retirement on the date of his conviction by the Sessions Judge, Rohtak or a later date. The competent authority would keep in mind that appellant had put in more

than 30 years of service at the time when he was convicted by the Sessions Judge, Rohtak. The competent authority is directed to dispose of the matter within two months from passing this judgment.”

Learned counsel for the petitioner contends that the petitioner had put in 30 years of service prior to the date of his conviction and thus, stood qualified for the grant of pensionary benefits on the date of his conviction i.e. 24.05.2006. Therefore, he argued that the said benefits could not be denied to him by the impugned order dismissing him from service. The second ground which has been raised by the learned counsel to impugn the order dated 10.09.2020 (Annexure P-8) is that the punishment of dismissal was disproportionate to the charges levelled against the petitioner and, therefore, the punishment of dismissal from service be converted into compulsory retirement, so that the petitioner could become entitled to the grant of pensionary benefits.

Coming to the first contention of the learned counsel for the petitioner with respect to the completion of 30 years of service by the petitioner prior to the date of his conviction and thus, being entitled to pensionary benefits, is not supported by any rule regulating the service conditions of the petitioner. It is a settled principle of law that pensionary benefits would be available to an employee only on his attaining superannuation and that too, after rendering minimum service as may have been prescribed for the grant of such benefits. The pensionary benefits cannot be available to an employee, who has been dismissed from service even though he may have rendered the minimum required service for the grant of pension on the date of his/her dismissal. As a corollary, it would

entitlement to the grant of pensionary benefits would come to an end, despite having put in the minimum service required for such benefits. It needs to be emphasized that pensionary benefits can be made available only to a retired employee and not to an employee, who had been dismissed. The learned counsel has not been able to cite any case law before this Court in support of his submissions that even after the dismissal of the petitioner, he would still be entitled to the grant of pensionary benefits by taking into account the service rendered by him prior to the date of his dismissal. Hence, the argument raised by the learned counsel that the petitioner was entitled to the grant of pensionary benefits is bereft of any merit and is accordingly rejected.

The next contention, which has been raised by the learned counsel for the petitioner, is that the conviction of the petitioner under Section 498-A IPC does not involve moral turpitude and therefore, his dismissal from service on account of the aforementioned conviction is bad in law, cannot be accepted and also deserves to be rejected. It would be worthwhile to notice that the respondent Department did not dismiss the petitioner from service solely on the ground of his conviction for offence under Section 498-A IPC. A perusal of the impugned order dated 10.09.2020 (Annexure P-8) reveals that on being released from jail in the year 2009, the respondent Department had served a charge-sheet upon the petitioner. As already noticed earlier, the charges against the petitioner were duly proved and it was only thereafter that the petitioner was dismissed from service on the basis of those proceedings. Therefore, there is no manner of doubt that the petitioner was not dismissed on account of his conviction under Section 498-A IPC only and his dismissal was also the

result of departmental proceedings.

Still further, it is a matter of record that the petitioner was indeed convicted under Section 498-A IPC by the trial Court, which conviction attained finality upto the Supreme Court and for which the petitioner underwent sentence of two years as awarded to him by the trial Court. A perusal of the impugned order dated 10.09.2020 (Annexure P-8) shows that the respondent Department has discussed at length whether or not the conviction under Section 498-A IPC would involve moral turpitude ? This Court is not sitting in appeal over the decision of the respondent Department with respect to the departmental inquiry and the findings recorded therein. This Court cannot be expected to substitute its own opinion with that of the appointing authority while considering the claim of the petitioner *qua* the punishment imposed. This Court can interfere only if the order passed by the authorities concerned is beyond jurisdiction or perverse. It would be apposite to refer to para 33 of ***State of Rajasthan and others Vs. Heem Singh (Civil Appeal No. 3340 of 2020)***, decided on **29.10.2020**, by the Hon'ble Supreme Court of India, which is extracted as under :

“33. In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is

responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy – deference to the position of the disciplinary authority as a fact finding authority and autonomy of the employer in maintaining discipline and efficiency of the service. At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognized it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review. To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the court to re-appreciate evidentiary findings in a disciplinary enquiry or to substitute a view which appears to the judge to be more appropriate. To do so would offend the first principle which has been outlined

above. The ultimate guide is the exercise of robust common sense without which the judges' craft is in vain."

A perusal of the aforementioned leaves no manner of doubt that Courts have to exercise utmost restraint in the process of judicial review in disciplinary matters and have to be circumspect. Whether or not, an employee is guilty of misconduct or not, lies within the domain of the disciplinary authority and the Courts cannot be expected to nor should assume the role of the disciplinary authority by wearing the hat of an employer. Needless to add, findings of fact recorded by a disciplinary authority should not be touched even by a barge pole in the exercise of judicial review until and unless the findings so arrived at suffer from perversity or are not supported by any evidence or the principles of natural justice have been violated.

In the case in hand, learned counsel for the petitioner, has failed to place on record any material to show that the impugned order dated 10.09.2020 (Annexure P-8) was passed without jurisdiction or could be said to be perverse in any manner. It would be pertinent to mention that rather no challenge, whatsoever, has been laid to the enquiry proceedings in the present petition, in pursuance of which the impugned order dated 10.09.2020 (Annexure P-8), dismissing the petitioner from service, was passed. In fact, the only argument, which was vehemently raised by the learned counsel, was that this Court should invoke its powers to convert the punishment of dismissal from service into that of compulsory retirement, so as to make the petitioner entitled to get pensionary benefits. At the cost of repetition, this is beyond the scope of this Court, more so, keeping in view the law laid down by the Supreme Court in **Heem Singh's case** (supra).

This Court, is not an appellate authority and cannot thus, substitute the decision of the appointing authority dismissing the petitioner from service with any other alternate punishment.

Learned counsel for the petitioner has laid a great deal of emphasis upon the judgment of a coordinate Bench of this Court in **CWP No. 8877 of 2015**, titled as, “**Navjit Singh Vs. State of Punjab**”, decided on **03rd July, 2019** (Annexure P-9). It has been argued that the dismissal from service on account of the petitioner's conviction in that case under Section 498-A IPC, was held to be bad in law and therefore, the impugned order dated 10.09.2020 (Annexure P-8), passed in the present case, be also set aside. The reliance, which is being placed by the learned counsel on **Navjit Singh's case** (supra), would not come to the rescue of the petitioner. In **Navjit Singh's case** (supra), no inquiry was conducted by the Department and the order of dismissal was passed without affording any opportunity of hearing to the petitioner therein after his conviction.

In the instant case, on the contrary, after the conviction of the petitioner had attained finality, a departmental inquiry was held against him, wherein, charges were proved in the inquiry report dated 14.05.2010 and it was only thereafter, action was initiated against the petitioner, on the basis of the inquiry report. Still further, the impugned order dismissing the petitioner from service, as already observed earlier, is not solely on the basis of his conviction under Section 498-A IPC, but also on the basis of inquiry proceedings initiated against him, subsequent to his release from the prison in the year 2009.

No other arguments have been raised by the learned counsel for the petitioner.

Resultantly, this Court is of the opinion that respondent No.3 has passed a detailed and a well reasoned speaking order dated 10.09.2020 (Annexure P-8), which does not warrant any interference.

The petition stands dismissed accordingly.

(MANJARI NEHRU KAUL)
JUDGE

November 05, 2020

J.Ram

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