

IN THE HIGH COURT FOR THE STATES OF PUNJAB
AND HARYANA AT CHANDIGARH

CWP No.3797 of 2015
Date of Decision : 05.02.2020

Sunehra Singh

...Petitioner

Versus

P. B.D. Sharma University of Health and Sciences & Anr.

...Respondents

Coram: Hon'ble Mr. Justice B.S. Walia

Present: Mr. I.D. Singla, Advocate for the petitioner.

Mr. Rajesh Hooda, Advocate for the respondents.

B.S. Walia, J.

1. Prayer in the writ petition under Articles 226/227 of the Constitution of India is for the issuance of a writ of Certiorari for quashing order Annexure P/1 dated 26.11.2012 and Annexure P/3 dated 19.11.2015 and further for the issuance of a writ of Mandamus directing the respondents to reinstate the petitioner with continuity of service and to pay all the consequential benefits.

2. Learned counsel for the petitioner contended that the petitioner while working as Chowkidar under the respondents ever since 09.06.1995, was unfortunately implicated in a false and frivolous case i.e. FIR No.211 dated 29.06.2012, U/s 302, 120-B and 34, Indian Penal Code (hereinafter referred to as 'the IPC') and Section 25 of

Arms Act, 1959, Police Station Sadar Rohtak. Petitioner was summoned by the police in the aforesaid case but after recording his statement he was allowed to go back, consequently the petitioner continued to serve with the respondents. However, vide order Annexure P/1 dated 26.11.2012, the petitioner was placed under suspension on the ground that he had been arrested by the police on 16.11.2012 and was in judicial custody in case FIR No.419 dated 16.11.2012, U/s 174-A, Indian Penal Code. Stand of the petitioner is that after inquiry of the police in case FIR No.211 dated 29.06.2012, U/s 302, 120-B and 34 of the IPC and Section 25 of the Arms Act, 1959, when he was allowed to go back, the petitioner continued to perform his duty as usual and was under a bonafide belief that he was not required to attend the Court and consequently he did not attend the Court for the date fixed for hearing. In the aforementioned circumstances, the petitioner was declared a proclaimed offender in case FIR No.419 dated 16.11.2012, U/s 174-A IPC, Police Station Sadar Rohtak.

3. Thereafter, the police apprehended the petitioner and put him behind the bars and in the Camp Court held at District Jail, Rohtak, the petitioner admitted his guilt for remaining absent from Court, whereupon, an order was passed releasing the petitioner on the sentence already undergone vide order Annexure P/2 dated 14.03.2012. Appeal against order Annexure P/2 dated 14.03.2012, was dismissed by the learned Sessions Judge, Rohtak, vide judgment dated 30.04.2015.

4. Grievance of the petitioner is that vide order Annexure P/3 dated 19.11.2014, he was suspended from service on being convicted U/s 174-A of IPC, whereas as per instructions issued by the Government of Haryana, Annexure P/4 dated 17/26.03.1975, a government employee cannot be declared unfit for government service if he is not involved in any offence involving moral turpitude and that as per the aforesaid instructions, the conviction of the petitioner U/s 174-A of IPC did not involve moral turpitude, therefore, the petitioner could not be termed to be unfit for government service. Accordingly, the termination of the petitioner was contrary to the instructions Annexure P/4.

5. Grievance of the petitioner is that his services have been terminated in gross violation of the principle of natural justice and that too without holding an inquiry or issuance of any charge sheet. It is further the stand of the petitioner that the petitioner and other co-accused had been acquitted in case FIR No.211 dated 19.06.2012, U/s 302, 120-B, 34 of IPC and Section 25 of Arms Act, vide judgment Annexure P/5 dated 11.01.2017 and 13.01.2017 and that in the circumstances, dismissal of the petitioner from service was a very hard and harsh punishment and violative of the principle of proportionality.

6. Written statement filed to the writ petition was adopted by the respondents as the reply to the amended writ petition vide order dated 03.09.2019. A perusal thereof reveals the preliminary objection that the petitioner was rightly dismissed from service on account of his conviction U/s 174-A of IPC, vide judgment dated 14.03.2013 and on account of his facing trial in case FIR No.211 dated 29.06.2012 U/s

302, 120-B and 34 of IPC and Section 25 of Arms Act, the same involved moral turpitude, therefore barred him from continuing in service. It is also the stand of the respondents that the petitioner was rightly placed under suspension on account of his being involved in heinous crime U/s 302 of IPC and on being arrested in case FIR No.419 and later on convicted in the said case and on account of his having been declared a proclaimed offender, he was rightly suspended on receipt of information from the police about his arrest on 16.11.2012. Stand has also been taken that the dismissal of the petitioner has rightly been ordered in exercise of powers under Article 311 (2) of the Constitution of India.

7. I have considered the submissions of learned counsel for the parties.

8. Admittedly, the petitioner has been acquitted in case FIR No.211 dated 29.06.2012, U/s 302, 120-B, 34 of IPC and Section 25 of Arms Act, Police Station Sadar Rohtak by the learned Addl. Sessions Judge, Rohtak, vide judgment and order dated 11.01.2017/13.01.2017. Appeal having been filed against the said decision or the same having been reversed has not been brought to the notice of this Court by the learned counsel for the respondents. Thus, for all intents and purposes, acquittal of the petitioner has attained finality. It also needs noticing that although the petitioner was named in FIR No.211 dated 29.06.2012, U/s 302, 120-B, 34 of IPC and Section 34 of arms Act, yet he was not arrested, however, on account of his non-appearance in the Court he was declared proclaimed offender and arrested in case FIR No.419 dated 16.11.2012, U/s 174-A IPC. Pursuant to his conviction

in case U/s 174-A IPC, vide order dated 14.03.2013, services of the petitioner were terminated vide order Annexure P/3 dated 19.11.2014, on the ground that retention of the petitioner in service on his conviction in case FIR No.419 dated 16.11.2012 U/s 174-A IPC, Police Station Sadar Rohtak, was undesirable in public interest. As per the circular/instructions Annexure P/4, which deals with rehabilitation of ex-convict, an ex-convict having been convicted for offence involving moral turpitude should not be taken in government service. However, the list of offences involving moral turpitude circulated along with the instructions, does not include offence U/s 174-A, IPC. The instructions further mentions that decision with regard to ex-convicts would depend upon case to case and circumstances of each case with the competent authority being required to exercise its discretion while taking a decision in accordance with the principles contained in the instructions. Relevant extract of the same is reproduced as under:-

“XX XX XX

(iii) Ex-convicts convicted of offences involving moral turpitude should neither be taken nor retained in government service. The following tests should ordinarily be applied in judging whether a certain offence involves moral turpitude or not:-

(1) Whether the act leading to a conviction was such as could shock the moral conscience of society in general.

(2) Whether the motive which led to the act was base one.

(3) Whether on account of the act having been committed the perpetrator could be considered to be of depraved character or a person who was to be looked down upon by the society.

Decision in each case will, however, depend upon the circumstances of the case and the competent authority has to exercise its discretion while taking a decision in accordance with the above-mentioned principle. A list of offences which involve moral turpitude is enclosed for your information and guidance. This list, however, cannot be said to be exhaustive and there might be offences which are inculcated in it but which in certain situations and circumstances may involve moral turpitude.”

9. Apparently order Annexure P/3 has been passed solely on account of the conviction of the petitioner under Section 174-A, IPC. The impugned order apart from having been passed solely on the basis of conviction is not shown to have been passed after issuance of any show cause notice. Article 311(2)(a) of the Constitution of India, which has been relied upon by learned counsel for the respondents to contend that removal from service without issuance of show cause notice on account of a conviction in a criminal offence does not warrant interference, is reproduced as under:-

Article 311 of the Constitution Of India :

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State

(1) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by a authority subordinate to that by which he was appointed

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges :

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed :

Provided further that this clause shall not apply

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

10. Proviso to Article 311(2)(a) of the Constitution of India reveals that no person who holds a civil post under the State Government can be dismissed or removed except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of the said charges provided that the aforementioned clause does not apply to a person who is dismissed or removed or reduced in rank on account of conduct which led to his conviction in a criminal charge. However, perusal of impugned order Annexure P/3 reveals that the order starts by noting that the petitioner had been convicted and sentenced to imprisonment w.e.f 17.11.2012 to 14.03.2013, as per order passed by the learned Chief Judicial Magistrate, Camp Court, District Jail, Rohtak, vide judgment dated 14.03.2013, in case FIR No.419 dated 16.11.2012, U/s 174-A of IPC, therefore, the competent authority had found that retention of the petitioner in service was undesirable in public interest.

11. It is settled law that conviction does not entail automatic removal and a decision to impose punishment can be only after considering the employees conduct which led to his conviction and forming an opinion that the conduct of the employee was unbecoming of a government servant rendering him liable to be punished. Thus, before imposing any of the three major punishments, i.e. dismissal, removal or reduction in rank, the competent authority had to apply its mind to the facts of the case to examine the conduct of the public servant concerned which had led to the conviction of the government servant and to determine the nature or quantum of punishment which his conduct called for. Reference in this context is made to the Full

Bench decision of this Court in **Om Parkash versus The Director, Postal Services and others 1972 (2) ILR (Punjab)**. Relevant extract of the decision in Om Parkash's case (supra) is reproduced as under :-

“8A. As already stated that there is no provision in the relevant rules providing for anybody being dismissed or removed from service in view of or on account of a conviction on a criminal charge. Disciplinary action can be taken for the conduct which had led to conviction or a criminal charge if such conduct constitutes misconduct according to the relevant service rules.

An apt illustration was given in this connection by my learned brother Tuli J. during the hearing of this petition it was pointed out that if a Government Servant assaults his neighbour and is convicted for the same, it may not be possible to take any departmental action against him (unless the competent authority holds that the conduct of the delinquent official was unbecoming a Government Servant), but if the official was convicted for assaulting his immediate officer in his office, he would be liable to be dealt with departmentally. This illustration shows that the rule-making authorities have justifiably not provided for disciplinary action being taken in every case of conviction, and have left the matter to be decided by the competent authority in relation to the original conduct and not the conviction.

19. A Division Bench of this Court (Gurudev Singh and A. D. Koshal JJ.) has also held in *Rajinder Singh v. the Punjab State* and another 1969 Cur. LJ 821 that neither the language of Article 311(2) of the constitution, nor the relevant service rules indicate that as soon as a public servant is convicted on a criminal charge, he must suffer one of the prescribed punishments. On that basis it was

observed that before inflicting any of the three major punishments, namely, dismissal, removal or reduction in rank, the competent authority has to apply its mind to the facts of the case to examine the conduct of the public servant concerned which had led to his conviction and to determine the nature or quantum of punishment which his conduct calls for. We are in respectful agreement with the view expressed by the Division Bench in that regard. In as much as the petitioner before us has been dismissed from service on account of the conviction alone without any finding about his conduct (which led to his conviction) justifying his dismissal, the impugned order cannot be sustained.)”

12. Learned counsel for the respondents has not referred to any rule to show that the petitioner was liable to removal from service automatically on his conviction by a criminal Court. Since removal of conviction is not automatic, the competent authority was required to record a satisfaction that the conduct of the petitioner which led to his conviction was such that the same was unbecoming of a government servant, thereby rendering him liable to be punished as also to be punished as warranted in the facts and circumstances of the case. However, no such satisfaction was recorded by the competent authority, nor was any show cause notice issued to the petitioner as the petitioner was removed from service solely on account of his conviction. Besides as per Annexure P/4, offence U/s 174-A of IPC, does not constitute moral turpitude. In addition thereto, the petitioner stands acquitted vide Annexure P/5 dated 11/13.01.2017, for the

offences U/s 302, 120-B and 34 of IPC and Section 25 of the Arms Act.

13. Since removal from service is not an automatic consequence of conviction, the competent authority is required to exercise its discretion in the context of conduct of the petitioner which led to his conviction and form an opinion as to whether the conduct of the employee was such as was unbecoming of the government servant thereby rendering such employee unsuitable for retention in government service. No such satisfaction having been recorded as also no show cause notice having been given nor the offences for which the petitioner was convicted involving moral turpitude the writ petition is allowed. Impugned order Annexure P/3 is set aside. Since the petitioner has retired in the interregnum, the petitioner would be entitled to all consequential benefits.

05.02.2020.
rajesh.k.khurana

(B.S. Walia)
Judge

Whether speaking/reasoned? : Yes/No
Whether reportable? : Yes/No