

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

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Civil Writ Petition No.9270 of 2014
Date of Decision: February 26th, 2020

Tarsem Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Manu K. Bhandari, Advocate
for the petitioner.

Mr. Charanpreet Singh, Assistant Advocate General, Punjab.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this writ petition is to the order dated 07.09.2011 (Annexure P-2) passed by the Director-cum-Special Secretary, Punjab Government, Rural Development and Panchayat Department, whereby the petitioner was dismissed from service on his conviction in a FIR which was registered against him under Sections 323, 324, 326 IPC. While passing the order, the conduct of the petitioner was not taken into consideration and it was merely because the petitioner has been convicted and sentenced in a criminal case that he was dismissed from service vide the said impugned order dated 07.09.2011 (Annexure P-2). Appeal which was preferred by the petitioner has also been dismissed by the Appellate Authority vide order dated 11.12.2013 (Annexure P-8) without taking into consideration the fact with regard to the suitability and fitness of the petitioner for retention in service and with regard to the conduct of the petitioner in the offence in which he has been found to have been involved for which punishment was imposed upon him and he had undergone sentence. In the revision preferred in this Court, the period of sentence was

reduced to 1½ years from 2 years, which was the initial sentence. On this basis, petitioner has approached this Court challenging these orders.

2. It is the contention of learned counsel for the petitioner, placing reliance upon the judgment passed by the Supreme Court in *Union of India Versus Tulsi Ram Patel* 1985 (2) SLR 576, that merely because an employee has been convicted and sentenced should not automatically entail dismissal from service as has happened in the case of the petitioner. He has also placed reliance upon the judgments of this Court in *Hari Ram Versus Dakshin Haryana Bijli Vitran Nigam Ltd.*, 2006 (2) SCT 112 and *Kaur Singh and another Versus Punjab State Electricity Board and others*, 2007 (4) SCT 426. Reliance has also been placed upon the judgments passed by this Court in *CWP No.23306 of 2010* titled as *Kulwant Singh Versus State of Punjab and others*, decided on 11.07.2012 (Annexure P-9) and *CWP No.7644 of 2007* titled as *Man Singh Versus State of Haryana and others*, decided on 09.11.2009 (Annexure P-10).

3. Learned counsel for the State, on the other hand, contends that not only the Punishing Authority but the Appellate Authority has also taken into consideration the contention, as has been raised by the petitioner. He contends that the competent authority having applied its mind found that the petitioner having been convicted and sentenced by the trial Court, which conviction order stands upheld up to the High Court except for reduction in the sentence, the involvement of the petitioner in the commission of the offence, therefore, cannot be doubted. He contends that the fact that the petitioner has undergone imprisonment also is not in dispute and the competent authority having considered these aspects has rightly come to a

conclusion that the dismissal of the petitioner is in accordance with law and does not call for any lenient view. He, thus, contends that the impugned orders cannot be said to be unsustainable as they are based upon proper appreciation of the fact that the petitioner stands convicted and sentenced for a criminal offence after a trial.

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. The principles which are applicable as far as the action to be taken on the basis of an employee having been convicted in a criminal case stands settled by the Hon'ble Supreme Court in Tulsi Ram Patel's case (supra), wherein 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. Perusal of the above would show that merely because an employee has been convicted for a criminal offence would not in itself be a ground for dismissal of an employee unless the competent authority comes to a conclusion that the offence for which the employee has been punished involves moral turpitude and, therefore, is not fit for retention in service. Relying on the said judgment, this Court in the case of Kulwant Singh's case (supra) as also in the case of Man Singh (supra) in similar circumstances, has proceeded to come to a conclusion that the order of dismissal cannot sustain. In the present case also, on perusal of the impugned orders, it is apparent that the Punishing Authority as well as the Appellate Authority have passed the order of dismissal merely on the ground that the petitioner has been convicted and sentenced in a criminal case without taking into consideration the fact as to whether the said offence would amount to moral turpitude or not. The mandate of the law as settled up to the Hon'ble Supreme Court in Tulsi Ram Patel's case (supra) having not been complied with, the impugned orders cannot sustain and, therefore, deserve to be set aside.

7. In the light of the above, the present writ petition is allowed and the impugned orders dated 07.09.2011 (Annexure P-2) and 11.12.2013 (Annexure P-8) are hereby set aside. However, liberty is granted to the respondents to pass a fresh order in accordance with law within a period of two months from today.

February 26th, 2020

Puneet

(AUGUSTINE GEORGE MASIH)

JUDGE

Whether speaking/reasoned:

Yes

Whether Reportable:

No