

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

Civil Writ Petition No.27993 of 2018(O&M)

Reserved on : October 28, 2020

Date of decision: December 04, 2020

Hakam Singh

...Petitioner

Versus

The Punjab State Power Corporation Limited
and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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

Mr.Sehajbir Singh, Advocate
for the respondents.

Harinder Singh Sidhu, J. :

By filing this petition under Article 226 of the Constitution, the petitioner Hakam Singh has sought quashing of order dated 09.05.2017 (Annexure P-4) passed by respondent No.2, whereby, the petitioner has been ordered to be removed from service on account of his conviction in a criminal case.

The petitioner was appointed on daily wage basis in the year 1996 and worked as such for 540 days. His services were treated as on work-charge basis vide order dated 13.11.1999. He was appointed as Assistant Lineman in the respondent- No.1 - Corporation on 31.03.2011.

It is stated that unfortunately, he was involved in FIR No.40

dated 27.04.2012 under Sections 325, 341, 323, 506 and 34 IPC, registered at Police Station Julkan, Patiala. Vide judgment and order dated 18.05.2016 passed by Judicial Magistrate Ist Class, Patiala, the petitioner along with two others was convicted. He was sentenced to undergo rigorous imprisonment for one year under Section 325 IPC besides other lesser sentences. The appeals filed by the petitioner and other co-accused were dismissed vide judgment dated 16.02.2017 of the Ld. Additional Sessions Judge, Patiala. The petitioner has filed Criminal Revision No.709 of 2017 in this Court which is pending. Vide order dated 13.07.2017 the sentence of the petitioner was suspended during the pendency of the revision petition.

After the appeal of the petitioner was dismissed by the Ld. Additional Sessions Judge Patiala on 16.02.2017 he was taken into custody. In view thereof vide order dated 11.04.2017 he was placed under suspension. Thereafter, in view of his conviction vide the impugned order dated 09.05.2017 the petitioner was removed from service in terms of Regulation 14(1) of the PSEB now PSPCL Employees Punishment and Appeal Regulations, 1971.

The order of removal of the petitioner is reproduced below:

“Punjab State Power Corporation Limited

(Office of Sr. Executive Engineer/Operation Division Nabha)

Office Order No.179

P.F. Dated 09.05.2017

Sh. Hakam Singh Assistant Lineman S/o Sh. Nikka Singh date of birth 12.08.1966, who was working in Operation Sub Division Dhingi under operation Division, PSPCL, Nabha (Head Quarter) 66 KVA Grid Sub Station Maghar Sahib under SSE-2, PSPCL, Patiala, a case was registered against him at Police Station Julkan, District Patiala vide FIR

No.40 dated 27.04.2012 under Section 325/341/323/506 and 34 IPC, which was being tried in the Court of Ms. Kamal Varinder, PCS, Judicial Magistrate Ist Class, Patiala, the said case was decided on 18.05.2016 and the court in its judgment convicted Sh. Hakam Singh and sentence of one year was imposed and fine of Rs.100 was also imposed.

Thereafter Sh. Hakam Singh S/o Sh. Nikka Singh filed an appeal against the judgment passed by the Judicial Magistrate Ist Class, Patiala, in the court of Hon'ble Parminder Singh Grewal, Additional Sessions Judge, Patiala, who dismissed the appeal on 16.02.2017 and passed the following orders:-

“In view of the reasons discussed herein before, the present appeal titled as “Baljit Singh Vs. State” “Hakam Singh Vs. State” and “Gurmit Singh Vs. State” are hereby dismissed, it being without any merit. The appellants/convicts Baljit Singh, Hakam Singh and Gurmit Singh are ordered to be sent to the concerned Central Jail, Patiala to undergo the Sentence already awarded by the learned Trial Court. Copy of the judgment be placed on the aforesaid two connected appeals. Trial Court record be returned and this appeal file be consigned to the record.”

After the above mentioned decision of the Hon'ble Court came to the notice of this office then Sh. Hakam Singh ALM S/o Sh. Nikka Singh was ordered to be suspended by this office vide order No.119 dated 01.04.2017 w.e.f. 16.02.2017.

After the above decision of the Hon'ble Court, copy of the opinion of the Legal Advisor, PSPCL Patiala was received in the office Vide Memo No.20814/LB-2(88628) 17 dated 04.05.2017 and the judgment dated 16.02.2017 passed by the Hon'ble Additional Sessions Judge, Patiala, the character and conduct of the employee does not permit him to remain in service of the PSPCL.

Secretary/PSEB now PSPCL vide memo No.35573/36073/LB-3(24)128/86 dated 10.03.86 and letter No.101511/102161/LB3(24) 144/95 dated 07.08.1995, letter No.157556/157746 dated 26.06.2001 Sh. Hakam Singh Assistant Lineman S/o Sh. Nikka Singh is ordered to be removed from service in view of Regulation 14(1) of the PSEB now PSPCL Employees Punishment and Appeal Regulations 1971.

Vide this office order Sh. Hakam Singh, ALM, whose

service particular are given below, is removed from the service of PSPCL from 16.02.2017:

1. *Name of Employee and Post :* *Sh. Hakam Singh, ALM*
2. *Father's Name :* *Sh. Nikka Singh*
3. *Date of Birth :* *12.08.1966*
4. *Date of appointment in the Department :* *13.11.99 as workcharge*
5. *Date of appointment on present post :* *31.03.11 as ALM*
6. *Permanent residence Address:* *Village Chirva, PS Julkan Distt. Patiala*

*Sr. Executive Engineer
P.S.P.C.L. OP Division
Nabha”*

Mr. Manu K. Bhandari, Ld. Counsel for the petitioner argued that the order of removal from service of the petitioner has been passed in a mechanical manner solely based upon his conviction without considering his conduct or gravity of the misconduct which led to his conviction. It is argued that the alleged incident occurred due to cutting of *Safeda* trees over a piece of disputed land. As per the prosecution version Babli w/o Harbans Singh, Chand Kaur w/o Lal Singh and Harbans Singh s/o Nikka Singh were injured in an alleged attack by Hakam Singh (petitioner), Gurmit Singh and Baljit Singh. The complaint was made by Babli, the wife of Harbans Singh, the real brother of the petitioner. He argued that the allegations which led to his conviction were totally unconnected with his service. He was not involved in an offence involving moral turpitude. Hence the order is wholly illegal.

He relied on a decision of a Division Bench of this Court in **Kaur Singh and another vs. Punjab State Electricity Board and others,**

2007(4) SCT 426 wherein while considering Punjab State Electricity Board Employees' (Punishment and Appeal) Regulations, 1971 it was held that before passing an order for removal under that Regulation the competent Authority was also required to consider the entire conduct of the delinquent employee, the gravity of the misconduct committed by him, the impact which his misconduct is likely to have, on the administration and other extenuating circumstances or redeeming features, if any present in the case.

The relevant observations are as under:

“3. A perusal of the impugned order does not reveal that the conduct of the petitioner, which has led to his conviction has been considered and is found to be of such a serious magnitude that it warrants his dismissal from service. It is well settled that conviction alone cannot constitute the basis of a dismissal order of an employee unless the competent authority has considered the conduct of the employee, which has led to his conviction. In that regard, reliance may be placed on Constitutional Bench judgment of Hon'ble the Supreme Court in the case of Union of India v. Tulsi Ram Patel, 1985(2) SLR 576. The observations made in paragraph 127 of the judgment, which are relevant to the issue reads as under :-

"To recapitulate briefly, 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 penalty and, if so, what that penalty should be. For the purpose it will have to peruse the judgment of the Criminal Court and consider all the facts and circumstances of the case and the various factors set out in Challapan's case. This, however, has to be done by it ex-parte and by itself. 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 concerned Government servant by reason of the exclusionary effect of the second proviso. The disciplinary authority must, however, bear in mind that a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of the concerned Government servant".

4. It is, thus, evident from the perusal of the aforementioned para of the judgment that numerous factors are required to be taken into account by the competent authority because the conviction alone cannot automatically entail dismissal, removal or reduction in rank. It is also clear that various factors mentioned in the judgment of a Constitution Bench of seven Hon'ble Judges in the case of The Divisional Personnel Officer Southern Railway and another v. T.R. Chellappan, (1976)3 SCC 190 would be required to be considered. At this stage, it would be appropriate to extract the following observations from T.R. Chellappan's case (supra) :-

"Proviso (a) to Article 311(2), however, completely dispenses with all the three stages of departmental inquiry when an employee is convicted on a criminal charge. The reason for the proviso is that in a criminal trial the employee has already had a full and complete opportunity to contest the allegations against him and to make out his defence"

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The word 'consider' has been used in contradistinction to the word 'determine'. The rule making authority deliberately used the word 'consider' and not 'determine' because the word 'determine' has a much wider scope. The word 'consider' merely connotes that there should be active application of the mind by the disciplinary authority after considering the entire circumstances of the case in order to decide the nature and extent of the penalty to be imposed on the delinquent employee

on his conviction on a criminal charge. This matter can be objectively determined only if the delinquent employee is heard and is given a chance to satisfy the authority regarding the final orders that maybe passed by the said authority. In other words, the term 'consider' postulates consideration of all the aspects, the pros and cons of the matter after hearing the aggrieved person. Such an inquiry would be a summary inquiry to be held by the disciplinary authority after hearing the delinquent employee. It is not at all necessary for the disciplinary authority to order a fresh departmental inquiry which is dispensed with under Rule 14 of the Rules of 1968 which incorporates the principle contained in Article 311 (2) proviso (a). This provision confers power on the disciplinary authority to decide whether in the facts and circumstances of a particular case what penalty, if at all, should be imposed on the delinquent employee. It is obvious that in considering this matter the disciplinary authority will have to take into account the entire conduct of the delinquent employee, the gravity of the misconduct committed by him, the impact which his misconduct is likely to have on the administration and other extenuating circumstances or redeeming features if any present in the case and so on and so forth. It may be that the conviction of an accused may be for a trivial offence as in the case of the respondent T.R. Chellappan in Civil Appeal No. 1664 of 1974 where a stern warning or a fine would have been sufficient to meet the exigencies of service. It is possible that the delinquent employee may be found guilty of some technical offence, for instance, violation of the transport rules or the rules under the Motor Vehicles Act and so on, where no major penalty may be attracted. It is difficult to lay down any hard and fast rules as to the factors which the disciplinary authority would have to consider, but I have mentioned some of these

factors by way of instances which are merely illustrative and not exhaustive. In other words, the position is that the conviction of the delinquent employee would be taken as sufficient proof of misconduct and then the authority will have to embark upon a summary inquiry as to the nature and extent of the penalty to be imposed on the delinquent employee and in the course of the inquiry if the authority is of the opinion that the offence is too trivial or of a technical nature it may refuse to impose any penalty in spite of the conviction".. (emphasis added)

5. *The views of Hon'ble the Supreme Court in the aforementioned judgment have been followed and applied by this Court in the case of Kulwant Singh v. The Deputy District Primary Education Officer, Gurdaspur, 1997(1) SCT 282 (P&H).*

6. *The principles laid down in the aforementioned authoritative judgment of Hon'ble the Supreme Court, if are applied to the facts of the present case then it becomes evident that the impugned order does not reflect any consideration of conduct of the petitioners which have led to their conviction. The judgment of the Criminal Court was required to be read by the competent authority which has passed the order and then after due application of mind it was required to be concluded as to whether the petitioners were worthy of retention in service or they are to be reduced in rank or any other suitable punishment was required to be inflicted.*

7. *In the present case Regulation 14(i) of Punjab State Electricity Board Employees' (Punishment and Appeal) Regulations, 1971 is pari materia with Rule 14(i) of the Railway Servants (Discipline and Appeal) Rules, 1968, which was under consideration in T.R. Chellappan's case (supra) and the same reads as under :-*

"SPECIAL PROCEDURE IN CERTAIN CASES

14. Notwithstanding anything contained in Regulations 8, 9, 10, 11, 12 and 13 :-

(i) where any penalty is imposed on an employee on the ground of conduct which has led to his conviction on a criminal charge"

xxxx xxx xxxx xxx"

8. Once the Rule 14(i) of the Punjab State Electricity Board Employees' (Punishment and Appeal) Regulations, 1971 and proviso (a) to Article 311(2) of the Constitution are pari-materia, then it has to be concluded that the views expressed by Hon'ble the Supreme Court in the aforementioned judgment would fully govern and apply to the facts of the present case.

9. The competent Authority was also required to consider the entire conduct of the delinquent employee, the gravity of the misconduct committed by him, the impact which his misconduct is likely to have, on the administration and other extenuating circumstances or redeeming features, if any present in the case. A perusal of the impugned order dated 9.11.2005 (Annexure P1) does not show any such application of mind. The competent authority appears to have followed the approach that the conviction ex-facie could constitute the basis of the order of dismissal, which is not sustainable in law. Therefore, the impugned order is liable to be quashed.

The ratio of the aforesaid decision is fully applicable to the present case. Just as in that case, the impugned order in the present case also discloses no application of mind and consideration of the factors as set out in the aforesaid judgment.

Accordingly, this petition is allowed. The impugned order is

set aside. The petitioner is directed to be reinstated in service. Respondents, however, are granted liberty to pass a fresh order in accordance with law, if so advised.

December 04, 2020

**(HARINDER SINGH SIDHU)
JUDGE**

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No