

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) NO.254 of 2013**

Karan Lal Sonkar S/o Kholbahara Sonkar, aged about 42 years, R/o Village-Mohtara, P.O.-Devgaon, Thana & Tahsil-Masturi, Distt.-Bilaspur (CG)

-----Petitioner

Versus

1. State of Chhattisgarh through Secretary, Urban Administration Department, Mahanadi Mantralaya, New Raipur (CG)
2. Chief Municipal Officer, Nagar Palik Parishad Gourela, Pendra Road, Distt.-Bilaspur (CG)

----- Respondents

For Petitioner : Mr.Suresh Kumar Verma, Advocate
 For Respondent No.1: Mr.Animesh Tiwari, Dy.A.G.
 For Respondent No.2: None present

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

21/9/2021

1. The petitioner while working as Peon in the establishment of respondent No.2 was convicted for offences under Sections 420/511 read with Sections 468 and 472 of the IPC and he was sentenced accordingly on 27.4.2000 and thereafter he was dismissed from service on 19.10.2000. On appeal being preferred by the petitioner against judgment of conviction, the appellate Court by its order dated 27.2.2006 maintained his conviction for offences under Sections 420/511 and 468 of the IPC, however, set-aside his conviction under Section 472 of the IPC and eventually extended the benefit of probation under Section 4 read with Section 11 of the Probation of Offenders Act, 1958

(hereinafter called as 'Act of 1958') by releasing the petitioner on probation of good conduct.

2. The petitioner has filed this writ petition stating inter-alia that since the petitioner has been released on probation, yet he has not been allowed to join though no order of termination has been passed against him, therefore, appropriate writ / direction be issued.
3. Return has been filed by the respondents stating inter-alia that the petitioner has already been dismissed from service on 19.10.2000 in view of the relevant service Rules and he has incurred disqualification by virtue of Rule 9 of the Chhattisgarh Municipal Employees (Recruitment and Conditions of Service) Rules, 1968 (hereinafter called as 'Rules of 1968') and therefore, he cannot be retained his service and order of dismissal from service has already been passed on 19.10.2000.
4. Mr.Suresh Kumar Verma, learned counsel for the petitioner, would submit that once the petitioner has been extended the benefit of probation under Section 4 read with Section 11 of the Act of 1958 by virtue of Section 12 of the Act of 1958 which provides removal of disqualification attaching to conviction, he cannot be said to have been terminated from service on this ground. Therefore, he be directed to join the service of respondent No.2.
5. On the other hand, Mr.Animesh Tiwari, learned counsel for respondent No.1/State, would submit that disqualification on conviction of a criminal charge is not included in term

removal of disqualification attaching to conviction in view of decision of the Supreme Court in the matter of **Shankar Dass v. Union of India and another**¹. Even if the petitioner has been released on probation by extending the benefit of Section 4 read with Section 12 of the Act of 1958 which provides removal of disqualification attaching to conviction, he cannot be held that he should be allowed to work though he was suffered termination and conviction for offences under Sections 420 and 468 of the IPC has been maintained by the appellate Court and merely he has been extended the benefit of probation under section 4 of the Act of 1958.

6. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.
7. The question for consideration would be whether the petitioner having been convicted for offences under Section 420/511 and 468 of the IPC and his conviction having been maintained by the appellate Court and benefit of probation under Section 4 read with Section 11 of the Act of 1958 having been extended by virtue of Section 12 of the Act of 1958, he is said to have not disqualified for the purpose of employment.
8. At this stage, it would be appropriate to notice Sections 4(1), 11(1) and 12 of the Act of 1958 which state as under:-

"4. Power of court to release certain offenders on

1 (1985) 2 SCC 358

probation of good conduct.—(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour:

Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

(2) to (5) xxx xxx xxx.

11. Courts competent to make order under the Act, appeal and revision and powers of courts in appeal and revision.—(1) Notwithstanding anything contained in the Code or any other law, an order under this Act, may be made by any court empowered to try and sentence the offender to imprisonment and also by the High Court or any other court when the case comes before it on appeal or in revision.

(2) to (4) xxx xxx xxx.

12. Removal of disqualification attaching to conviction.—Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of section 3 or section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law:

Provided that nothing in this section shall apply to a person who, after his release under section 4 is subsequently sentenced for the original offence."

9. Section 12 of the Act of 1958 came up for consideration before the Supreme Court in the matter of Shankar Dass

(supra) in which their Lordships of the Supreme Court have held that the order of dismissal from service consequent upon a conviction is not a 'disqualification" within the meaning of Section 12 of the Act of 1958. It was observed as under:-

"4. Section 12 of the Probation of Offenders Act must be placed out of way first. It provides that notwithstanding any thing contained in any other law, a person found guilty of an offence and dealt with under the provisions of Section 3 or 4 "shall not suffer disqualification" attaching to a conviction for an offence under such law. The order of dismissal from service consequent upon a conviction is not a disqualification" within the meaning of Section 12. There are statutes which provide that persons who are convicted for certain offences shall incur certain disqualifications. For example, Chapter III of the Representation of the People Act, 1951, entitled "Disqualifications for membership of Parliament and State Legislatures" and Chapter IV entitled "Disqualifications for Voting" contain provisions which disqualify persons convicted of certain charges from being members of legislatures or from voting at elections to Legislatures. That is the sense in which the word "disqualification" is used in Section 12 of the Probation of Offenders Act. Therefore, it is not possible to accept the reasoning of the learned Single Judge of the Delhi High Court."

- 10.** Reverting to the facts of the present case in light of aforesaid principle of law laid down by the Supreme Court in Shankar Dass (supra), it is quite vivid that the order of dismissal from service consequent upon a conviction in criminal charge on 19.10.2000 is not a "disqualification" within the meaning of Section 12 of the Act of 1958. Even if the petitioner has been extended the benefit of probation by the appellate Court under Section 4 read with Section 11(1) of the Act of 1958, he has

already incurred disqualification upon dismissal and could not be wiped out by virtue of Section 12 of the Act of 1958 as order of dismissal from service is an order of punishment under the Rules of 1968.

11. As a fallout and consequence of the aforesaid discussion, the writ petition deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-