

RAJESH KUMAR

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGAPresent : Mr. Sanjiv Gupta, Advocate
for the petitioner.

Mr. Saurabh Mohunta, D.A.G., Haryana.

(Presence marked through video conference).**ARUN MONGA, J. (ORAL)**

Prayer in the present petition is for issuance of a writ in the nature of *certiorari* quashing the impugned order dated 15.05.2012 (Annexure P-4), vide which, the services of the petitioner were terminated on account of his conviction by the Additional Sessions Judge, Ambala vide judgment dated 31.01.2012 (Annexure P-1).

2. Learned counsel for the petitioner submits that the petitioner was convicted in an FIR No.40 dated 06.04.2008 registered under Sections 148, 149, 323, 324, 307, 506 of IPC and Section 27 of the Arms Act at Police Station Mullana. Thereafter, the appeal filed by the petitioner was admitted and his sentence was suspended. And yet, during pendency of the criminal appeal, his services were terminated w.e.f. 27.01.2012. Hence, the present petition.

3. Learned State counsel, on advance service, joins proceedings and by relying upon the judgment of the Apex Court in case ***Govt. of A.P.***

and another vs B. JagjeevanRao 2014(13) SCC 239 submits that in cases of conviction, the employer cannot be compelled to take an employee back in service.

4. Heard.

5. The aforesaid FIR, which led to the dismissal of the petitioner from service from the post of Water Pump Operator, resulted in his conviction vide Sessions Court order/judgment dated 03.02.2012 in the following terms :-

1	Section 148 of IPC	R.I. for 18 months each and a fine of Rs.1000/- each. In default of payment of fine, they shall also undergo S.I for one month each.
2	Section 307/149 of IPC	R.I. for 05 years each and a fine of Rs.2500/- each. In default of payment of fine, they shall also undergo S.I. for three months each.
3	Section 326/149 of IPC	R.I. for 3 years each and a fine of Rs.2000/- each. In default of payment of fine, they shall also undergo S.I. for two months each.
4.	Section 506/149 of IPC	R.I. for 6 months each and a fine of Rs.500/- each. In default of payment of fine, they shall also undergo S.I. for 15 days each.
5.	Section 323/149 of IPC	R.I. for 6 months each and a fine of Rs.500/- each. In default of payment of fine, they shall also undergo S.I. for 15 days each.

The sentences imposed upon the petitioner were directed to be concurrent and the period of detention already undergone by him during the investigation/trial was directed to be set of against the substantive sentences imposed upon him.

5. No doubt, subsequently in an appeal filed by the petitioner, the aforesaid sentences have been suspended. The appeal is since admitted pending adjudication in the normal course. However, it is not the conviction

per se, which has led to the dismissal of the petitioner as is borne out from perusal of the impugned order. The delinquent official was duty bound to inform the department, if not of registration of the FIR in question against but surely subsequent events thereto, when he was arrested followed by his conviction and sentence. None of it was done by the petitioner. Neither he informed of the registration of FIR nor his subsequent arrest during the investigation/trial stage nor even conviction and the sentence as per the Sessions Court order dated 31.01.2012 read with 03.02.2012.

6. On the other hand, in a very cavalier manner, in order to deliberately conceal his conviction, the petitioner applied for earned leave from 27.01.2012. To say the least, highly unbecoming of a government official to behave in a manner as the petitioner herein has.

7. In the premise, the impugned order has been rightly passed by invoking proviso (A) to Article 311(2) of the Constitution of India.

8. No grounds to interfere are made out. The writ petition is accordingly dismissed.

September 01, 2021

gurpreet

(ARUN MONGA)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No