

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

LPA-578-2021 (O&M)
Date of Decision:-14.07.2021

Pt. B.D. Sharma University of Health and Sciences & Another

... Appellants

Versus

Sunehra Singh

... Respondent

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present:- Mr. Tanvir S. Attariwala, Advocate
for the appellants.

Mr. Vivek Singla, Advocate
for the respondent.

KARAMJIT SINGH, J.

Case has been heard through video conferencing on account of
COVID-19 Pandemic.

The appellants have filed this appeal against the order dated
5.2.2020 (Annexure A-1) passed learned Single Judge, whereby writ petition
filed by the respondent-Sunehra Singh was allowed and order of his
dismissal dated 19.11.2014 (Annexure P-3) was set aside and he was held
entitled to all consequential benefits.

The admitted facts of the case are that respondent-Sunehra Singh while working as Chowkidar under the appellants was implicated in criminal case having FIR No.211 dated 29.6.2012 registered under Sections 302, 120-B/34 IPC and Section 25 Arms Act at Police Station Sadar Rohtak. Initially the police failed to arrest him and he was declared proclaimed offender, resulting in registration of FIR No.419 dated 16.11.2012 under Section 174-A IPC at Police Station Sadar Rohtak. Subsequently he was arrested and was convicted and sentenced under Section 174-A IPC by the Court concerned. However, in the main murder case, having FIR No.211 he was acquitted by the Court of Additional Sessions Judge, Rohtak vide judgment dated 11.1.2017. On the basis of his conviction under Section 174-A IPC, he was dismissed from service by the competent authority vide order dated 19.11.2014 (Annexure P-3). Earlier to that he was placed under suspension vide order dated 26.11.2012 (Annexure P-1).

Respondent-Sunehra Singh being aggrieved by the aforesaid orders Annexure P-1 and Annexure P-3, filed the writ petition and the same was allowed by the learned Single Judge vide impugned order dated 5.2.2020.

Being not satisfied, appellants-Pt. B.D. Sharma University of Health and Sciences through its Vice Chancellor and the Registrar of Post-Graduate Institute of Medical Science, filed the present appeal.

The main contention of the counsel for the appellants is that the respondent admitted his guilt and accordingly he was convicted and sentenced under Section 174-A IPC by the Court concerned and on the basis

of the said conviction, he was dismissed from service by the competent authority in view of the provisions of Rule 12(ii) read with Article 311(2) of the Constitution of India, vide impugned order (Annexure P-3). The counsel for the appellants further contended that there is no illegality in the said order of dismissal which was passed in accordance with law, while taking into consideration the act and conduct of the employee. The learned counsel further contended that under the given facts and circumstances of the case, there was no need to conduct any inquiry in the present case, as the delinquent admitted his guilty before the Court of law.

On the other hand, the counsel for the respondent, who was having advance copy of the appeal has supported the impugned order passed by the learned Single Judge.

We have considered the submissions made by counsel for the parties.

The respondent who was accused in murder case having FIR No.211 dated 29.6.2012, had absconded. Resultantly, he was declared proclaimed offender and FIR No.419 dated 16.11.2012 was registered against him under Section 174-A IPC. Subsequently, he was arrested and was convicted and sentenced under Section 174-A IPC. There is no dispute regarding the fact that in the murder case having FIR No.211 dated 29.6.2012, the respondent faced trial and was finally acquitted by the Sessions Court vide judgement dated 11.01.2017 (Annexure P-5). The appellants have failed to show that the said judgment has been set aside or stayed by the Higher Court, till date. Undisputedly, the respondent was

dismissed from service with the aid of proviso to Article 311(2) of the Constitution of India, on the basis of his conviction under Section 174-A IPC.

We are of the view that there is no merit whatsoever in the contentions raised by the counsel for the appellants. In the present case, the competent authority awarded the maximum punishment of dismissal from service, without forming an opinion that the conduct of the employee was unbecoming of a government servant rendering him liable to be punished as has been rightly observed by the learned Single Judge. In **Union of India vs. Tulsiram Patel (1985) 3 SCC 398**, the Hon'ble Apex Court while considering the scope of proviso to Article 311(2) of the Constitution of India observed that '*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*'. Also it is settled proposition of law as has been aptly observed by the learned Single Judge that conviction does not entail automatic removal and a decision to impose punishment can be taken only after considering the employee's 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.

In the present case, the respondent was dismissed from service just because he was convicted and sentenced under Section 174-A IPC. The offence for which the respondent was convicted was not involving moral

turpitude, as has been rightly pointed out by the learned Single Judge. Even no show cause notice was issued to the respondent by the competent authority before passing the impugned order (Annexure P-3). In the light of the above, we are of the view that while imposing the major penalty of dismissal from service, the competent authority failed to consider the gravity of offence committed by the delinquent. The impugned order (Annexure A-1) is well reasoned and is not suffering from any illegality or perversity.

For the foregoing reasons, we do not find any ground to interfere in this appeal and the same is hereby dismissed.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

14.7.2021
Gaurav Sorot

Whether reasoned / speaking?

Yes / No

Whether reportable?

Yes / No