

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.7531 of 2021 (O&M)

Reserved on:16.3.2022

Date of Decision:24.3.2022

Suresh Kumar

...Petitioner

Versus

State Of Haryana and Others.

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Ashutosh Kaushik, Advocate
for the petitioner.

Mr. Rohit Arya, DAG Haryana.

JAISHREE THAKUR J.

1. The petitioner herein is seeking a writ to be issued in the nature of *Certiorari* for quashing the orders dated 29.12.2020 (Annexure P-12), 26.04.2019 (Annexure P-10) and 22.02.2019 (Annexure P-8) vide which the petitioner has been dismissed from service, without any show cause notice despite the fact that he was already awarded major penalty in relation to the same charges upon culmination of departmental enquiry. In addition thereto, the petitioner is seeking a writ in the nature of mandamus to be issued directing the respondents to reinstate the petitioner back in service with all consequential benefits.

2. In brief the facts are that the petitioner herein was appointed as a Constable with the respondent-Department on 23.01.1989. FIR No. 473 dated 24.12.2002 was registered under Sections 148, 149, 323, 324, 325, 452, 506 IPC at Police Station Sadar Thanesar, District Kurukshetra and consequent thereto he was put under suspension with effect from 31.12.2002.

Though the petitioner was reinstated in service, departmental proceedings

were initiated against him in relation to the same incident regarding which the FIR was registered. A charge sheet was served upon the petitioner and the petitioner participated in the regular enquiry. On the basis of the enquiry report dated 1.8.2003, the petitioner was issued a show cause notice dated 27.04.2005 proposing therein the penalty of dismissal from service, which was duly replied to. However, the Superintendent of Police Railways after taking into consideration the reply submitted by the petitioner, imposed a major penalty of stoppage of three annual increment with permanent effect upon the petitioner, instead of dismissal from service. The petitioner preferred appeal against the aforesaid order, which was disposed of by the Inspector General of Police Railways Panchkula, Haryana by order dated 22.8.2005 and keeping in view that it was a first major punishment of the career of the petitioner, the punishment was reduced to stoppage of one annual increment with permanent effect. In the proceedings initiated in the FIR, the petitioner was convicted by JMIC Kurukshetra on 17.09.2010. The petitioner remained in custody for 2 months 24 days and thereafter, in appeal the sentence was suspended. The judgement of conviction was upheld in appeal. The High Court too upheld the order of conviction by its judgement dated 23.05.2019, but reduced the quantum of punishment to actual imprisonment already undergone. In the meantime, the petitioner moved an application dated 5.12.2018 seeking voluntary retirement, which was rejected by order dated 22.2.2019. By the same order, he was dismissed from service with immediate effect under Rule 16.2 (2) of the Punjab Police Rules 1934 read with standing order No.114/2006 as issued by the office of the Director-General of Police Haryana. While dismissing him from service, it was noted that the official had been convicted and sentenced to imprisonment for more

than one month and the offences involved in the case are of moral turpitude. The order of dismissal was challenged in appeal and revision unsuccessfully, leading to the present petition being filed.

3. Mr. Ashutosh Kaushik, learned counsel appearing on behalf of the petitioner herein would contend that the order of dismissal passed under Rule 16 (2) of the Punjab Police Rules has been issued in a mechanical manner based entirely upon the order of conviction. It is argued that an employee in government service cannot be dismissed merely on the basis of his conviction, and it is only his misconduct which might have led to the conviction is to be taken notice of. Counsel further argues that the petitioner has been dismissed from service without giving due opportunity of hearing and the very basis of the dismissal order is wrong, as he was not involved in any offence pertaining to moral turpitude. It is also argued that while dismissing him from service the length of service of the petitioner has also not been taken into account. He relies upon the judgements rendered in **Kulwant Singh vs. The Deputy Director Primary Education Officer Gurdaspur 1997(1) RSJ 328, Ex- Constable Darshan Singh vs. State of Haryana** passed in **CWP No.9847 of 2015 decided on 18.10.2016, Hari Ram vs. DHBVNL and another 2006(2) SCT 112, Shanker Das vs. UOI AIR 1885 SC 772** in support of his contention that an employee should not be automatically dismissed from service upon his conviction.

4. Per contra, learned counsel appearing on behalf of the respondent-State argues that the petitioner stood convicted under FIR No. FIR No. 473 dated 24.12.2002, which was registered under Sections 148, 149, 323, 324, 325, 452, 506 IPC at Police Station Sadar Thanesar, Kurukshetra vide judgement dated 17.09.2010 and remained in custody for over two months and his

dismissal from service was in terms of Rule 16 (2) of the Punjab Police Rules. He relies upon judgements rendered by this High Court in ***Ajit Singh Driver Vs. Presiding Officer, Industrial Tribunal, Haryana, Faridabad*** passed in CWP No.6096 of 1986 decided on 13.10.1993; ***Sucha Singh Vs. The State of Haryana and others (1983) 3 SLR 11*** and the judgment rendered by the Hon'ble Supreme Court in ***Deputy Director of Collegiate Edu. (Admn.), Madras Vs. S. Nagoor Meera*** passed in Civil Appeal No.2992 of 1995 decided on 24.02.1995 to contend that where a person is dismissed or removed from service "on the ground of conduct which has led to his conviction on a criminal charge", the provisions of Article 311(2) which provide for an enquiry and the grant of a reasonable opportunity before punishing a civil servant are not attracted. Once a person holding a civil post has been tried by a competent court, the facts are established and therefore, nothing remains to be enquired into.

5. I have heard the counsel for the parties and with their assistance have gone through the pleadings of the case and the law cited.

6. The impugned orders do not contain any indication that the nature and gravity of the offence were taken into consideration while imposing the major penalty of dismissal. In fact, the order dismisses the petitioner from service on account of his conviction and that the offences involved in the case pertain to moral turpitude. The order also does not show if the punishing authority had kept in view the length of service of the petitioner i.e.20 years. Rule 16.2 of the Punjab Police Rules provides that dismissal shall be awarded only for the gravest acts of misconduct.

7. In a Full Bench decision of this Court in ***Om Parkash Vs. The Director Postal Services (Posts and Telegraphs Deptt.), Punjab Circle,***

Ambala and others, AIR 1973 Punjab and Haryana¹, it is held that departmental punishment of a Government servant is not a necessary and automatic consequence of conviction on a criminal charge. The competent authority has to consider all the circumstances of the case and then make such order in relation to question of imposition of penalty on the Government servant for his original conduct, which has led to his conviction. It is also held that the authority competent to take disciplinary action under Rule 19(1) of 1965 Rules against Central government servant convicted on a criminal charge has to consider all the circumstances of the case and then decide (a) whether the conduct of delinquent official, which led to his conviction is such as to render his further retention in public service undesirable; (b) if so, whether dismiss or remove him from the service or compulsorily retire him and see if the said conduct of the official is not such which renders his further retention in service undesirable, whether the minor punishment, if any, shall be inflicted or not.

8. In the case of **Union of India and another Vs. Tulsi Ram Patel, AIR 1985 SC 1416**, the Hon'ble Supreme Court held as under:-

“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 judgement 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.”

9. In a similar case of **Man Singh Vs. State of Haryana and others (CWP No.7644 of 2007) decided on 09.11.2009**, a Coordinate Bench of this Court set aside the order of dismissal and directed reconsideration on the question of punishment. The petitioner therein was serving as a Sub Inspector in the Haryana Armed Police and was dismissed from service on account of his conviction for offences under Sections 148, 325, 307, 323, 149 IPC read with Section 27 of the Arms Act. Even though his conviction had been upheld but he also was granted benefit of probation. It was held that while dismissing a person the power has to be exercised cautiously. The judgement as rendered in **Man Singh’s** case has been followed subsequently in **Ex- Constable Darshan Singh vs. State of Haryana (Supra)**.

10. The impugned orders do not reflect that the length of service of the petitioner was looked into and, since there can be no automatic dismissal from service on account of conviction, the authorities were under an obligation to consider whether retention in service was desirable or not. Another factor that needs to be considered is that the petitioner has been dismissed from service by holding that he has been involved in a FIR in offence involving *moral turpitude*, which reasoning would not be sustainable.

The petitioner was convicted under Sections 148, 149, 323, 324, 325, 452, 506 IPC and none of these sections fall under those sections, which concern offences involving moral turpitude. This fact would also show that the punishing authority itself did not apply its mind while passing the dismissal order, holding that the petitioner was involved in a case pertaining to moral turpitude.

11. The judgments referred to by the counsel appearing for the respondents are distinguishable on facts, as they were the cases where the persons were convicted for the offences committed either under the Prevention of Corruption Act or under Section 302 IPC and thus, not applicable to the facts of the instant case.

12. Consequently, the impugned orders dated 29.12.2020 (Annexure P-12), 26.4. 2019 (Annexure P-10) and 22.2.2019 (Annexure P-8) are set aside and quashed. The matter is remanded back to the punishing authority for reconsideration. It would be for the punishing authority to apply its mind and to form an opinion as to whether conviction of the petitioner deserves the penalty of dismissal, removal or reduction in rank or any other lesser penalty. Let such exercise of reconsideration and passing a fresh order be completed within a period of six months from the date of receipt of a certified copy of this order. The writ petition is allowed in the aforesaid terms.

(JAISHREE THAKUR)
JUDGE

March 24, 2022

Pankaj*

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No