

CWP No.9200 of 2019 (O&M)

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

CWP No.9200 of 2019 (O&M)

Date of decision: 01.06.2022

Gurjant Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Nandan Jindal, Advocate for the petitioner.

Mr. Ayush Sarna, AAG, Punjab for the respondents.

Mr. Amit Shukla, Advocate for the applicant-intervener.

MAHABIR SINGH SINDHU, J.

Present writ petition has been filed under Article 226 of the Constitution, *inter alia*, for quashing the impugned order dated 02.03.2019 (P-9), passed by the Secretary, School Education, Punjab (*for short* 'Secretary'), whereby despite acquittal of petitioner in a criminal case, his request for reinstatement in service was declined.

(2) Facts are not in dispute.

(3) Briefly stated, on 29.05.1995, petitioner was appointed as E.T.T. Teacher on *ad hoc* basis and his services were regularized w.e.f. 24.02.1996. On 07.02.2004, he was promoted as Math Master and transferred to Jathedar Kaur Singh Government Senior Secondary School, Namol, District Sangrur.

(4) On 13.02.2013, an FIR No.9 dated 13.02.2013 was registered against him under Sections 376, 506 of the Indian Penal Code, 1860 (*for short 'IPC'*); Sections 5 & 6 of Protection of Children from Sexual Offences Act, 2012 (*for short 'POCSO Act'*); Sections 3 (xi) & (xii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (*for short 'SC & ST Act'*) at Police Station Cheema, District Sangrur. Petitioner was arrested on the same day and as a result thereof, he was put under suspension vide order dated 13.02.2013 (P-1) by respondent No.3 with immediate effect.

(5) After conclusion of trial, petitioner was convicted & sentenced for life imprisonment under Section 376 IPC; Section 6 read with Section 5(f) of the POCSO Act as well as Section 3 (1) (xi) (xii) & 3 (2)(v) of the SC & ST Act by learned Additional Sessions Judge, Sangrur, vide judgment of conviction & order of sentence dated 23.05.2013 (P-2).

(6) On account of his conviction, petitioner was dismissed from service, vide order dated on 20.08.2013 (P-3), by the Director Public Instructions (SE), Punjab (*for short 'Director'*).

(7) Aggrieved against the aforesaid conviction & sentence, petitioner preferred an appeal bearing CRA-D-757-DB of 2013, which was accepted by the Division Bench on 23.08.2018 (P-5), resulting into his acquittal from the charges in criminal case.

(8) After acquittal by the Division Bench, petitioner moved an application dated 27.08.2018 (P-6) before the Director for his reinstatement in service.

(9) It is necessary to mention here that acquittal of petitioner was challenged before the Hon'ble Supreme Court by the State of Punjab as well as complainant through Special Leave to Appeal (Criminal) No.10593 of 2018 and Special Leave Petition (Criminal) Diary No.43814 of 2018, but both were dismissed on 14.12.2018 (P-7) & 07.01.2019 (P-8), respectively.

(10) Now while passing the impugned order, Secretary has declined request of petitioner for reinstatement in service. Hence, present writ petition.

(11) **CONTENTIONS:**

On behalf of petitioner.

It is contended by learned Counsel for the petitioner that although initially, he was convicted by learned trial Court, but subsequently, acquitted by the Division Bench of this Court and same has attained finality up to the Hon'ble Supreme Court. Thus, in view of the provisions of Rule 7.3 of the Punjab Civil Services Rules (*for short 'PCS Rules'*), petitioner is entitled for reinstatement in service along with all consequential benefits.

Further contended that petitioner was falsely implicated in a criminal case and which has resulted into unnecessary harassment. On account of his arrest, firstly, petitioner was put under suspension and later on, after conviction, he had been dismissed from service without holding any inquiry.

Also contended that as per Rule 7.3 of the PCS Rules, once the order of conviction is set aside, then petitioner has a right of automatic reinstatement in service along with all consequential benefits including promotion, thus, the impugned order is not legally sustainable.

Lastly contended that impugned order dated 02.03.2019 is absolutely non-speaking and as such, deserves to be set aside only on this ground.

On behalf of the respondents

Learned State Counsel opposed the prayer of petitioner while submitting that criminal case against him was registered on the basis of a complaint made by the National Human Rights Commission (Law Division), New Delhi to the Principal Secretary, Department of School Education, Punjab as the victim belongs to Scheduled Castes community.

Further contended that since petitioner was convicted in a heinous crime, therefore, taking into consideration the conduct, he has rightly been dismissed from service, vide order dated 20.08.2013 (P-3).

Also contended that there is no provision under Rule 7.3 of the PCS Rules to the effect that where conviction of an employee is set aside in an appeal or revision by the superior Court, then he would be automatically entitled for reinstatement in service.

Again contended that petitioner has approached this Court without availing the alternative remedy of review under Rule 21 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (*for short* '1970 Rules'), therefore, present writ petition is liable to be dismissed.

On behalf of the intervener

Learned Counsel for the intervener, while fully supporting the pleas raised on behalf of the State, further submitted that act of petitioner being a Teacher falls within the ambit of moral turpitude, therefore, he has rightly been dismissed from service and as such, the impugned order does

not require any interference by this Court while exercising jurisdiction under Article 226 of the Constitution.

(12) Heard learned Counsel for the parties and perused record.

(13) Points for consideration in the present case would be:-

“(i) As to whether in view of the facts and circumstances of the present case, the impugned order is legally sustainable?

(ii) If yes, what order to be passed by this Court?”

(14) There is no dispute that FIR No.9 dated 13.02.2013 was registered against the petitioner and at that time, he was working as a Teacher (Math Master).

It is also an admitted fact that initially petitioner was convicted & sentenced by learned trial Court, but later on, he has been acquitted by the Division Bench of this Court and same has attained finality up to the Hon’ble Supreme Court.

(15) It is also a matter of record that consequent upon his conviction by learned trial Court, petitioner was dismissed from service by the Director being the punishing authority, vide order dated 20.08.2013 (P-3), and which is not the subject matter of challenge in the present writ petition.

(16) Perusal of dismissal order reveals that punishing authority had not only taken into consideration the conviction & sentence of petitioner; rather there is a reference of departmental inquiry as well and for reference, relevant part of the order reads as under:-

“After receiving complaints, department conducted departmental enquiry against Gurjant Singh for allegedly allegations against him wherein allegations proved in the enquiry.”

(17) There is no quarrel that under Rule 5 (ix) of 1970 Rules, dismissal from service is a major penalty and *“which shall ordinarily be a disqualification for future employment under the Government”*.

It is also not in dispute that subject to the provisions of Rule 14, *“an order imposing any of the penalties specified in Rule 5 whether by the punishing authority or by any appellate or reviewing authority”* is appealable under Rule 15 of 1970 Rules.

(18) Concededly, petitioner did not avail the remedy of appeal against his dismissal; rather he simply moved an application before the Director for reinstatement and which ultimately has been rejected by the Secretary while passing the impugned order and same reads as under:-

“ Govt. of Punjab
Education Department

Order No.06/54-2013 (E-4 (1))
Dated 02.03.2019

By sending an application dated 27.08.2018 for reinstatement in service by Sh. Gurjant Singh, Math Master (now dismissed) Jathedar Kaur Singh Senior Secondary School, Namol, District Sangrur. The application after consideration is being rejected.

Sd/-
Krishan Kumar (I.A.S.)
Secretary, School Education, Punjab”

(19) It transpires that respondents in counter affidavit of Sh. Baljinder Singh, Assistant Director (School Administration), Office of the Director Public Instruction (Secondary Education), Punjab have averred that *“there does not exist any provision in the Punjab Civil Service Rules or any other rules for the time being in force that in case the conviction the*

(sic - of) such ousted employee is set aside by a Court of law, he/she shall automatically be entitled to revocation of penalty imposed upon him/her". It is further averred in this paragraph that "in such eventuality, the aggrieved person may prefer an appeal before the Appellate Authority, which has already been rejected in the instant case."

Meaning thereby, as per above stand of the respondents, in case of acquittal from criminal charge(s), there is no provision under 1970 Rules for automatic reinstatement, but availability of remedy of appeal is duly acknowledged; which according to them in the present case has been rejected while passing the impugned order.

If that be so, even then the impugned order is not legally sustainable for the following reasons:-

Rule 19 of 1970 Rules deals with the procedure for consideration of an appeal and which reads as under:-

19. Consideration of appeal - *(1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of Rule 4 and having regard to the circumstances of the case, the order of suspension is justified or not confirm or revoke the order accordingly.*

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 5 or enhancing any penalty imposed under the said Rules, the appellate authority shall consider-

- a. whether the procedure laid down in these Rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provision of the Constitution of India or in the failure of justice;*
- b. whether the finding of the punishing authority are warranted by the evidence on the record; and*

- c. *whether the penalty or the enhanced penalty imposed is adequate, inadequate or serve and pass orders-*
- (i) confirming, enhancing, reducing or setting aside the penalty; or*
 - (ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case;*

Provided that-

- (i) the Commission shall be consulted in all cases where such consultation is necessary;*
- (ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in Clauses (v) to (ix) of Rule 5 and an inquiry under Rule 8 has not already been held in the case, the appellate authority shall subject to the provision of Rule 13, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 8 and thereafter, on a consideration of the proceedings of such inquiry make such orders as it may deem fit;*
- (iii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of Rule 5 and an inquiry under Rule 8 has already been held in the case, the appellate authority shall make such orders as it may deem fit; and*
- (iv) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity as far as may be in accordance with the provisions of Rule 10 of making a representation against such enhanced penalty.”*

From perusal of aforesaid sub-rule 2, it is apparently clear that the appellate authority while deciding an appeal against an order imposing any of the penalties specified under Rule 5 (*ibid*) shall follow the procedure prescribed therein. However, from impugned order, it is nowhere discernible that appellate authority has followed such a course.

(20) Also noteworthy that appellate authority did not take into consideration the acquittal of petitioner; rather the impugned order is absolutely non-speaking and laconic inasmuch as no reason much less to say any cogent reason has been assigned while rejecting the appeal of the petitioner.

(21) At the same time, the contention raised on behalf of the petitioner that after his acquittal from criminal charge(s), he is automatically entitled for reinstatement in service in terms of Rule 7.3 of the PCS Rules is not acceptable.

Rule 7.3 of the PCS Rules has been reproduced in para 17 of the writ petition and perusal of the same reveals that these provisions are applicable for claiming certain allowances after reinstatement by a government employee; but certainly, cannot be invoked for reinstatement into service.

(22) However, plea of alternative remedy raised by respondents under Rule 21 of 1970 Rules is not acceptable for the reason that impugned order has been passed in breach of Rule 19 of 1970 Rules, therefore, the same is rejected.

Since appellate authority has failed to adhere the procedure prescribed under Rule 19 of 1970 Rules, therefore, the impugned order has resulted into complete negation of the rule of law.

As a result thereof, it is held that impugned order is not legally sustainable.

(23) In view of the discussions, made hereinabove, there is no option except to allow the present writ petition.

(24) Consequently, writ petition is allowed. Impugned order dated 02.03.2019 is set aside and matter is remitted back to the appellate authority to consider and decide the representation dated 27.08.2018 by treating it as an appeal in accordance with law by passing reasoned order within three months from receipt of certified copy of this order.

Needless to say that acquittal of the petitioner shall also be considered while taking final decision in the matter.

The appellate authority shall not be influenced with the observations made hereinabove while taking final decision.

(25) Chief Secretary, Punjab shall ensure that the Punjab Civil Services (Punishment and Appeal) Rules, 1970, along with complete Instructions issued there-under (up till date), are uploaded on the official website within one month from receipt of certified copy of this order.

(26) Pending application(s), if any, shall also stand disposed off.

June 1st, 2022
Sanjay/Gagan

(MAHABIR SINGH SINDHU)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>