

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

**CM-2522 & 2523-LPA-2019
in/and LPA No.1136 of 2019
Decided on: 19.04.2022**

State of Haryana and others

... Appellants

Versus

Jitender Kumar @ Jitender Singh

... Respondent

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE VIKAS SURI**

Present: Ms. Mamta Singla, DAG, Haryana
for the appellants.

Mr. R.N. Lohan, Advocate
for the respondent.

G.S. Sandhawalia, J.(Oral)

CM-2522-LPA-2019

Application for condoning the delay of 45 days in refiling the
appeal has been filed.

For the reasons mentioned in the application, duly supported by
affidavit of the official, the same is allowed. Delay of 45 days in refiling
the appeal is condoned.

CM stands disposed of.

CM-2523-LPA-2019

Application for condoning the delay of 50 days in filing the
appeal has been filed.

For the reasons mentioned in the application, duly supported by
affidavit of the official, the same is allowed. Delay of 50 days in filing the
appeal is condoned.

CM stands disposed of.

LPA-1136-2019

The State is in appeal against the order of the learned Single Judge dated 04.12.2018 passed in **CWP No.15068 OF 2017 'Jitender Kumar @ Jitender Singh Vs. State of Haryana and others'**, wherein the order dated 06.06.2017 (Annexure P-5) dismissing the writ petitioner, respondent herein, on account of conviction recorded by the Criminal Court, was quashed.

The learned Single Judge came to the conclusion that the conviction as such was under Section 326 IPC and, therefore, it was not a case of moral turpitude. Reliance was placed upon the Policy dated 17/26.03.1975 (Annexure P-7) to the extent that the policy itself showed that persons convicted for moral turpitude should not be taken or retained in government service. Resultantly, it was held that dismissing the petitioner who was working as a clerk with the Haryana Roadways without any inquiry from the police department and by resorting to the provisions of Article 311 (2) (b) of the Constitution of India, was not justified. The learned Single Judge had placed reliance upon the judgment passed in **CWP No.2685 of 2009 'Jai Singh Vs. Haryana State Cooperative Apex Bank Ltd. and another'** decided on 01.05.2014.

Counsel for the State has vehemently submitted that the provisions of Article 311 do not as such distinguish or make any such provision of moral turpitude and, therefore, the judgment is not sustainable.

Mr. Lohan has submitted that the judgment relied upon in **Jai Singh (supra)** was upheld by the Division Bench in **LPA No.931 of 2014** decided on 29.05.2014 and, thus, submitted that the order of the learned Single Judge is justified.

The issue is no longer *res integra*, though the authority while dismissing the writ petitioner as such had referred to his role regarding the act as such, whereby he had been convicted and the fact that he had given *Gandasi* blow upon the body of Mangal Singh and come to the conclusion that such type of person should not be retained in the Government service and retaining such persons would have adverse impact on the functioning of the department as well as on the co-employees.

The provisions of Article 311 of the Constitution of India read as under:-

“311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.

(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Provided that where it is proposed after such

inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply:-

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final”.

A perusal of the same would go on to show that Clause 2 (a) talks about the ground of conduct which has led to the conviction or criminal charge. Thus, the argument as such which has been raised by the counsel for the State is not justified. The law has been settled by the Constitutional Bench of the Apex Court in **'Union of India Vs. Tulsiram Patel', 1985 (2) SLR 576**. Relevant portion of the said judgment reads as under:-

“127. To recapitulate briefly, 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 judgment of the criminal court and consider all the facts and circumstances of the case and the various factors set out in **Challappan's case**. This, however, has to be done by it *ex parte* and by itself. 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 concerned government servant by reason of the exclusionary effect of the second proviso. The disciplinary authority must, however, bear in mind that a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of the concerned Government servant.”

The said view was also followed in '**Kulwant Singh Vs. The Deputy District Primary Education Officer, Gurdaspur**', 1997 (1) PLR 228, which was also a case pertaining to conviction under Section 326 IPC for a period of one year by a Learned Single Judge. In the said case when the criminal appeal of the said employee was also disposed off, it was noticed the employee had apprehended dismissal from service and the learned Single Judge had also noticed that rural quarrels of varied dimensions are a common occurrence in the countryside. It was held that it only reflects virility of the rural folk of this part of the country and it had

been commented that subject to the stringency of the service rules if any, the conviction of the petitioner would not normally stand in the way to continue in service. In spite of that the dismissal order had been passed and thereafter, the writ petition was allowed setting aside the same by holding that it did not involve moral turpitude.

We are also in agreement with the said view and find no reason to come to a different conclusion. Rather the punishing authority also did not consider the service period of the employee at that point of time while passing the extreme order of dismissal, though noticing that he was employed since 1997 and has thus 20 years of service to his credit, which also dispensed without inquiry proceedings on the departmental side. Reliance as such placed upon the Government instructions by the learned Single Judge is also well founded and, therefore, we do not find it a fit case as such to interfere, as there is no patent irregularity or illegality in the said order.

To be fair to the Learned State Counsel who has referred to the judgment in **Jai Kishan Vs. State of Haryana & others, 2005 (2) SCT 567**, to submit that in similar circumstances, dismissal order under Section 311(2) had not been interfered with by the Co-ordinate Bench. We have perused the said judgment and find that the same was based on different facts and circumstances. Firstly, the employee in question had been appointed on ad-hoc basis and on account of his involvement in offence punishable under

Sections 302, 307, 326, 324, 323, 148 read with Section 149 IPC and on account of conviction, his services were terminated. His appeal had been allowed by this Court to the extent that conviction was only maintained under Section 324 IPC. During the period of trial and appeal, he had applied for the post of Sanskrit Teacher and had been selected. However, when it was brought to the notice of the Department that he was a convict under Section 324 IPC, his appointment was cancelled. Thus, he had sought 2 prayers in the writ petition, one for reinstatement in terms of his previous appointment on ad-hoc basis and alternatively, appointment on regular basis in pursuance of the selection.

Keeping in view the fact that it was only an ad-hoc appointment, the policy dated 17/26.03.1975 was distinguished that he does not have any legally vested right to claim reinstatement. It was also noticed that he concealed the fact that there was a case pending against him for a heinous crime and therefore, he had got appointment by taking advantage of his own wrong. It was held that no fault could be found in the order dated 02.07.1997 at the belated stage since the writ petition was decided on 27.02.2005. Similarly, regarding his regular appointment, it was held that there was no indefeasible right to claim appointment especially on account of the fact that the job was of Sanskrit Teacher and therefore, it was not employment like a mechanic in a workshop or a bus conductor and being a guardian of youngsters of impressionable age would deprive

them of impeccable moral values. It was in such circumstances the Co-ordinate Bench had not exercised its extraordinary writ jurisdiction. In the present case, it is to be noticed that the petitioner is only a Clerk in the Transport Department and therefore also, the said judgment would not be applicable in the facts and circumstances. In our considered opinion the judgment of the Division Bench is distinguishable on facts.

The present appeal is, accordingly, dismissed.

(G.S. SANDHAWALIA)
JUDGE

April 19, 2022
Naveen/Sailesh

(VIKAS SURI)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No