

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 27904 of 2022 (O&M)
Date of Decision: 05.12.2022

Anil Kumar

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Rajesh Kumar, Advocate
for the petitioner.

JAISHREE THAKUR, J.

1. The instant writ petition has been filed for issuance of a writ in the nature of Certiorari for quashing the order dated 10.06.2011 passed by respondent No. 2 against the petitioner and also for issuance of directions to the respondents to reinstate the petitioner till the final disposal of appeal pending before this Court.

2. In brief, the facts are that the petitioner was a Lower Division Clerk in the Punjab State Electricity Board. A FIR No. 15 was registered by the Vigilance Bureau at Police Station, Vigilance Bureau, Ferozpur, against the petitioner under Sections 7 and 13 (2) of the Prevention of Corruption Act, 1988 (for short, “the Act”) on 05.06.2007 and he was convicted and sentenced to undergo rigorous imprisonment for a period of 2 years and to pay a fine of Rs. 3000/- and in default of fine to further rigorous imprisonment for two months under the aforesaid sections. Against the conviction and sentence dated 23.12.2010, the petitioner filed Criminal Appeal No. CRA-23-SB/2011, which stands admitted and the sentence of the petitioner was suspended until final

disposal of the appeal. Thereafter, on 08.04.2011, the petitioner represented before the Deputy Chief Engineer, Patiala, however, he was dismissed from his services on 10.06.2011. The petitioner submitted another representation to Deputy Chief Engineer, Patiala on 13.06.2011 for reinstatement of his services who was dismissed from service on account of his conviction and sentence under Sections 13(2) and 7 of the Act but of no avail. Hence the instant writ petition has been filed to impugn the order of his dismissal.

4. The sole grievance of the petitioner is that dismissal so ordered only on the ground of conviction for a criminal offence, without holding a departmental enquiry and the procedure as adopted to dismiss the petitioner is in violation of the requirement as laid down in the Punjab State Civil Service Rules which is bad in law and deserves to be set-aside. The petitioner has represented twice before the Deputy Chief Engineer, Patiala stating that his appeal is pending before this Court and that his services may be reinstated.

5. Learned counsel for the petitioner has primarily urged that order of dismissal without holding departmental enquiry would be bad in law and in violation of the statutory provisions and hence, cannot be sustained. He would also place reliance on a Constitutional bench judgement of the Hon'ble Apex Court in the case of **Union of India vs. Tulsi Ram Patel. 1985(2) SLR 576**, wherein it has been observed 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 lead to his conviction is as such as the warrants the imposition of penalty and if so, what the penalty should be. For the purpose, it will have to peruse the judgement of the criminal court and consider all the facts and circumstances for the case. Once the disciplinary

authority reaches the conclusion that the government servant's conduct was as to require his dismissal or removal from the services or reduction in rank, he must decide which of these penalties should be imposed upon him. This too, it has to do by itself and without hearing the govt. Servant concerned by the reason of the exclusionary of the second proviso. However, a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in the rank of the govt. Servant concerned and, therefore, it is not mandatory to impose of the these major penalties”.

6. A perusal of the order of dismissal reflects that the above guideline has been adhered to by the respondents before passing the dismissal order. The relevant part of the order Annexure P-1 is reproduced as under:-

“According to letter of Punjab Government letter No. 3/23/98-1PP11/10394 dated 3.8.98 (which has adopted by Punjab State Electricity Board vide circular No. 14/2001 Memo No. 157556/15/746/ADP 110 dated 26-06-2001) which are registered in para no. 1, “What is really relevant thus the conduct of the Govt. Employee which has led to his conviction on criminal Charge. Now, in this case (Anil Kumar, LDC) has been found guilty by criminal court, until the said conviction has been set aside by the appellate and Higher Court, I may not be advisable to retail such a person in service...”

7. In **Tulsi Ram Patel** (supra), the Court has observed at length the power of the State under Article 311 of the Constitution, which regulates dismissal, removal or reduction in rank of a person employed in the civil capacity under the Union or a State conferring certain safeguards upon the employees. However, in case of conviction by a criminal court, the safe guard of holding a departmental inquiry before dismissal has been dispensed with.

Article 311 of the Constitution of India is reproduced 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 a 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.”

8. It has been observed by this Court in ***Satish Kumar v. State of Haryana and Another, 2010(20) S.C.T. 428***, that holding an enquiry before

dismissing or removing or reducing a person in rank will not apply in cases of dismissal or removal on ground of conduct which has led to conviction on a criminal charge. It further elaborates that even though sentence is suspended later on, the only proper course is to take action under Article 311(2)(a) of Constitution and suspension of sentence is not a valid ground to withhold action under Article 311(2).

9. There is, thus, no merit in the writ petition and the same is accordingly dismissed.

December 05, 2022*prem***(JAISHREE THAKUR)****JUDGE**

Whether speaking/reasoned :

Yes

Whether Reportable :

No