

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

CWP-19914-2020
Date of Decision: 28.02.2023

<u>Pushpa Devi</u>	Petitioner
<u>Versus</u>	
<u>State of Haryana and others</u>	...Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. R.K. Malik, Senior Advocate, with
Mr. S.S. Randhawa, Advocate, for the petitioner.

Mr. Zorawar Singh Chauhan, DAG, Haryana.

HARNARESH SINGH GILL, J.

The petitioner seeks quashing of the impugned order dated 12/17.11.2020 (P.8), vide which she was ordered to be reverted from Trained Graduate Teacher (Science) to JBT (Junior Basic Training) Teacher.

During the service tenure of the petitioner, FIR No. 85 dated 26.04.2013 under Sections 323, 324, 325, 326, 506 read with Section 34 IPC, was registered at Police Station Sadhaura, against the petitioner and five others.

Owing to the said proceedings, the respondent-Department issued the petitioner a show cause notice dated 09.01.2017 as to why she should not be reverted to her previous post. The petitioner filed reply to the said show cause and after considering the same, the Additional Director Administration, Department of Elementary Education, passed an order dated

19.01.2018 directing therein that the matter be kept pending till the final outcome of the judicial proceedings.

The judicial proceedings culminated in the judgment of conviction and order of sentence dated 26.03.2019 passed by the Judicial Magistrate, Ist Class, Bilaspur. However, in appeal, vide order dated 03.07.2019, the learned Additional Sessions Judge, Yamuna Nagar, suspended the conviction of the petitioner. The said fact was communicated to the authorities vide communication dated 02.11.2020. The authorities, however, without considering the said communication, passed the order dated 12.11.2020, reverting the petitioner to the post of JBT.

Learned Senior Counsel for the petitioner would argue that the criminal proceedings arising out of the aforesaid FIR, have not yet attained finality, as the appeal against the judgment of conviction and order of sentence passed by the trial Court, is still pending before the Additional Sessions Judge, Yamuna Nagar at Jagadhri. It is further submitted that once, the conviction has been stayed by the appellate Court, the matter would come to an identical stage as it existed at the time of passing of the order dated 19.01.2018 by the Additional Director, Administration, Department of Elementary Education. Still further, it is argued that before passing the impugned order, neither any show cause notice was issued to the petitioner nor any opportunity of hearing afforded and that the service Rules do not stipulate for reversion during the pendency of the criminal proceedings.

On the other hand, the learned State counsel, while defending the impugned order, would argue that the departmental proceedings, being independent of the criminal proceedings, can be initiated and order of punishment can very well be passed. It is yet further submitted that when the matter pertains to the criminal proceedings against an employee, then it is not incumbent upon the departmental authorities to either initiate any inquiry or issue any show cause notice or afford any opportunity of hearing and the punishment order can be passed straightway. It is further submitted that the petitioner has only been reverted to her previous position and it is not a case, where the services of the petitioner have been terminated.

I have heard the learned counsel for the parties.

Undisputed is the position that in an appeal filed by the petitioner, her conviction and sentence has been stayed. Suspension of conviction and sentence, would impliedly mean that she is not disqualified to hold her post in the service, as of yet. Still further, the matter cannot be said to have attained finality till the final outcome of appeal or revision, as the case may be.

In the instant case, the FIR in question was registered on 26.04.2013. The Court of Judicial Magistrate, Sub Division, Bilaspur, convicted and sentenced the petitioner vide judgment and order dated 26.03.2019. The petitioner preferred an appeal before the Sessions Court, Yamuna Nagar at Jagadhri. Vide order dated 03.07.2019, the Additional Sessions Judge, Yamuna Nagar at Jagadhri, while suspending the conviction of

the petitioner, passed the following order (relevant extracts only):-

“4. The applicants Manish Kumar and Pushpa, who are stated to be government employees remained on bail throughout the trial of this case. They had been convicted and sentenced by the trial Court vide impugned judgment of conviction and order of sentence dated 26.03.2019. In the appeal filed by them along with other appellants, the substantive sentence imposed upon the appellants, has been suspended by this Court. Since, the applicants Manish and Pushpa are government teachers and their service career may be affected by the conviction order, therefore, their conviction is suspended till further orders. Accordingly, the application stands disposed of being allowed.”

A perusal of the aforesaid extracts would show that the conviction of the petitioner has been suspended vide order dated 03.07.2019. The impugned order has been passed on 17.11.2020. It, thus, clearly, reveals that the authorities while passing the impugned order did not take into consideration the order dated 03.07.2019 passed by the Additional Sessions Judge, Yamuna Nagar at Jagadhri. Yet further, the purport of the order dated 19.01.2018 passed by the Additional Director, Administration, Departmental of Elementary Education, itself stands defeated by the impugned order. Vide the said order, it was directed that the matter be kept pending till the final outcome of the criminal proceedings. As noticed above, the proceedings have not yet attained finality. With the suspension of the conviction and sentence of the petitioner by the Appellate

Court, the situation would come back to the one that existed on the date of passing of the order dated 19.01.2018.

For the reasons recorded above, the impugned order dated 12/17.11.2020 (P.8) cannot be sustained in law. Accordingly, the present petition is allowed and the impugned order is quashed.

28.02.2023
ds

(HARNARESH SINGH GILL)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No