

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-24105 of 2022 (O&M)

Date of decision: 16.02.2023

Vinod Kumar

..Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Nischal Chetanya Manchanda, Advocate, for
Mr. Jagdish Manchanda, Advocate,
for the petitioner.

Mr. R.S.Pandher, Sr. DAG, Punjab

ANIL KSHETARPAL, J(Oral)

1. This writ petition has been filed in order to challenge the correctness of the order dated 11.02.2022 by which the petitioner's job as a Peon has been taken away.

2. The impugned order has been passed solely on the basis of the petitioner's conviction in a cheque dishonour case filed under Section 138 of the Negotiable Instrument Act, 1881. The impugned order proceeds on the basis that the petitioner has been found guilty of forgery and the offence for which he has been convicted is of serious nature.

3. The genesis of power of dismissal from service on the conviction of an employee is provided in Article 311 of the Constitution of India, which is extracted as under:-

“Article 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.”

4. On reading of Clause-(a) of proviso to Article 311(2), it is evident that conviction of an employee on a criminal charge does not

automatically result in his removal from service. It has been provided that in the cases where the employee is found guilty of conduct leading to his conviction which is not expected from a civil servant, in that situation, it can be made the basis to pass an order removing the employee even without holding an inquiry.

5. Similar provision exists in Rule 13(i) of the Punjab Punishment and Appeal Rules, 1970, which reads as under:-

13.Special procedure in certain cases - Notwithstanding anything contained in Rule 8,9,10,11 and 12

(i) where any penalty is imposed on a Government employee on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) where the punishing authority is satisfied for the reasons to be recorded by it in writing that it is not reasonable practicable to hold an inquiry in the manner provided in these rules; or

(iii) where the Government is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules, the punishing authority may consider the circumstances of the case and make such orders thereon as it deems fit;

Provided that the Commissioner shall be consulted, where such consultation is necessary, before any orders are made in any under this rule."

6. It is evident that the Rule 13 also provides that the services of a government employee can be terminated on the ground of conduct which has led to his conviction on a criminal charge. The question that arises for adjudication in this case is "As to whether the competent authority has considered the conduct of the petitioner which led to his conviction?

7. On careful reading of the order, it is evident that the Director, Education Department (Secondary Education) passed the order while observing that the petitioner has been found guilty in a forgery case which is

a serious offence. A bare look at the judgment passed by the trial Court in a complaint under Section 138 of the Negotiable Instrument Act, 1881, it is evident that the complainant in the aforesaid case alleged that the petitioner approached him for a friendly loan of Rs.5,80,000/- which was sought to be refunded by issuing a cheque, however, when the cheque was presented to the bank, it was returned unpaid with the remark “funds insufficient”. After serving notice demanding payment, the complaint was filed. The petitioner while defending the case stated that he had borrowed Rs.1,30,000/- as a loan which has already been re-paid and the complainant misused his blank cheque. As the petitioner has failed to prove his defence, the judgment of conviction was passed and he was sentenced. The aforesaid order was upheld in appeal. The petitioner's revision petition is pending in the High court, in which the bail has been granted.

8. Thus, it is evident that there is neither any allegations of forgery nor there is a finding of the Court. The respondents rely upon the instructions dated 05.08.1998 and the circular dated 14.09.2012. The instructions can only be issued to supplement the rules and not to supplant it. Moreover, a Division Bench in *State of Haryana and another vs. Ram Chander* 2013 SCC Online (P& H) 3704 after considering a parallel provision in Haryana Civil Services (Punishment and Appeal) Rules 1987 held that every kind of conviction does not enable the competent authority to terminate or dismiss the individual holding civil post from service without holding an inquiry. After interpreting the rules, the Division Bench culled out the following principles:-

“11. Following principles can be culled out, as contained in the aforesaid instructions:-

- (a) *Those who are involved in moral turpitude should not be taken in government service.*
- (b) *Those who are convicted of offences, which do not involve moral turpitude or those who are released under the [Probation of Offenders Act](#), should not suffer any disability in respect of obtaining government service.*
- (c) *With regard to those convicted of offence not involving moral turpitude, laying down uniform policy, is not possible and it is left to the appointing authority in each case to make detailed inquiry and satisfy himself fully that ex-convict has reformed himself after release from jail and nothing adverse about his conduct has come to notice after his conviction. Such an inquiry is to be made invariably through Police Department.*
- (d) *What amounts to moral turpitude is also stated in para (iii) of the instructions.*
- (e) *Discretion is given to the competent authority while taking decision in accordance with principle mentioned in these instructions.*

12. On the basis of these instructions, when competent authority is to invoke its power under Rule 7(2)(b) of the P&A Rules, 1978, the first question would be as to whether the offences for which the employee is convicted constitute moral turpitude. If the answer is in the affirmative, it would be open to the competent authority to pass the order of termination without holding inquiry. However, if the offences for which an employee is convicted have no shades of moral turpitude, the disciplinary authority has to look into the attendant circumstances leading to the conduct of such an employee to see whether he is suitable for rejection in

government service or not.”

9. Moreover, in **Om Pal Vs. State of Haryana and others 2015 (26)SCT 231**, the Court held that the conviction under Section 138 of the Negotiable Instrument Act, 1881, is of a quasi criminal nature, as the dispute essentially arises from a civil transaction and ordinarily such conviction has no bearing on service of the employee. Recently the apex Court in **P Mohanraj vs. Shah Brothers Ispat(P) Ltd., 2021 SCC Online SC 152** called Section 138 of the Negotiable Instruments Act, 1881 as a “Civil sheep” in a “Criminal Wolf’s clothing”.

10. Keeping in view the aforesaid facts, this court is of the opinion that the punishment order terminating the services of the petitioner is extremely harsh, considering the fact that he has been in employment as Class-D employee from more than 30 years. The competent authority shall have the liberty to pass fresh order, however, if the petitioner has not attained the age of superannuation he shall be taken back in service, but he shall not be entitled to any back wages in view of the facts and circumstances of the present case.

11. With these observations and discussion, the writ petition is allowed.

12. All the pending miscellaneous applications, if any, are also disposed of.

February 16, 2023
nt

(ANIL KSHETARPAL)
JUDGE

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