

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 888 of 1996 (O&M)

Reserved On: 19.12.2023
Pronounced On: 01.01.2024

State of Punjab and Another
... Appellant(s)

Versus

Atma Singh
... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Vikas Arora, Assistant Advocate General,
Punjab, for the appellant(s).

Mr. Rajiv Atma Ram, Senior Advocate
with Mr. Brijesh Khosla, Advocate
for the respondent.

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab and Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.
2. In this regular second appeal, the correctness of the judgment and decree passed by the First Appellate Court, which, in turn, reversed the judgment and decree passed by the trial Court, is assailed by the defendants (State of Punjab). The issue that arises for consideration is regarding the scope of Court's interference in the order passed by the Disciplinary

Indian Penal Code, 1860 (hereinafter referred to as “IPC”) for attempt to murder under Clause (a) of second proviso to Article 311(2) of the Constitution of India, 1950.

3. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed. At the relevant time, the respondent was working as a Veterinary Pharmacist. He was convicted by the Court of Additional Sessions Judge for having committed an offence under Section 307 IPC on 28.11.1981. He was directed to undergo rigorous imprisonment for a period of three years and to pay a fine of ₹300/-. In appeal, the conviction was upheld on 27.07.1983, however, the sentence was reduced to rigorous imprisonment for two years. The Director, Animal Husbandry, Punjab, on the basis of his conviction, dismissed him from service on 26.07.1988. He filed civil suit on 23.05.1990 challenging the correctness of the order dated 26.07.1988, passed by the Director. The trial Court dismissed the suit on the ground that the order dismissing him from service is neither arbitrary nor grossly excessive or out of proportion to the offence committed by the respondent.

4. However, the First Appellate Court reversed the judgment passed by the trial Court. The State of Punjab’s appeal was admitted on 19.09.1996, while staying the recovery of arrears, however, the directions were issued to the State to reinstate the respondent. Pursuant thereto, the respondent was reinstated into service on 31.10.1998 and he retired on 31.01.2011, after he was given an extension in the service for a period of one year. The provisional pensionary benefits are being paid to him.

5. Heard the learned counsel representing the parties, at length and

with their able assistance, perused the paper-book.

6. The following reasons were recorded by the First Appellate Court while accepting the appeal of the respondent:-

- i) There is nothing in the impugned order to suggest that the Punishing Authority had, in any manner, applied its mind to the facts relating to the incident which led to the conviction of the appellant (the respondent herein).
- ii) The Punishing Authority has not considered the part that had been played by him in the commission of offence.
- iii) The Punishing Authority had not independently examined his conduct which led to his conviction.
- iv) The Punishing Authority was of the opinion that the order of dismissal *ipso facto* follows from conviction for a criminal offence.
- v) The Punishing Authority kept the sword hanging on the respondent's head for about 8 years as he was originally convicted by the trial Court in the year 1981 whereas his appeal was dismissed in the year 1983 but the Punishing Authority passed the order in the year 1988.
- vi) The Punishing Authority has failed to apply its reasonable mind to the facts of the case.
- vii) The Punishing Authority has passed the order mechanically without considering the peculiar facts of the case.

On the one hand, the learned State counsel while relying upon

the judgment passed in *Union of India v. Tulsi Ram Patel (1985) 3 SCC 398* contends that the First Appellate Court has erred in interfering with the Disciplinary Authority's order.

8. On the other hand, the learned senior counsel representing the respondent submits that the Disciplinary Authority has failed to examine the respondent's conduct. He further contends that the Disciplinary Authority had also not considered the question with regard to dismissal, reduction or removal of the respondent. Hence, the judgment passed by the First Appellate Court is correct and shall not be interfered with.

9. The judgment passed by the High Court while upholding the respondent's conviction is Ex.P2. A careful perusal thereof shows that about 8/9 months prior to the incident, Bikker Singh and Malkiat Singh (brother of the respondent) were murdered and Sukhdev Singh, Baldev Singh, Gurtej Singh and Karnail Singh were prosecuted for the said murder. Sukhdev Singh was released on bail in the aforesaid case. Thereafter, the case under Section 107/151 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") was proceeded against Sukhdev Singh, Natha Singh, Modan Singh, Mukhtiar Singh, Banta Singh, Gurdeep Singh, Surjit Singh and Chand Singh. On 07.01.1980, the aforesaid persons including Sukhdev Singh had to appear in the Court of Sub Divisional Magistrate (SDM) when they were on their way to the Court premises, the respondent armed with a . 12 bore gun, along with the various other persons armed with firearms confronted them near the boundary wall of the bus stand. The respondent aimed his gun at Natha Singh, however, Baldev Singh, the Head Constable, who was present at the spot at the particular moment caught hold of the

respondent from his back. However, another co-accused pointed his gun at Baldev Singh on the asking of the respondent. Thereafter, Baldev Singh, in order to prevent the co-accused from firing a shot at him, grappled another accused, namely Surjit Singh. Finding an opportunity, Atma Singh- the respondent fired a gunshot and it resulted in hitting Natha Singh in his chest. In view of the aforesaid facts, the conviction of the respondent was affirmed by the High Court.

10. Clause (a) of second proviso to Article 311(2) of the Constitution of India provides that an employee on the ground of conduct which has led to his conviction on a criminal charge can be dismissed, removed or reduced in rank. In ***Divisional Personnel Officer, Southern Railways and Another v. T.R. Chellappan and Others (1976) 3 SCC 190***, the Supreme Court held that the hearing of the employee before passing an order under clause (a) of Article 311(2) is necessary. However, a Larger Bench in ***Tulsi Ram Patel's case (supra)***, held that the hearing of the delinquent employee is not necessary while passing any such order . While examining clause (a) of second proviso to Article 311(2) of the Constitution of India, the Court in para 127 has held as under:-

“127. Not much remains to be said about clause (a) of the second proviso to Article 311(2). 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. Having decided which of these three penalties is required to be imposed, he has to pass the requisite order. A Government servant who is aggrieved by the penalty imposed can agitate in appeal, revision or review, as the case may be, that the penalty was too severe or excessive and not warranted by the facts and circumstances of the case. If it is his case that he is not the Government servant who has been in fact convicted, he can also agitate this question in appeal, revision or review. If he fails in all the departmental remedies and still wants to pursue the matter, he can invoke the court's power of judicial review subject to the court permitting it. If the court finds that he was not in fact the person convicted, it will strike

down the impugned order and order him to be reinstated in service. Where the court finds that the penalty imposed by the impugned order is arbitrary or grossly excessive or out of all proportion to the offence committed or not warranted by the facts-and-circumstances of the case or the requirements of that particular Government service the court will also strike down the impugned order. Thus, in Shankar Dass v. Union of India and another, 1985 (2) RCR (Criminal) 117: [1985] 2 S.C.C. 358, this Court set aside the impugned order of penalty on the ground that the penalty of dismissal from service imposed upon the appellant was whimsical and ordered his reinstatement in service with full back wages. It is, however, not necessary that the Court should always order reinstatement. The Court can instead substitute a penalty which in its opinion would be just and proper in the circumstances of the case.”

11. If the Court finds that the employee was not in fact the person convicted or where it is found that the order of penalty is arbitrary or disproportionate to the offence committed or is not warranted by the facts and circumstances of the case or the requirements of that particular government service, the Court shall strike down such punishment order. Clause (a) of second proviso to Article 311(2) of the Constitution of India does not require recording of reasons as is envisaged under clause (b) of second proviso. Thus, clause (a) differs from clause (b) in this particular context.

This Court is expected to decide the case at hand keeping in

consideration the aforesaid position of law. It is evident that the respondent attempted to murder Natha Singh due to previous enmity by using the firearms. He was stopped by a Head Constable, namely Gurdev Singh. However, on getting an opportunity, he fired a gunshot hitting Natha Singh in the chest. Thus, it is evident that the respondent's conduct which led to his conviction is sufficient to conclude that he does not deserve to be retained in service. From the perusal of the order passed by the Director, it is evident that the conduct of the respondent was taken into consideration and the competent authority came to a conclusion that his further retention in the government service is undesirable as his conduct is questionable. Before setting aside the order of dismissal of employee under Clause (a), the Court is expected to apply the tests laid down in *Tulsi Ram Patel's case (supra)*. It is evident that neither the order is said to be arbitrary or grossly excessive or disproportionate. The facts and circumstances of the case also prove that the respondent committed the criminal offence in a pre-meditated manner. The respondent had intercepted Natha Singh and others when they were on their way to the Court. Hence, the First Appellate Court was not correct in observing that the Disciplinary Authority did not take into consideration the respondent's conduct.

13. Now, the Court proceeds to analyze the reasons recorded by the First Appellate Court. The first reason recorded by the First Appellate Court is erroneous because from the reading of the punishment order, it is evident that the Disciplinary Authority took into consideration the respondent's conduct which led to his conviction. The second reason also lacks substance

because the Disciplinary Authority had examined the judgment passed by

the trial Court as well as the High Court before ordering his dismissal from service. It is also evident that the respondent played a major part in the commission of the offence. The First Appellate Court has also erred in observing that the Disciplinary Authority failed to independently examine the conduct of the respondent. Similarly, the reason No. (iv) assigned by the First Appellate Court is fallacious because the Disciplinary Authority has taken into consideration the conduct of the respondent. Moreover, it is evident that the punishment order was not passed by someone with a legal background. Hence, it was not appropriate to expect detailed reasons for reaching a conclusion. The reading of the impugned order shows that further retention of the respondent in government service was found undesirable by the competent authority. Thus, it is evident that the First Appellate Court erroneously observed that the Disciplinary Authority passed the order only on the conviction of the respondent for a criminal offence. It is clearly evident that the Disciplinary Authority considered the nature of offence and the conduct of the respondent.

14. The argument of the learned senior counsel representing the respondent although appears attractive in first blush, but is found to be without substance on a deeper scrutiny. It is evident that the respondent was convicted for committing an offence under Section 307 IPC for having attempted to kill Natha Singh with whom he had previous enmity. In these circumstances, the Disciplinary Authority had passed the appropriate order in accordance with law. The Supreme Court in para 27 of the ***Tulsi Ram Patel's case*** (*supra*) which has already been extracted, held that the

Disciplinary Authority is required to pass a requisite order. The order is

neither required to be supported by reasons nor it is required to be passed after granting an opportunity of hearing to the employee as a necessary requisite. In these circumstances, the tests which have been laid down by the Supreme Court are required to be applied before striking down the order passed by the Disciplinary Authority. This aspect has already been examined by the Court. Hence, the argument of the learned counsel representing the respondent lacks substance.

15. The next reason assigned by the First Appellate Court also holds no firm ground because the respondent is not stated to have suffered on account of delay. The Disciplinary Authority passed the impugned order within a period of five years from the date of the judgment of the High Court. No evidence has been led to prove that the respondent suffered any prejudice due to the time taken by the Disciplinary Authority for passing the order.

16. The next reason assigned by the First Appellate Court highlights the non-application of mind by the Disciplinary Authority. As already noticed, while passing the order under clause (a) of second proviso to Article 311(2) of the Constitution of India, the Disciplinary Authority is not required to record reasons.

17. Thus, the judgment passed by the First Appellate Court is not sustainable as it is erroneous. However, this Court cannot overlook the factual situation and the subsequent developments that have taken place in the case at hand. The respondent was dismissed from service in the month of July, 1988, whereas he was reinstated in the service in the month of October,

1996 pursuant to the interim direction of the High Court. Thereafter, he

continued to work for a period just over 14 years.

18. Keeping in view the aforesaid facts and discussion, at this stage, it would not be appropriate to deny the retiral benefits to the respondent. However, he shall not be entitled to the arrears of pay or other benefits apart from whatever has been paid to him for the period between the month of July, 1988 to October, 1996.

19. With the aforesaid modifications, the appeal is disposed of. The State of Punjab is directed to calculate the retiral benefits payable to the respondent forthwith.

20. The miscellaneous application(s) pending, if any, shall stand disposed of.

January 01, 2024
“DK”

(Anil Kshetarpal)
Judge

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No