



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2063-1999

Reserved on:-03.07.2024

Date of Pronouncement:-31.07.2024

Manohar Lal

...Appellant

Versus

The Indian Bank and others

...Respondents

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL

Present : Mr.Kulvir Narwal, Advocate and
Mr.Shubham Chaudhary, Advocate
for the appellant.

Mr.Sumit Batra, Advocate for the respondents.

SUVIR SEHGAL, J.(ORAL)

1. Plaintiff – appellant is in second appeal before this Court challenging the concurrent finding recorded by the Courts below whereby suit for declaration and appeal filed by him have been dismissed by the learned Sub-Judge, Jalandhar and the First Appellate Court, respectively.

2. Pleaded case of plaintiff - appellant is that he joined as a Clerk/Shroff with the defendants at Ludhiana on 07.12.1984. He was



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named as an accused in a criminal case lodged on 02.08.1986 under Section 302 IPC and after trial, was convicted vide judgment dated 05.02.1987, Ex.D1 and a sentence of imprisonment for life besides fine, was imposed upon him. Vide order dated 10.03.1987, Zonal Manager of the defendant, dismissed him from service w.e.f. 05.02.1987 on the ground that he had been convicted by a criminal Court for an offence involving moral turpitude. Plaintiff filed a departmental appeal, which was dismissed by the General Manager (Credit), Madras vide order dated 24.4.1987. Criminal appeal filed by the plaintiff against the conviction order was partly allowed, conviction was converted into Section 304 Part-I, IPC and sentence was reduced to rigorous imprisonment for five years, besides fine. He was released from detention on 11.12.1989 after serving the sentence. He has challenged orders dated 24.4.1987 as well as order 10.03.1987 by filing a suit for declaration to the effect that both the orders are unconstitutional and that he is entitled to continue to serve the defendants on the post on which he was discharging his duty.

3. Upon notice, suit was contested by the defendants by filing a written statement wherein besides taking various preliminary objections, it was submitted that as the plaintiff was convicted for an offence involving moral turpitude, he could not continue with the employment as provided under Section 10 (1) (b) (i) of the Banking Regulation Act, 1949. Plaintiff did not file any replication and on the basis of the pleadings of the parties, issues were framed. After they led evidence, Trial Court by judgment and decree dated 31.01.1995



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dismissed the suit, which was upheld in appeal. Learned Additional District Judge, Jalandhar dismissed the appeal on 03.12.1998, leading to the institution of the present second appeal.

4. Counsel for the appellant has primarily argued that as the appellant had filed an appeal against his conviction and consequential sentence, which had not attained finality, orders of dismissal passed by the authorities were premature. It is also his argument that conviction for an offence under Section 304 Part I IPC, does not involve moral turpitude and orders dismissing the plaintiff – appellant from service are illegal.

5. *Per contra*, learned State counsel has opposed the appeal and while supporting the judgments passed by the Courts below, has asserted that the orders have been passed keeping in view the conduct leading to conviction.

6. I have heard counsel for the parties and considered their respective submissions, besides examining the trial Court record with their able assistance.

7. In **Deputy Director of Collegiate Education (Administration), Madras Vs. S. Nagoor Meera**, (1995) 3, Supreme Court Cases. 377, it has been held as under:-

“9. The Tribunal seems to be of the opinion that until the appeal against the conviction is disposed of, action under clause (a) of the second proviso to Article 311 (2) is not permissible. We see no basis or justification for the said view. The more appropriate course in all such cases is to take action under



Clause (a) of the second proviso to Article 311 (2) once a government servant is convicted of a criminal charge and not to wait for the appeal or revision, as the case may be. If, however, the government servant – accused is acquitted on appeal or other proceeding, the order can always be revised and if the government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to had he continued in service. The, other course suggested, viz., to wait till the appeal, revision and other remedies are over, would not be advisable since it would mean continuing in service a person who has been convicted of a serious offence by a criminal Court. It should be remembered that the action under clause (a) of the second proviso to Article 311 (2) will be taken only where the conduct which has led to his conviction is such that it deserves any of the three major punishments mentioned in Article 311 (2). As held by this Court in Shankardass V. Union of India (1985 (2) S.C.R. 358):

“Clause (a) of the second proviso to Article 311 (2) of the Constitution confers on the government the power to dismiss a person from service “on the ground of conduct which has led to his conviction on a criminal charge.” But that power like every other power has to be exercised fairly, justly and reasonably. Surely, the Constitution does not contemplate that a government servant who is convicted for parking his scooter in a no-parking area should be dismissed from service. He may perhaps not be



entitled to be heard on the question of penalty since clause (a) of the second proviso to Article 311 (2) makes the provisions of that article inapplicable when a penalty is to be imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act justly.”

8. Merely because an employee has filed an appeal against his conviction, which is pending, does not estopp the departmental authorities from taking any action against him on the ground of conduct leading to his conviction on a criminal charge. Even if, during the pendency of the appeal, the execution of the sentence imposed upon an employee by the criminal court is suspended, it does not debar the employer from taking action against him. Reliance in this regard is placed upon **Ram Kishan and others Versus State of Rajasthan (1997) 7 SCC 518**. In view of the dictum of the Supreme Court, the argument raised by the counsel for the appellant that the action taken by the authorities on the basis of the conviction recorded by the trial Court is premature, deserves to be rejected.

9. Before examining the second contention for the counsel for the appellant, it may be noticed that nothing has been brought on the record to show as to whether the appellant preferred any petition before the Hon’ble Supreme Court and if so what was its fate. It appears that the conviction of the appellant has attained finality. The question therefore arises as to whether in these circumstances, the defendants were justified in dismissing the appellant from service as a result of his



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conviction.

10. The contents of the judgments dated 05.02.1987, Ex.D1 passed by the learned Additional District & Sessions Judge, Jalandhar as also judgment dated 28.09.1988, Ex.P11 passed by a Division Bench of this Court reveal that the FIR was lodged against the appellant on the allegation that Satish Kumar deceased, who was a shopkeeper had demanded money for the goods sold by him on credit to the family of the appellant. Satish Kumar was assaulted by the appellant as well as his brothers, Yash Pal and Purshottam Lal. Appellant picked up a “SUA” (ice breaker) from the shop of Satish Kumar and stabbed him in his chest, resulting in his death. The very fact that the appellant has been convicted for culpable homicide not amounting to murder leads to an irresistible conclusion that he is guilty of an offence involving moral turpitude.

11. Although moral turpitude has not been defined anywhere, but it is an act which is immoral, reprehensive and shocks the conscience of the society. It means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or deposition of the person charged with the particular conduct.

12. This Court in **Amrik Singh Versus State of Punjab 1988 (7) SLR 271** held that the word “moral turpitude” has to be judged in each case on its own facts and circumstances. The tests, which would normally be applied for adjudging whether certain offence involves moral turpitude or not appear to be:



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- (i) Whether the act leading to conviction was such as could shock moral conscience of the society in general?
- (ii) Whether the motive which led to the act was agone; and
- (iii) Whether on account of the act having been committed, the delinquent could be considered to be of depraved character or a person who was to be looked down upon by the Society?

13. Upon applying, the aforesaid tests, this Court found that the offence under Section 304 Part I under which the employee had been convicted squarely falls within the purview of moral turpitude and he cannot escape the liability. This finding was affirmed by a Division Bench of this Court in State of Punjab Versus Amrik Singh, 1990 (1) PLR 615 wherein, the State had challenged the judgment of the writ Court to the extent it had directed the authorities to review his case and to award punishment proportionate to the offence with which he has been charged. Similar is the situation in the present case. This Court is, therefore, of the view that there is no infirmity or illegality in the judgments and decrees passed by both the Courts below and they are hereby affirmed.

14. Appeal is devoid of merit and is dismissed with no order as to cost.

15. Pending application, if any, is disposed of.

(SUVIR SEHGAL)
JUDGE

31.07.2024
Brij

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