

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

225

CWP-14250-2019 (O&M)
Date of Decision :23.01.2024

Pankaj Bhattla (since deceased) through LRs**...Petitioner**

Versus

State of Haryana and another**....Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Kartikey Chaudhary, Advocate for the petitioner.

Mr. Harish Rathee, Senior DAG, Haryana.

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Harsimran Singh Sethi, J. (Oral)

1. In the present petition, challenge is to order dated 22.03.2017 (Annexure P/5) by which, the petitioner namely, Pankaj Bhattla was dismissed from service on the ground of his conviction by the Judicial Magistrate 1st Class, Naraingarh vide order 18.03.2015 as well as order dated 07.02.2019 (Annexure P/7) passed by the appellate authority upholding the order of punishment in an appeal filed by the petitioner against the order of punishment.

2. Certain facts need to be mentioned for the correct appreciation of the issue in hand.

3. Petitioner-Pankaj Bhattla was appointed as Taxation Inspector in the month of June, 1995. During his service career, a 3rd party had filed a complaint against the petitioner on the basis of which, a criminal case was registered against the petitioner under Sections 323, 324, 326, 504 and 506

of the IPC and ultimately in the said criminal proceedings, the petitioner was convicted by the Judicial Magistrate 1st Class, Naraingarh vide order dated 18.03.2015 but no sentence of imprisonment was awarded to him and he was given benefit of probation for a period of 06 months. Keeping in view the order of conviction, the petitioner was suspended by the respondents vide order dated 16.12.2015.

4. Petitioner filed an appeal against the order of conviction which was also dismissed. Keeping in view the conviction which had attained finality, petitioner was dismissed from service vide order dated 22.03.2017 (Annexure P/5) on the ground that he stands convicted by the competent court of law.

5. Aggrieved against the said order dated 22.03.2017 (Annexure P/5) passed by the Excise and Taxation Commissioner dismissing the petitioner from service, petitioner had filed an appeal, which came to be dismissed on 07.02.2019 (Annexure P-7), the said orders are under challenge in the present petition.

6. Learned senior counsel appearing for the petitioner argues that once no imprisonment was awarded to the petitioner despite conviction under Sections 323, 324, 326, 504 and 506 of the IPC, it cannot be said that the same reflected upon moral turpitude of the petitioner hence, order passed by the Excise and Taxation Commissioner, Haryana dated 22.03.2017 (Annexure P/5) is liable to be set aside.

7. Learned Senior counsel appearing for the petitioner submits that appeal filed by the petitioner has been rejected by the respondents by taking into consideration other punishments which were imposed during his

service career, which act on the part of the respondents is arbitrary and illegal. Learned senior counsel for the petitioner further submits that keeping in view the facts and circumstances of the present case, punishment imposed upon the petitioner dismissing him from service after rendering 22 years of service, when petitioner became eligible for the grant of pension, is arbitrary and illegal.

8. Learned counsel for the respondents on the other hand submits that once the petitioner was convicted by the competent Court of law, jurisdiction to pass an appropriate order on the basis of the same as to whether the petitioner is entitled to be retained in service or not is within the jurisdiction of the department concerned and the respondent-department has exercised the said jurisdiction by passing order of dismissal from service of the petitioner, which order was upheld by the appellate authority and hence, the present petition challenging the order of dismissal of petitioner from service dated 22.03.2017 (Annexure P/5) as well as order dated 07.02.2019 (Annexure P/7) rejecting his appeal preferred against the said order of punishment, is liable to be dismissed.

9. I have heard learned counsel for the parties and have gone through the record with their able assistance.

10. It may be noticed that during the pendency of the present petition, petitioner-Pankaj Bhattla unfortunately died and the present petition is being pressed by his legal heirs i.e. wife and minor daughter.

11. The question of law which arises for adjudication before this Court is whether in the facts and circumstances of the present case where the petitioner had 22 years of service to his credit and even after conviction,

he was not awarded sentence of imprisonment but was released on probation, the punishment of dismissal from service imposed by the respondents is proportionate and is arbitrary or not.

12. From the facts which have been stated hereinbefore, order dated 22.03.2017 (Annexure P/5) has been passed on the basis of the order of conviction alone. A bare perusal of the order dated 22.03.2017 (Annexure P/5) would show that there is not even a single finding recorded by the officer concerned that the sections under which the petitioner was convicted reflects upon the moral turpitude of the petitioner so as to dismiss him from service. The only reason given for dismissing him from service is that he has been convicted and considering the gravity of the offence, the petitioner cannot be retained in service. The said decision is not in accordance with law.

13. It is a settled principle of law that in case any employee is convicted for criminal offence, the department has a jurisdiction to pass an appropriate order in case conviction is awarded in a particular section of the IPC which reflects upon the moral turpitude of the employee concerned. The finding is to be recorded keeping in view the facts and evidence which came before the Court deciding the criminal proceedings.

14. In the present case, no such consideration has been given by the officer concerned as to how sections of the IPC under which the petitioner was convicted reflects upon moral turpitude of the petitioner. That being the factual position, merely on the basis of the conviction, no order could have been passed by the respondents.

15. Further, the petitioner has been convicted under Sections 323,

324, 326,504 and 506 of the IPC. Learned Senior counsel for the petitioner argues that for the benefit of the administrative department, the instructions dated 26.03.1975 (Annexure P/8) have already issued by the State of Haryana mentioning as to which sections of the IPC reflects upon morals of the employee in case convicted and in those instructions, none of the section under which the petitioner has been convicted has been mentioned. Hence, the said instructions dated 26.03.1975 (Annexure P/8) have not at all been taken into account by the respondents while passing order of dismissal of petitioner from service.

16. Learned counsel for the respondents has not been able to rebut the fact that the State has issued relevant instructions describing as to which sections of the IPC upon conviction will reflect upon the morals of the employee concerned.

17. It is a conceded position that under the said instructions, sections under which the petitioner has been convicted have not been mentioned and even otherwise, the respondents could not have passed the dismissal order simplicitor. Even if, it is assumed for the sake of argument that the same sections under which petitioner was convicted reflects upon the morals of the employee, still respondents should have taken into account 22 years service rendered by the petitioner while passing order of punishment ascertaining if the order of dismissal is justified or the order of compulsory retirement would have also serve the purpose.

18. Hon'ble Supreme Court of India in **Civil Appeal No.4059-2015 titled as Union of India and another vs. R.K. Sharma decided on 30.06.2022** has held that punishment of dismissal from service in case of

absence from duty in the facts and circumstances of the said case was 'too harsh' especially, where an employee concerned had 10 years of service to his credit hence, instead of dismissal from service, compulsory retirement would have been an appropriate punishment. In the present case, the petitioner had 22 years of service to his credit, which fact has totally been ignored by the respondents while passing order of punishment especially, in view of the fact that the none of the section of the IPC under which the petitioner was convicted finds mentioned in the instructions issued by the Government of Haryana mentioning the provisions of law that will be associated with the morality of an employee and also in view the fact that conviction was also not relating to any act of the petitioner done in his official capacity.

19. Further, in the appeal filed by the petitioner against the order of dismissal from service dated 22.03.2017 (Annexure P/5), the appellate authority had gone into the entire service record of the petitioner taking into account past punishments which were imposed upon him and if there was any charge sheet pending against him at the time when the petitioner was dismissed from service while deciding his challenge to the disproportionality of the punishment imposed upon him in view of the conviction relating to a private dispute.

20. Reliance is being placed on the judgment of the Hon'ble Supreme Court of India in **Civil Appeal No.8349-2010 titled as Mohd. Yunus Khan vs. State of U.P. and others decided on 28.09.2010.** Relevant paragraphs of the judgments are as under:-

“33. The courts below and the statutory authorities failed to appreciate that if the disciplinary authority wants to consider the past conduct of the employee in imposing a punishment, the delinquent is entitled to notice thereof and generally the charge-sheet should contain such an article or at least he should be informed of the same at the stage of the show cause notice, before imposing the punishment.

34. This Court in [Union of India & Ors. v. Bishamber Das Dogra](#), (2009) 13 SCC 102, considered the earlier judgments of this Court in [State of Assam v. Bimal Kumar Pandit](#), AIR 1963 SC 1612; [India Marine Service \(P\) Ltd. v. Their Workmen](#), AIR 1963 SC 528; [State of Mysore v. K. Manche Gowda](#), AIR 1964 SC 506; [Colour-Chem Ltd. v. A.L. Alaspurkar & Ors.](#), AIR 1998 SC 948; [Director General, RPF v. Ch. Sai Babu](#), (2003) 4 SCC 331, [Bharat Forge Co. Ltd. v. Uttam Manohar Nakate](#), (2005) 2 SCC 489; and [Govt. of A.P. & Ors. v. Mohd. Taher Ali](#), (2007) 8 SCC 656 and came to the conclusion that it is desirable that the delinquent employee be informed by the disciplinary authority that his past conduct could be taken into consideration while imposing the punishment. However, in case of misconduct of a grave nature, even in the absence of statutory rules, the Authority may take into consideration the indisputable past conduct/service record of the delinquent for "adding the weight to the decision of imposing the punishment if the fact of the case so required."

21. It may be noticed that the order dated 22.03.2017 (Annexure P/5) dismissing the petitioner was passed on the basis of the conviction order and it was not a case where the appellate authority was required to go through the entire service record of the petitioner so as to see whether he was entitled to be retained in service any further or not. It is only when extension in service is to be decided at a particular age, the entire service record of the employee is to be seen but in the present case when dismissal order was passed on the basis of the conviction, the appellate authority while deciding the appeal should have restricted its consideration only to the facts regarding conviction only. In case, the entire service record is to be taken into consideration, the employee concerned has to be given show cause notice of the same whereas, in the present case, no such fact has been brought to the notice of this Court that any show cause notice was given to

the petitioner that while passing order on the basis of conviction, his earlier service record will also be taken into consideration for the purpose of deciding as to whether the petitioner is fit to be retained in service or not.

22. In the absence of any such show cause notice, the appellate authority on its own noted the service record, which fact weighed in the mind of the appellate authority so as to dismiss the appeal of the petitioner filed by him against the order of punishment dated 22.03.2017 (Annexure P/5). Keeping in view the said fact that total service record of the petitioner was taken into consideration without putting the said fact to the petitioner, hence order passed by the appellate authority becomes void and cannot be sustained in the eyes of law, keeping in view the law settled by the Hon'ble Supreme Court of India in **Mohd. Yunus Khan (supra)**.

23. Learned counsel for the petitioner argues that keeping in view the facts and circumstances of the present case, as the petitioner has already died, in case the petitioner was not fit to be retained in service, appropriate order of compulsorily retiring the petitioner from service should have been passed so that the petitioner could have got the benefit of 22 years of service in the shape of pensionary benefits and family pension to the legal heirs after his death.

24. Learned counsel for the respondents submits that even for passing the said order, matter needs to be remanded back to the authority concerned as the said decision can only be taken by the respondents and not by the Court.

25. Though, in the normal circumstances, where the punishment imposed is contrary to the settled principle of law or the procedure as

envisaged or the punishment imposed is not commensurate to the allegations, the same is remanded back to the authority concerned for passing a fresh order but in the present case as the petitioner had already died, hence, no fresh proceedings can be entertained against a dead person hence, this Court will have the jurisdiction in the interest of justice to decide as to what appropriate order could have been passed so that neither of the parties suffers prejudice.

26. As the respondents wanted that petitioner should not be retained in service of the respondent-department after his conviction, the appropriate order would have been to retire the petitioner compulsorily from service. The said order was not passed by the respondents probably, as there were other disciplinary proceedings pending against the petitioner but after the said disciplinary proceedings have already been dropped, there is no impediment in passing the order of treating the petitioner having been compulsorily retired from service by way of punishment upon conviction.

27. Keeping in view the facts and circumstances recorded hereinbefore, order dated 22.03.2017 (Annexure P/5) as well as order dated 07.02.2019 (Annexure P/7) are modified to the extent that instead of dismissing the petitioner from service, the petitioner be treated having been compulsorily retired from service from the date of passing of the said order. Whatever benefits, for which, the employee becomes entitle upon compulsory retirement, will be admissible to the petitioner or his legal heirs after his death including pensionary benefits and family pension.

28. Let the said benefits be computed within a period of 08 weeks from the date of receipt of copy of this order and the same be paid to the

legal heirs of the petitioner.

29. Present petition is allowed in above terms.
30. Civil Miscellaneous application pending, if any, is also disposed of.

January 23, 2024

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(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No