

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-23354-2021
Date of Decision: 22.04.2024

JASVIR SINGH

... PETITIONER

Versus

SANT LONGOWAL INSTITUTE OF ENGINEERING AND TECHNOLOGY,
LONGOWAL AND ANOTHER

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Ashok Bhardwaj, Advocate
for the petitioner.

Mr. J.S.Lalli, Advocate
for the respondents.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Article 226 of the Constitution of India is seeking setting aside of order dated 12.02.2020 (Annexure P-8) whereby he has been dismissed from service on account of conviction in a criminal case.

2. The petitioner on 12.10.2001 joined respondent-Institute as a Technician (Electrical and Instrumentation Engineering). He came to be embroiled in FIR No.206 dated 24.12.2012 registered under Sections 302, 307, 452, 109, 148, 149 and Sections 25, 27 of Arms Act at Police Station Dirba, District Sangrur. The police after completing investigation filed its report under Section 173 Cr.P.C. Learned Additional Sessions Judge, Sangrur vide judgment dated 24.09.2019 held the petitioner and co-accused guilty of commission of

offence punishable under Sections 302, 307 of IPC and Section 25 of Arms Act. He was awarded sentence of life imprisonment. He has preferred CRA-D-848-2019 before this Court which is still pending. He remained in custody from April' 2015 to November' 2021. As on day, his sentence stands suspended. The respondent vide order dated 12.02.2020 has dismissed him from service on account of conviction in a criminal case.

3. Mr.Ashok Bhardwaj, Advocate submits that impugned order is bad in the eye of law. The respondent has power to dismiss an employee on account of his conviction in a criminal case, however, no employee can be subjected to automatic dismissal. The disciplinary authority is duty bound to apply its mind. The said authority is supposed to look at judgment of conviction and determine conduct of the delinquent. In the present case, the respondent has passed a mechanical order. The conduct of the petitioner which led to his conviction has not been scrutinized. A Constitution Bench in **Union of India vs. Tulsiram Patel, 1985(3) SCC 398** has held that no employee can be mechanically dismissed from service on account of his conviction. This Court in **Hari Ram vs. Dakshin Haryana Bijli Vitaran Nigam Ltd. and another, 2006(2) SCT 112** has set aside order of dismissal on the ground that authority failed to consider conduct of delinquent which led to his conviction.

4. Per contra, Mr. J.S.Lalli, Advocate submits that the petitioner was concededly convicted by trial Court. He was declared proclaimed offender and he surrendered in April' 2015. The respondent took a lenient view and he despite being in judicial custody was not dismissed from service. The respondent waited for conclusion of trial. He was convicted vide judgment dated 24.09.2019. Left with no other option, the disciplinary authority dismissed

him from service by impugned order dated 12.02.2020. The petitioner has filed appeal before this Court, however, judgment of conviction has not been stayed.

5. I have heard the arguments of learned counsel for the parties and perused the record with their able assistance.

6. The conceded position emerging from the record is that the petitioner was embroiled in FIR registered under Section 302/307 of IPC. He surrendered in April' 2015 and remained absconding from December' 2012 to April' 2015. He faced trial and remained in custody till the conclusion of trial. The trial Court found him guilty and convicted vide judgment dated 24.09.2019. He has been awarded sentence of life imprisonment. He has preferred an appeal which is pending before this Court. The petitioner has been dismissed from service by order dated 12.02.2020 meaning thereby he remained in service from December' 2012 to January' 2020 despite his involvement in a criminal case. He came to be dismissed on the conclusion of trial.

7. As per petitioner, the impugned order is bad in the eye of law because respondent has failed to consider conduct of the petitioner which led to his conviction. The impugned order has been passed in violation of mandate of proviso to Article 311 (2) of Constitution of India. His case is squarely covered by judgment of Supreme Court in **Tulsiram Patel's case (supra)**.

8. The petitioner as well as respondent are relying upon para 127 of judgment of Supreme Court in **Tulsiram Patel's case (supra)**. The said para for the sake of convenience is reproduced as below :

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 [(1976) 3 SCC 190 : 1976 SCC (L&S) 398 : (1976) 1 SCR 783]. 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 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 [(1985) 2 SCC 358 : 1985 SCC (L&S) 444] 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.

[Emphasis supplied]

9. The judgment of this Court cited by the petitioner is based upon the judgment of Supreme Court in **Tulsiram Patel's case (supra)**. He avers that the respondent was bound to consider conduct of respondent which led to his conviction whereas respondent has passed impugned order in a mechanical manner. His conduct has not been scrutinized. For the ready reference, the impugned order dated 12.02.2020 is reproduced as below :

“WHEREAS Shri Jasvir Singh, Technician, Department of Electrical and Instrumentation Engineering has been convicted on criminal charges under section 148 IPC, 120-B IPC, 302 of IPC, 307 IPC, 450 IPC, 25/54/59 Arms Act by the Court of Jaswinder Sheemar, Additional Sessions Judge, Sangrur in the case titled as State Vs. Gursewak Singh & Others, SC No. 158/2015 on dated 24.09.2019.

AND WHEREAS it is considered that the conduct of Shir Jasvir Singh, Technician, Department of Electrical and Instrumentation Engineering which has led to his conviction is such as to render his further retention in the public service undesirable.

NOW THEREFORE, in exercise of the powers conferred on the undersigned by Rule 19 (i) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 as applied to the employees of SLIET, the undersigned hereby dismisses the said Sh. Jasvir Singh, Technician, Department of Electrical and Instrumentation Engineering with effect from 24.09.2019 i.e. date of conviction.”

10. From the perusal of above-quoted order, it is evident that respondent has noticed that petitioner has been convicted on a criminal charge under Section 302/307 of IPC. The respondent has further recorded that conduct of the petitioner which led to his conviction has rendered him undesirable for further retention in public service.

11. Supreme Court in **Tulsiram Patel's case (supra)** has held that disciplinary authority must bear in mind that a conviction on a criminal charge does not automatically entail dismissal or removal or reduction in rank. The petitioner is relying upon abstract of para 127 of said judgment. The Supreme Court in said para has observed that Disciplinary Authority must peruse the judgment of conviction and consider all the facts and circumstances and the various factors set out in the **Divisional Personnel Officer, Southern Rly. v. T.R. Chellappan,(1976) 3 SCC 190.** Supreme Court in Chellappan's case has held that delinquent employee may be convicted for a trivial offence like raising slogans or traffic violation. In case of conviction in trivial offences, an employee should not be dismissed from service.

12. The findings of **Chellappan's case** as noticed in **Tulsiram Patel's case (supra)** are reproduced as below :

“113It is obvious that in considering this matter the disciplinary authority will have to take into account the entire conduct of the delinquent employee, the gravity of the

misconduct committed by him, the impact which his misconduct is likely to have on the administration and other extenuating circumstances or redeeming features if any present in the case and so on and so forth. It may be that the conviction of an accused may be for a trivial offence as in the case of the respondent T.R. Challappan in Civil Appeal 1664 of 1974 where a stern warning or a fine would have been sufficient to meet the exigencies of service. It is possible that the delinquent employee may be found guilty of some technical offence, for instance, violation of the transport rules or the rules under the Motor Vehicles Act and so on, where no major penalty may be attracted. It is difficult to lay down any hard and fast rules as to the factors which the disciplinary authority would have to consider, but I have mentioned some of these factors by way of instances which are merely illustrative and not exhaustive. In other words, the position is that the conviction of the delinquent employee would be taken as sufficient proof of misconduct and then the authority will have to embark upon a summary inquiry as to the nature and extent of the penalty to be imposed on the delinquent employee and in the course of the inquiry if the authority is of the opinion that the offence is too trivial or of a technical nature it may refuse to impose any penalty in spite of the conviction. This is a very salutary provision which has been enshrined in these Rules and one of the purposes for conferring this power is that in cases where the disciplinary authority is satisfied that the delinquent employee is a youthful offender who is not convicted of any serious offence and shows poignant penitence or real repentance he may be dealt with as lightly as possible. This appears to us to be the scope and ambit of this provision.”

On the conjoint reading of para 127 and findings of **Chellappan's case**, it is evident that Court has principally laid down that conviction of an employee in a criminal case does not automatically entail his dismissal from

service because he may be convicted for a trivial offence. The authorities are duty bound to look at the nature of offence and conviction awarded.

13. In the case in hand, the petitioner has been subjected to sentence of life imprisonment for an offence punishable under Section 302/307 of IPC. The judgment of conviction has not been stayed.

14. From the sequel of events, it comes out that FIR was registered against petitioner in December' 2012 and he was declared proclaimed offender. He surrendered in April' 2015. He remained in custody till the conclusion of trial. The respondent taking a lenient and sympathetic view did not dismiss him from service despite his long incarceration. He was convicted and thereafter awarded sentence of life imprisonment by order dated 24.09.2019 still he was not immediately dismissed. The respondent dismissed him from service on 12.02.2020. He has preferred appeal against the order of conviction, before this Court which is still pending. Act of respondent cannot be called mechanical. The petitioner has been convicted for committing a heinous crime of murder. He has been awarded sentence of life imprisonment. The respondent did not dismiss him as soon as conviction was recorded. The respondent dismissed him from service after 04 months from the date of conviction. In the impugned order, the factum of conviction under Section 302 of IPC has been noticed. He has not been convicted for a trivial offence. Thus, he is not entitled to benefit of findings recorded in Tulsiram Patel's case (supra) read with Chellappan's case.

15. In the wake of above discussion and findings, this Court is of the considered opinion that there is no infirmity in the impugned order warranting interference. The respondent cannot be asked to retain an employee who has been convicted and awarded sentence of life imprisonment.

16. Mr. Ashok Bhardwaj, Advocate at last prays that petitioner may be granted liberty to re-approach authorities, in case his conviction is set aside by Appellate Court. Court is inclined to accept this prayer of the petitioner. He is at liberty to re-approach authorities in case his conviction is set aside at any stage.

17. Dismissed with liberty aforesaid.

(JAGMOHAN BANSAL)
JUDGE

22.04.2024
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Whether speaking/reasoned	Yes
Whether reportable	Yes