
(2012) 07 P&H CK 0067

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 23306 of 2010

Kulwant Singh Ex
Driver

APPELLANT

Vs

State of Punjab and
Others

RESPONDENT

Date of Decision: July 11, 2012

Acts Referred:

- Penal Code, 1860 (IPC) - Section 323, 324, 325, 326, 34

Citation: (2013) 2 SLJ 84

Hon'ble Judges: Tejinder Singh Dhindsa, J

Bench: Single Bench

Advocate: Manu K. Bhandari, for the Appellant; Suvir Sehgal, Addl. A.G., Punjab, for the Respondent

Final Decision: Allowed

Judgement

Tejinder Singh Dhindsa, J.

The petitioner was appointed as a Driver in the Punjab Roadways, Ludhiana Depot on 6.1.1999. Prior to his appointment an F.I.R. No. 29 dated 14.4.1998 under Sections 323, 324, 325, 427 and 34, I.P.C. had been registered against the petitioner, his father as also two others. A cross case was also registered against the complainant Nazar Singh and others by the father Of the petitioner under Sections 323, 326, 427 and 34, I.P.C. in terms of judgment dated 29.10.2001 passed by the J.M.I.C. Fatehgarh Sahab the petitioner along with others was convicted for offences under Sections 323, 324, 325, 427 and 34, I.P.C. in appeal the Addl. Sessions Judge had upheld the order of conviction but reduced the sentence that the petitioner had been awarded. Suffice it to notice that even the complainant i.e. Nazar Singh against whom the cross case had been filed was also convicted and sentenced on the same terms. The petitioner approached the High Court in terms of filing Criminal Revision No. 1572 of 2003 and on 31.7.2003 the revision petition was admitted and the sentence awarded to the petitioner was suspended. The petitioner

was placed under suspension by the General Manager, Punjab Roadways, Ludhiana vide order dated 19.8.2003 (Annexure P-5). Thereafter, the petitioner was dismissed from service vide order dated 5.3.2004 on account of having been convicted in pursuance to the criminal proceedings. The petitioner preferred a departmental appeal in terms of raising a specific plea that the offence for which the petitioner had been convicted did not involve any moral turpitude. Vide order dated 7.12.2005 passed by the Special Secretary, Transport Department, State of Punjab the petitioner was directed to be reinstated in service subject to the final decision of the High Court in the Criminal Appeal that was pending. In pursuance of such order the petitioner rejoined duties on 21.12.2005.

2. Criminal Revision No. 1572 of 2003 came to be decided by this Court vide judgment dated 11.2.2010, whereby the conviction of the petitioner along with others was maintained but the High Court reduced the sentence to the one already undergone. Thereafter, the matter was reconsidered at the hands of the respondent-authorities and vide impugned order dated 26.10.2010 (Annexure P-15) passed by the Director, State Transport, Punjab the petitioner has been ordered to be dismissed from service only on the basis that he is a convicted employee. It is in terms of impugning such order dated 26.10.2010 (Annexure P-15) that the present petition has been preferred by the petitioner.

3. Mr. Manu K. Bhandari, learned Counsel appearing for the petitioner submits that the services of the petitioner could not have been terminated simply on the basis of the conviction of the petitioner in criminal proceedings. Learned Counsel would contend that it was imperative for the respondent-authorities to have examined the conduct of the petitioner, which had led to his conviction.

4. On the other hand Mr. Suvir Sehgal, learned Addl. A.G., Punjab would justify the passing of the impugned order in terms of taking a stand that even though, reasons did not find mention in the impugned order itself but the facts would speak for themselves and in this regard would make a pointed reference to the judgment of conviction passed against the petitioner as also others to contend that the petitioner has been found guilty to have caused grievous hurt to one Saudagar Singh with a blunt weapon and in furtherance of a common intention and as such stands convicted under Sections 323, 324, 325, 427 and 34 I.P.C. Learned Counsel would, accordingly, argue that it would not be in public interest for such a convicted employee to be retained in service.

5. I have heard respective Counsel for the parties at length.

6. The short question that would require consideration in the present writ petition is as to whether upon conviction of an employee in a criminal matter, whatever be the conduct of the delinquent leading to his conviction, would the same necessarily lead to an order of dismissal or as to whether while inflicting punishment the conduct leading to the conviction of such delinquent has to be taken into consideration.

7. A Constitution Bench of the Hon"ble Apex Court in case of [Union of India and Another Vs. Tulsiram Patel and Others](#), has already dealt with such precise question and it was held as under:--

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. 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 Government servant concerned by reason of the exclusionary effect of the second proviso. However, a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of the Government servant concerned and, therefore, it is not mandatory to impose any of these major penalties.

8. A perusal of the impugned order dated 26.10.2010 (Annexure P-15) clearly reveals that the conduct of the petitioner which has led to his conviction has not been considered and no finding has been returned by the Punishing Authority that the conduct of the petitioner has been found to be of such a serious magnitude that it warrants dismissal from service. The judgment of the Criminal Court was required to be read and considered by the Competent Authority which had passed the impugned order and upon due application of mind it was required to be concluded as to whether the petitioner was worthy of retention in service or if, any other suitable punishment was required to be inflicted. Towards holding such view, I would draw support from two Division Bench judgments of this Court rendered in case of Hari Ram v. Dakshin Haryana Bijli Vitran Nigam Ltd., 2006(2) S.C.T. 112 and Kaur Singh & Anr. v. Punjab State Electricity Board & Ors., 2007(4) S.C.T. 426. In view of the reasons recorded above the impugned order dated 26.10.2010 (Annexure P-15) is set aside and the matter is remanded back to the Disciplinary Authority to consider the aspect of the conduct of the petitioner leading to his conviction and as to whether the same would still entail and warrant the imposition of the extreme penalty of dismissal. Such re-consideration and passing of a fresh order be done within a period of four months from the date of receipt of a certified copy of this order. It is, however, directed that reinstatement of the petitioner shall remain in abeyance till fresh consideration is accorded and will depend upon the outcome of such fresh consideration. Writ petition is allowed in the aforesaid terms.