(2000) 11 P&H CK 0265

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 16776 of 1999

Harish Kumar		APPELLANT
	Vs	
State of Haryana		RESPONDENT

Date of Decision: Nov. 7, 2000

Acts Referred:

- Constitution of India, 1950 - Article 226, 311(1)
- Haryana Civil Services (Punishment and Appeal) Rules, 1987 - Rule 7
- Penal Code, 1860 (IPC) - Section 148, 149, 302

Hon'ble Judges: V.S. Aggarwal, J; Amar Bir Singh Gill, J

Bench: Division Bench

Advocate: R.K. Malik, for the Appellant; R.S. Tacoria, Additional A.G., for the Respondent

Final Decision: Dismissed

Judgement

V.S. Aggarwal, J.
Harish Rumar petitioner seeks quashing of order dated 9.8.1999 by virtue of which his services had been terminated.

2. The relevant facts alleged are that the petitioner was appointed as a Math Master on 9.2.1995. A criminal case with respect to the offence punishable u/s 302 of the Indian Penal Code was registered against him. On 15.4.1999, he was held guilty of the said offence by the Court of Sessions. The petitioner preferred an appeal which was stated to be pending but during pendency of the appeal, he had been admitted to bail.

3. After the petitioner was admitted to bail, he claims that he wanted to report on duty but was not allowed. The District Education Officer, Rewari, had taken clarification from the Director, Secondary Education, Haryana and thereafter in compliance with the directions, the District Education Officer terminated the service of the petitioner. The petitioner assails the said order terminating his services contending that his services have been terminated retrospectively from 15.4.1999

though the order was passed on 19.8.1999 and, therefore, it is illegal. He further claims that the order terminating his services could only be passed taking into account his conduct. The same has not been taken into account and further that the District Education Officer had not been taken into account and further that the District Education Officer had not even seen the judgment of the Court of Sessions and on these grounds, according to the petitioner, the order terminating his services necessarily should be quashed.

4. In the written statement riled by respondents No. 1 to 3, the petition as such had been contested. It has been pointed out that the petitioner has been held guilty of the offence punishable u/s 302 read with Section 149 of the Indian Penal Code. Therefore, it was not necessary to give any show cause notice to the petitioner. His services were terminated and accordingly was not allowed to join the duty. The order was stated to be just under the circumstances. It was reiterated that major penalty was imposed on account of the conduct of the petitioner in terms that the conduct of the petitioner which led to his conviction was imprisonment for life with respect to the offence punishable u/s 302 of the Indian Penal Code. It was insisted that the services of the petitioner were terminated after going through the judgment.

5. So far as the contention that the order wrongly have been passed terminating the services of the petitioner retrospectively is concerned, the same indeed is not devoid of any merit. Admittedly, the petitioner was held guilty of the offence punishable u/s 302 read with Section 149 of the Indian Penal Code. The judgment is stated to have been pronounced on 15.4.1999. The order terminating the services of the petitioner has been passed on 19.8.1999 with effect from 15.4.1999. In other words, retrospective operation of the same had been given.

6. Indeed, the authority concerned had no jurisdiction to pass the order from retrospective effect. It would be deemed to be passed from the date of the order. It is for the authorities to consider as to what allowance has to be given for the period i.e. 15.4.1999 to 19.8.1999.

7. The only other argument advanced was that the District Education Officer, did not apply his mind to the question in controversy as to whether the conduct of the petitioner was such that his services should be terminated and otherwise also he took the advice of the Director, Secondary Education, Haryana, before terminating the services and on both the counts, therefore, the order cannot be sustained. Rule 7(b) of the Haryana Civil Services (Punishment and Appeal) Rules, 1987, reads as under :-

"Rule 7(b). The provisions of the foregoing sub-rule shall not apply where any major penally is proposed to be imposed upon a person on the ground of conduct which has led to his conviction on a criminal charge; or where an authority empowered to dismiss or remove him, or reduce him in rank is satisfied that, for some reasons to

be recorded by him in writing, it is not reasonably practicable to give him an opportunity of showing cause against the action purposed to be taken against him, or wherein the interest of the security of the State it is considered not expedient to give to that person such an opportunity."

It is true that when a person is convicted of a criminal charge, necessarily one should see the conduct which led to the conviction of the accused. So far as the present petitioner is concerned, he has been held guilty of the offence punishable u/s 302 read with Section 149 of the Indian Penal Code. The conduct can be seen from the judgment of the learned Sessions Judge, Revvari. Since the appeal is pending, we deem it unnecessary to say much in this regard but suffice to say that taking stock of the totality of the fact the conduct is not much to be appreciated. A perusal of the correspondence clearly shows that the District Education Officer had taken note of the conduct of the petitioner. He has clearly written to the Director, Secondary Education, Haryana, that the petitioner was involved in a murder case and remained in jail from 15.4.1999 to 9.8.1999. Thus, though he was taking the advise of the Director, Secondary Education, Haryana, it cannot be termed that he did not take into account the conduct of the petitioner. The facts speak for themselves.

8. As regards if the District Education Officer had applied his own mind or not, indeed, the record reveals that he has taken the guidance from the Director, Secondary Education, Haryana, but this was with respect to the absence of the petitioner from 15.4.1999 to 9.8.1999. The Director, Secondary Education, Haryana, wrote back that the services of the petitioner should have been terminated from 15.4.1999. Thereupon, the District Education Officer, Rewari, had passed the following order :-

"Sh. Harish Kumar son of Sh. Sher Singh Moh. Badal Vill. and P.O. Kosli, District Rewari, was appointed as Maths Master on Ad hoc basis vide this office order No. E/95/Adhoc/183-87 dated 7.2.1994 and was posted in Government High School Kosli. In compliance with Director, Secondary Education, Haryana, Chandigarh, order No. 14/98-99-E-II(3) dated 16.8.1999 his services are hereby terminated with retrospective effect i.e. from 15.4.1999 as he remained in judicial custody.

He was convicted and sentenced to undergo RI for life u/s 302 read with Section 149 I.P.C. under Session Case No. 33 of 3.9.97/30.1.92 FIR No. 249 and 29.9.1991 under Sections 302/323 read with Sections 149 and 148. I.P.C. P.S. Jatusanaby the Hqn''ble Court of Sh. M.M. Sharma, Additional Session Judge, Rewari, order dated 15.4.1999."

It is abundantly clear that the District Education Officer acted on the advise dated 15.4.1999 but he had taken the conduct into consideration and in the next paragraph pointed out that this isbecause the petitioner had been convicted of the offence under Sections 302/148 and 149 of the Indian Penal Code. Consequently, the arguments so much thought of by the learned Counsel must fail and necessarily

has to be repelled. The authority had applied his own mind. In any event, the Director, Secondary Education, Haryana, was the high authority than District Education Offleer. Thus, rigors of Article 311(1) of the Constitution of India will not come to the rescue of the petitioner.

For these reasons, subject to what is recorded above, the writ petition must fail and is dismissed.

9. Petition dismissed.