Neutral Citation No. - 2023:AHC:169979

A.F.R.

Court No. - 36

Case :- WRIT - A No. - 11761 of 2023

Petitioner :- Manoj Kumar Katiyar
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Dhananjay Kumar Mishra
Counsel for Respondent :- C.S.C.,Ajeet Singh

Hon'ble Manjive Shukla,J.

1. Heard learned counsel appearing for the petitioner and learned Standing Counsel appearing for the Respondent No. 1 as well as Mr. Ajeet Singh, learned counsel appearing for the Respondents No. 2 & 3.

2. Petitioner through this writ petition has challenged the order dated 26.12.2014 passed by the District Basic Education Officer, Kanpur Dehat whereby petitioner has been dismissed from service on the ground that he has been convicted in Session Trial No. 531 of 2009 (State Vs. Manoj Katiyar & Anr.) arising out of Case Crime No. 314 of 2009. Petitioner through this writ petition has also challenged the order dated 18.04.2023 whereby representation of the petitioner for his reinstatement in service has been rejected.

3. Facts of the case, in brief, are that the petitioner was initially appointed on the post of Assistant Teacher in Primary School Saray, Block Amraudha, District Kanpur Dehat on 22.11.1999. Thereafter petitioner was promoted to the post of Assistant Teacher in Uchcha Prathmik Vidyalay, Rasoolpur, Block Rasoolabad, District Kanpur Dehat on 22.01.2007.

4. Petitioner while in service was implicated in Case Crime No. 314 of 2009 which was registered under Section 498-A, 302/34 I.P.C. Petitioner was subjected to trial in Session Trial No. 531 of 2009 (State Vs. Manoj Katiyar & Anr.) and vide judgment and

order dated 22.01.2013 he has been convicted and vide order dated 23.01.2013 he has been sentenced for life imprisonment under Sections 302/34 I.P.C. and rigorous imprisonment of two years under Section 498-A I.P.C.

5. District Basic Education Officer, Kanpur Dehat has passed an order on 26.12.2014 whereby petitioner has been dismissed from service on the ground that he has been convicted vide judgment and order dated 22.1.2013 passed in Session Trial No. 531 of 2009.

6. Petitioner after the aforesaid judgment and order dated 22.01.2013 passed in Session Trial No. 531 of 2009 was sent to judicial custody. Petitioner has been granted bail by the Hon'ble Supreme Court vide order dated 04.01.2023 passed in Special Leave to Appeal (Crl) No. 10265 of 2022 (Manoj Katiyar Vs. State of U.P.).

7. Petitioner after being released on bail submitted a representation on 27.01.2023 to the District Basic Education Officer, Kanpur Dehat whereby he requested that since he has been released on bail, therefore, he may be reinstated in service. The District Basic Education Officer, Kanpur Dehat in response to the representation of the petitioner informed the petitioner vide his letter dated 18.04.2023 that the petitioner has already been dismissed from service vide order dated 26.12.2014 and copy of the order dated 26.12.2014 was again provided to the petitioner through the aforesaid letter.

8. Learned counsel appearing for the petitioner has argued that Article 311 (2) of the Constitution of India provides that no person who is a member of the Civil Service of the Union or All India Service or a Civil Service of a State or holds a civil post under the Union or a State shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges framed against him and given a

reasonable opportunity of being heard in respect of those charges provided, no inquiry is required where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge.

9. Learned counsel appearing for the petitioner has further argued that in view of the provisions made in Article 311 (2) of the Constitution of India petitioner would have been dismissed from service only on the basis of conduct which led to his conviction in Session Trial No. 531 of 2009 i.e. disciplinary authority was under obligation to consider the conduct of the petitioner which led to his conviction and only thereafter he could have passed the order for dismissal of the petitioner from service.

10. Learned counsel appearing for the petitioner has vehemently argued that the order dated 26.12.2014 on its face reveals that the petitioner has been dismissed from service merely on the ground that he has been convicted vide judgment and order dated 22.01.2013 passed in Session Trial No. 531 of 2009 but the conduct of the petitioner which led to his conviction has not been considered at all, therefore, the order dated 26.12.2014 passed by the District Basic Education Officer, Kanpur Dehat is in gross violation of the provisions made in the aforesaid Article 311 (2) of the Constitution of India.

11. Learned counsel appearing for the petitioner has invited attention of this court towards the law laid down by the Hon'ble Supreme Court in the Case of ***Union of India Vs. Tulsi Ram Patel (1985) 3 SCC 398*** wherein it has been held that before denying a government servant from his constitutional right to an inquiry, the first consideration would be whether the conduct of the concerned government servant is such which justifies the penalty of dismissal, removal or reduction in rank. Hon'ble Supreme Court has further held that once the conclusion is

reached in respect of the conduct of a government servant which led to his conviction only then the government servant can be dismissed, removed or reduced in rank from service without conducting inquiry.

12. Learned counsel appearing for the petitioner has also relied upon the Division Bench judgments of this court rendered in the cases of ***Shyam Narayan Shukla Vs. State of U.P. 1988 (6) LCD 530*** and ***Sadanand Mishra Vs. State of U.P. 1993 LCD 70*** and has argued that since the petitioner has been dismissed from service vide order dated 26.12.2014 without considering the conduct which led to his conviction, therefore, in view of the provisions made under Article 311 (2) of the Constitution of India petitioner could not have been dismissed from service without conducting an inquiry. Learned counsel appearing for the petitioner has thus concluded his arguments by submitting that the order dated 26.12.2014 passed by the District Basic Education Officer, Kanpur Dehat is violative of the provisions made under Article 311 (2) of the Constitution of India, therefore, cannot sustain in the eyes of law and thus is liable to be quashed by this court.

13. Per contra, learned counsel appearing for the Respondents No. 2 & 3 has argued that since the petitioner has been convicted vide judgment and order dated passed in Session Trial No. 531 of 2009, therefore, the District Basic Eduction Officer, Kanpur Dehat has passed order on 26.12.2014 and thereby petitioner has been dismissed from service. Learned counsel appearing for the Respondents No. 2 & 3 has further argued that since the petitioner has already been convicted therefore, order dated 26.12.2014 whereby petitioner has been dismissed from service is perfectly legal and does not violate any provision of the Constitution of India.

14. Learned counsel appearing for the Respondents No. 2 & 3 thus, has concluded his arguments and has submitted that there is neither any illegality nor infirmity in the order dated 26.12.2014 which is impugned in the present writ petition, therefore, writ petition filed by the petitioner is liable to be dismissed by this court.

15. I have considered submissions advanced by the learned counsels appearing for the parties and I find that Article 311 (2) of the Constitution of India provides that a government servant cannot be dismissed removed or reduced in rank without conducting an inquiry in which the said government servant is associated and afforded opportunity of hearing but where a government servant is dismissed from service on the ground of his conduct which led to his conviction in relation to a crime, then there is no necessity of holding inquiry. The Article 311 (2) of the Constitution of India is extracted as Under :-

311 (1)…….

> *(2) "No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed: Provided further that this clause shall not apply*
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> *(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or*
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> *(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or*
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> *(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry."*

16. Hon'ble Supreme Court in the case of ***Union of India Vs. Tulsi Ram Patel (1985) 3 SCC 398*** has considered the

provisions of Article 311 (2) and has held that where a government servant is dismissed from service on the basis of conduct which led to his conviction then disciplinary authority is under obligation to consider the conduct of the government servant which led to his conviction and thereafter finding must be recorded that the conduct of the government servant is such that he cannot be retained in service. The relevant portion of the judgment of the Hon'ble Supreme Court rendered in the case of **Union of India Vs. Tulsi Ram Patel (Supra)** is extracted as under :-

> *Before, however, any clause of the second proviso can come into play the condition laid down in it must be satisfied. The condition for the application of each of these clauses is different. In the case of clause (a) a government servant must be guilty of conduct deserving the penalty of dismissal, removal or reduction in rank which conduct has led to him being convicted on a criminal charge. In the case of clause (b) the disciplinary authority must be satisfied that it is not reasonably practicable to hold an inquiry. In the case of clause (c) the President or the Governor of a State, as the case may be, must be satisfied that in the interest of the security of the State, it is not expedient to hold an inquiry. When these conditions can be said to be fulfilled will be discussed later while dealing separately with each of the three clauses. The paramount thing, however, to bear in mind is that the second proviso will apply only where the conduct of a government servant is such as he deserves the punishment of dismissal, removal or reduction in rank. If the conduct is such as to deserve a punishment different from those mentioned above, the second proviso cannot come into play at all, because Article 311 (2) is itself confined only to these three penalties. Therefore, before denying a government servant his constitutional right to an inquiry, the first consideration would be whether the conduct of the concerned government servant is such as justifies the penalty of dismissal, removal or reduction in rank. Once that conclusion is reached and the condition specified in the relevant clause of the second proviso is satisfied, that proviso becomes applicable and the government servant is not entitled to an inquiry. The extent to which a government servant can be denied his right to an inquiry formed the subject-matter of considerable debate at the Bar and we, therefore, now turn to the question whether under the second proviso to Article 311(2) even though the inquiry is dispensed with, some opportunity at least should not be afforded to the government servant to that he is not left wholly without protection. As most of the arguments on this Part of the case were common to all the three clauses of the second proviso, it will be convenient at this stage to deal at one place with all the arguments on this part of the case, leaving aside to be separately dealt with the other arguments pertaining only to a particular clause of the second proviso.*
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> ……..

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. 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 all 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 and another, 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.

17. The Division Bench of this court in the case of ***Shyam Narayan Shukla Vs. State of U.P. 1988 (6) LCD page 350*** has considered the provisions of Article 311 (2) of the Constitution of India and has held as under :-

The order dated 28.3.1985, by which Sri Jamuna Prasad Shukla was dismissed from service, was set aside by this Court in Writ Petition No 1701 of 1985 merely on the ground that the dismissal order was based on the conviction of the petitioner, which was in violation of clause (a) to the proviso to Article 311 (2) of the Constitution under

which it was incumbent for the authority concerned to have taken into consideration the petitioner"s conduct which had led to his conviction on a criminal charge under section 302 I.P.C. For this purpose reliance was placed on a decision of this Court in Trilok Chandra Sharma Vs. State of U.P. & others (1984 (2) LCD 294) rendered by a Division Bench, of which one of us (S.S. Ahmad, J) was a member. In that judgment, reliance was placed on a decision of the Supreme Court in Division Personnel Officer, Southern Railway and another v. T.R. Challappan (1976 (1) SCR 783) which has since been overruled by the Supreme Court itself in its later decision in Union of India v. Tulsi Ram Patel (1985 (3) SCC 398). The relevant portion of the Supreme Court"s judgment in Tulsi Ram Patel"s case is quoted below :

> *"Not much remains to be said about clause (a) of 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 Case, This, however, has to be done by it ex parte and by itself. Once the disciplinary authority reaches to conclusion that the government servant"s conduct was such as to require 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 the particular government service the court will also strike down the impugned order. Thus, in Shanker Dass v. Union of India 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."

7. In view of the above decision of the Supreme Court, it has to be held that whenever a Government servant is convicted of an offence, he cannot be dismissed from service merely on, the ground of conviction but the appropriate authority has to consider the conduct of such employee leading to his conviction and then to decide what punishment is to be inflicted upon him. In the matter of consideration of conduct as also the quantum of punishment the employee has not to be joined and the decision has to be taken by the appropriate authority independently of the employee who, as laid down by the Supreme Court, is sot to be given an opportunity of hearing at that state.

8. In view of the Supreme Court judgment in Tulsi Ram Patel"s case (supra) the decision in Sri Shukla"s earlier writ petition no. 1701 of 1985 that he was entitled to a hearing as contemplated under Article 311 (2) of the Constitution cannot be said to lay down correct law and the said decision to the extent that it calls upon the opposite parties to hold fullfledged disciplinary enquiry as contemplated by Article 311 (2) of the Constitution cannot, therefore, be enforced but to the extent that it sets aside the order of dismissal dated 28.3.1985 can be enforced against the opposite parties by requiring them to pass a fresh order after taking into consideration the conduct of the petitioner, namely, Sri Jamuna Prasad Shukla, which had led to his conviction in Sessions Trial No. 946 of 1980 and then to decide the quantum of punishment which is to be inflicted upon him.

18. The Division Bench of this court in the case of **Sadanand Mishra Vs. State of U.P. 1993 LCD 70** has considered the provisions of Article 311 (2) of the Constitution of India and has held as under :-

22. But the legal position as set out at (ii) above has since been upset by the Supreme Court in Union of India Vs. Tulsi Ram Patel 1985 (3) SCC 398 in which the Supreme Court observed as Under :-

"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 servent 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 Challapan Case. This, however, has to be done by it ex-parte and by itself. Once the disciplinary authority reached to conclusion that the government servants' conduct was such as to require 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 excesive or out of all proportion to the offence committed or not warranted by the facts and circumstances of the case or the requirements of the partcular government service the court will also strike down the impugned order. Thus, in Shanker Dass v. Union of India 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."

19. It will be noticed that in recording the above principles, the Supreme Court over-ruled its previous judgment in Divisional Officer, Southern Railway and another v. T. R. Challappan (1976(1) SCR 783).

20. The principles enunciated by Hon'ble the Supreme Court are:

(1) On the conviction of an employee on a criminal charge, the order of punishment cannot be passed unless the conduct which had led to his conviction is also considered.

(2) The scrutiny or examination of conduct of an employee leadng to his conviction is to be done ex-parte and an opportunity of hearing is not to be provided for this purpose to the employee.

19. This court has considered the provisions of Article 311 (2) of the Constitution of India in the case of ***Ram Kishan Vs. State of U.P. & Ors. 2020 (1) ADJ 862*** and had held that on conviction of an employee on a criminal charge, the order for dismissal, removal or reduced in rank cannot be passed unless conduct which led to his conviction is considered. The relevant portion of the judgment of this court rendered in the case of ***Ram Kishan Vs. State of U.P. & Ors.*** (Supra) is extracted as under :-

"In view of the above decision of the Supreme Court, it has to be held that whenever a Government servant is convicted of an offence, he cannot be dismissed from service merely on, the ground of conviction but the appropriate authority has to consider the conduct of such employee leading to his conviction and then to decide what punishment is to be inflicted upon him. In the matter of consideration of conduct as also the quantum of punishment the employee has not to be joined and the decision has to be taken by the appropriate authority independently of the employee who, as laid down by the Supreme Court, is sot to be given an opportunity of hearing at that state."

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12. In Shankar Das v. Union of India, 1985 (2) SCR 358, Hon'ble Supreme Court while referring to power under Clause (a) of second proviso of Article 311(2) of the Constitution of India, has observed as under: -

"Be that power like every other power has to be exercised fairly, justly and reasonably."

13. Proviso (a) to Article 311 of the Constitution of India, is an exception to clause (2) of Article 311, which is applicable where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge. In case of Divisional Personnel Officer, Southern Railway Vs. T.R. Chellappan, 1976 (3) SCC 190 (para-21), Hon'ble Supreme Court considered Article 311(2), Proviso (a) and held that this provision confers power upon the disciplinary authority to decide whether in the facts of a particular case, what penalty, if at all, should be imposed on the delinquent employee, after taking 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. 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. The disciplinary authority has the undoubted power after hearing the delinquent employee and considering the circumstances of the case to inflict any major penalty on the delinquent employee without any further departmental inquiry, if the authority is of the opinion that the employee has been guilty of a serious offence involving moral turpitude and, therefore, it is not desirable or conducive in the interests of administration to retain such a person in service. In Sushil Kumar Singhal vs. Regional Manager, Punjab National Bank, 2010 (8) SCC 573 (Paras-24 and 25), Hon'ble Supreme Court explained the meaning of the

words 'moral turpitude' to mean anything contrary to honesty, modesty or good morals.

14. Thus, in view of the law laid down by Hon'ble Supreme Court in the cases of Tulsiram Patel (supra), T.R. Chellapan (supra) and Shankar Das (supra), and two Division Bench judgments of this court in Shyam Narain Shukla (supra) and Sadanand Mishra (supra), it can safely be concluded that while removing the petitioner from service, the respondents were bound to consider the conduct of the petitioner, which has led to his conviction in the session trial. This was the condition precedent for the competent authority to acquire jurisdiction to impose punishment of removal from service. However, the impugned order is unfortunately silent and does not show consideration of conduct of the petitioner which has led to his conviction in the S.T. No.178 of 2005. It was necessary for the respondents, while passing the impugned order, to consider the conduct of the petitioner leading to his conviction and then to decide what punishment is to be inflicted upon him. This has not been done by the respondent No.2 while removing the petitioner from service. Therefore, the impugned order cannot be sustained and is hereby quashed.

20. Petitioner has been convicted vide judgment and order dated 22.01.2013 passed in Session Trial No. 531 of 2009. The District Basic Education Officer, Kanpur Dehat has passed an order on 26.12.2014 whereby petitioner has been dismissed from service on the ground of his conviction in Session Trial No. 531 of 2009.

21. I have perused the order dated 26.12.2014 passed by the District Basic Education Officer, Kanpur Dehat and I find that conduct of the petitioner which led to his conviction in Session Trial No. 531 of 2009 has not been considered at all. Article 311 (2) of the Constitution of India provides that a government servant cannot be dismissed, removed or reduced in rank unless an inquiry is conducted against him and he is afforded opportunity of hearing but an exception has been carved out that if the government servant has been convicted in relation to a crime then the disciplinary authority may consider the conduct which led to conviction of the government servant and if he finds that the conduct of the government servant is such that he cannot

be retained in service then he can pass the order for his dismissal from service and for doing so inquiry is not required.

22. Petitioner has been dismissed from service vide order dated 26.12.2014 on the ground of his conviction in relation to a crime but nowhere in the said order conduct of the petitioner which has led to his conviction has been considered and therefore, the order dated 26.12.2014 does not come in the ambit of proviso appended to Article 311 (2) of the Constitution of India. The District Basic Education Officer, Kanpur Dehat either should have conducted inquiry by associating the petitioner and affording him opportunity of hearing and only thereafter could have passed the order thereby dismissing petitioner from service or if the disciplinary authority wanted to pass order in terms of proviso appended to Article 311 (2) of the Constitution of India thereby dismissing the petitioner from service without holding inquiry, then he could have done so only by considering the conduct which led to conviction of the petitioner whereas the District Basic Education Officer, Kanpur Dehat while passing order dated 26.12.2014 thereby dismissing the petitioner from service has not considered the conduct of the petitioner which led to his conviction at all, therefore, the order dated 26.12.2014 impugned in the present writ petition cannot sustain in the eye of law.

23. In view of the aforesaid reasons, this writ petition is ***allowed.*** The order dated 26.12.2014 passed by the District Basic Education Officer, Kanpur Dehat is quashed. The matter is remanded to the District Basic Education Officer, Kanpur Dehat to pass a fresh order as per the provisions made in Article 311 (2) of the Constitution of India, within two month from the date of presentation of certified copy of this order.

24. It is further provided that reinstatement of the petitioner and his entitlement for service benefits shall depend on the outcome

of the fresh order to be passed by the District Basic Education Officer, Kanpur Dehat.

Date:-16.8.2023

Gaurav