Court No. - 4

Case :- WRIT - A No. - 2153 of 2025

Petitioner :- Santosh Kumar Singh
Respondent :- State Of U.P. And 5 Others
Counsel for Petitioner :- Ambuj Maurya,Atipriya Gautam,Madhaw Pandey
Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar,J.

1. Heard Sri Vijay Gautam, learned Advocate assisted by Ms. Atipriya Gautam, learned counsel for the petitioner and learned Standing Counsel for the State respondents.

2. Petitioner was dismissed from service under order dated 28.2.2024 passed by respondent no.5 on account of his conviction in a criminal trial under judgment and order passed by the trial court on 25.10.2023 in criminal case no. 22 of 2011 (State v. Santosh Kumar Singh), arising out of case crime no. 178 of 2010 under Section 7, 13(1)(d) read with section 13(2) P.C. Act, P.S. Sector 49 Noida, District Gautam Budh Nagar, by which sentene awarded to the petitioner was five years imprisonment and fine of Rs. 20,000/-.

3. Petitioner was working as a 'Sub Inspector' in the Police Department prior to passing of the impugned order dated 28.2.2024 imposing major penalty dismissing him from service exercising powers under Rule 8(2)(a) of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 (hereinafter referred to as 'the Rules, 1991). Dismissal order is already assailed by the petitioner in this petition.

4. It is argued by counsel for the petitioner that while terminating the petitioner from service and holding that in view of Article 311(2) of the Constitution of India, it was not necessary to hold full-fledged departmental inquiry. In view of the conviction of petitioner in a criminal case, it was necessary for the respondent-Authority to have issued a show-cause notice inviting at least an explanation from the petitioner and then to pass the order rendering due application of mind as to the conduct of the petitioner in relation to the criminal case amounting to moral turpitude, considering the future prospects.

5. Learned counsel for the petitioner has placed reliance upon the judgment of the Supreme Court in case of **Union of India Vs. Tulsi Ram Patel (1985) 3 SCC 398** and various other judgments of the Supreme Court that have been followed by a Co-ordinate Bench of this Court in case of **Ram Kishan Vs. State of U.P. and others (Writ-A No. 14570 of 2009)** decided on 7.1.2020 and another recent judgment passed by a Co-ordinate Bench of this Court in case of **Manoj Kumar Katiyar Vs. State of U.P. and 2 others (Writ-A No. 11761 of 2023)** decided on 16.8.2023.

6. *Per contra*, it is argued by learned Additional Chief Standing Counsel that since the petitioner's services have been dispensed with on account of conviction in a criminal case, the only possible result was termination

from service, thus according to him, there was no other possible alternative for the respondent except to dismiss him from service in view of Rules, 1991. However, on the question of show-cause notice and opportunity of hearing, the Disciplinary Authority could have applied its independent mind as to the conduct being bad for moral turpitude. It is argued that the matter may be remitted to the Authority competent, to decide afresh, in accordance with law.

7. Having heard counsel for the respective parties and having perused the records and judgments cited above, this Court proceeds to examine the impugned order dismissing the petitioner from service for the legal point of view as has been pressed by the learned counsel appearing for the petitioner. At the first instance, this Court proceeds to examine Rule 8(2)(a) of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 that reads as under:

*"8. **Dismissal and removal**- (1) no police officer shall be dismissed or removed from service by an authority subordinate to the appointing authority.*

(2) No Police Officer shall be dismissed, removed or reduced in Rank expect after proper inquiry and disciplinary proceedings as contemplated by these rules :

Provided that this rule shall not apply-

(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"

8. Looking to the impugned order, whereby the services of the petitioner has been dismissed, this Court finds that the order has been passed as a consequence to the conviction in a criminal case, as if, dismissal from service was to take place *ifso facto*. In view of the judgments cited above, this Court finds that the Courts have stressed upon the principle that at least an opportunity be afforded to an employee to offer an explanation as to why his services may not be dispensed with on the ground that he has been convicted in a criminal case and to explain his position regarding the same. This, according to the judgment is the safeguard from an action by virtue of proviso to Article 311(2) of the Constitution, Article 311(2) is reproduced hereinunder :

"(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 -

(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

(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

(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."

9. This Court finds that in case of Ram Kishan (supra), a Co-ordinate Bench of this Court has followed not only the judgment of Tulsi Ram Patel (supra), but also the Division Bench judgment in case of **Shyam Narayan Shukla Vs. State of U.P. 1988 (6) LCD 530** as well as another Division Bench judgments in cases of **Sadanand Mishra Vs. State of U.P. 1993 LCD 70 and Shanker Das Vs. Union of India 1985 (2) SCR 358.**

10. It is true that authority may proceed to dismiss a government servant on account of such government servant getting convicted in a criminal case but nevertheless this discretion that is based upon the doctrine of pleasure can not be taken to be an absolute one. Here, it has been rendered subject to condition that before passing the order finally terminating the services of such an employee, the authority shall consider conduct of such employee leading to his conviction and then to decide what punishment is to be inflicted upon.

11. Paragraph nos. 9, 10, 11, 12, 13 and 14 of the judgment of Ram Kishan (supra) read as under:

"9. In Union of India vs. Tulsiram Patel, (1985) 3 SCC 398, Hon'ble Supreme Court has considered the provisions of Article 311(2) of the Constitution of India and held as under:-

"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."

10. In Shyam Narain Shukla vs. State of U.P., (1988) 6 LCD 530, a Division Bench of this court has considered similar question and held 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 not to be given an opportunity of hearing at that stage."

11. Another Division Bench of this Court in Sadanand Mishra v. State of U.P. 1993 LCD 70 held that on conviction of an employee of a criminal charge, the order of punishment cannot be passed unless the conduct which has led to his conviction, is also considered. It was further held that the scrutiny or exercise of conduct of an employee leading 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 concerned.

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."

12. Very recently, a Co-ordinate Bench of this Court in case of Manoj Kumar Katiyar (supra) has reiterated the same principle and has discussed the fact of that case in which also, conviction in a criminal trial, the services of the petitioner had been dispensed with. The Court vide paragraph no. 22 held that the order of dismissal is not come within the ambit of proviso to Article 311(2) of the Constitution of India and then quashed the order remitting the matter to be decided afresh.

13. In the background of legal position so discussed above, the impugned order cannot be sustained in the eyes of law and, resultantly, liable to be quashed.

14. In view of the aforesaid observations, the order dated 28.2.2024 passed by respondent no.5 is hereby quashed. The matter is remitted to the Authority competent to first issue a show-cause notice to the petitioner and invite his explanation within four weeks from the date of production of a certified copy of this order and then decide the matter, in accordance with law, within a further period of one month, after affording opportunity to the petitioner.

15. It is further provided that reinstatement of the petitioner and his entitlement for service benefits shall depend upon the outcome of the fresh order to be passed by the competent Authority.

16. Writ petition, thus, stands allowed in above terms.

Order Date :- 12.3.2025
Sanjeev