

(2011) 04 DEL CK 0264
In the Delhi High Court
Case No : Writ Petition (C) 2479 of 2011

Amar Lal Arora

APPELLANT

Vs

The Vice Chancellor and Others

RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Employees (Terms and Conditions of Services) Rules, 1971 — Rule 75(1)
Penal Code, 1860 (IPC) — Section 498A
Probation of Offenders Act, 1958 — Section 12

Citation : (2011) 04 DEL CK 0264

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : R.R. Jangu, for the Appellant; Anurag Mathur, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petition impugns the order dated 29th December, 2009 of the Respondent University of Delhi dismissing the representation of the Petitioner for review of the earlier decision/order dated 24th April, 2001 dismissing the Petitioner from the services of the Respondent University.

2. The Petitioner was dismissed vide order dated 24th April, 2001 from the employment of the Respondent University, under Rule 75(1) of the University Non-teaching Employees (Terms and Conditions of Services) Rules, 1971 for the reason of having been convicted of an offence u/s 498-A of the Indian Penal Code (IPC).

3. The Petitioner earlier preferred W.P. (C) No. 596/2002 in this Court impugning the order dated 24th April, 2001 of dismissal. It was the stand of the Respondent University in opposition to that writ petition that though the dismissal of the Petitioner for the reason of his conviction was in accordance with the Employment Rules (supra) but if the conviction of the Petitioner was set aside in appeal preferred and then pending and if the Petitioner was acquitted of the

charge, then a fresh decision would be taken on the issue.

4. The said W.P. (C) No. 596/2002 was disposed of vide order dated 10th January, 2006 binding the Respondent University to its statement and further directing the Respondent University to issue an order reinstating the Petitioner within four weeks on receipt of intimation of acquittal or of setting aside of conviction of the Petitioner. It was further observed "In any other event, it shall dispose of the Petitioner's representation within six weeks. All rights and contentions of the parties are kept open."

5. In the appeal preferred by the Petitioner against his conviction, vide order dated 27th November, 2004 i.e. prior to the disposal of the writ petition aforesaid, though the appeal challenging the judgment on conviction was dismissed but the appeal challenging the order on sentence was allowed by releasing the Petitioner on probation for one year and by directing the Petitioner to pay compensation of `3,00,000/- to his estranged wife.

6. The Petitioner preferred Criminal Revision Petition (CRP) No. 291/2005 against the order dated 27th November, 2004 aforesaid of the Additional Sessions Judge. The said CRP was pending at the time of the disposal, on 10th January, 2006, of the writ petition being W.P. (C) No. 596/2002 aforesaid.

7. The said CRP preferred by the Petitioner was disposed of vide order dated 13th July, 2009. A perusal thereof shows that the only grievance raised by the Petitioner during the hearing of the writ petition was that owing to the conviction he stood dismissed from his employment. It was the contention of the Petitioner in the CRP that owing to the pendency of the said revision petition, the Respondent University was not considering the representation against the order dated 24th April, 2001 of dismissal. The order dated 13th July, 2009 in the CRP shows that the Petitioner did not press the CRP on merits but only contended that the conviction should not be treated as a disqualification for reinstatement by the Respondent University. This Court referring to Section 12 of the Probation of Offenders Act, 1958 and being of the view that the Petitioner having been released on probation was unlikely to suffer any disqualification, disposed of the writ petition.

8. The Respondent University vide order dated 29th December, 2009 impugned this petition dismissed the representation of the Petitioner for review of the order dated 24th April, 2001 on the ground that the order of conviction of the Petitioner had not been set aside in the CRP and the benefit of Section 12 of the Probation of Offenders Act was not available to the Petitioner.

9. The Petitioner first filed contempt case (C) 26/2010 averring the University to be in disobedience of the order dated 10th January, 2006 in the earlier writ petition. However, the said contempt petition was also not pressed on 1st December, 2010 seeking liberty to prefer an independent petition challenging the order dated 29th December, 2009 of the University.

10. The counsel for the Petitioner relies on Shankar Dass Vs. Union of India (UOI) and Another, and th The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others, .

11. However, the aforesaid judgments rather than helping the Petitioner are against the Petitioner. Both lay down that Section 12 of the Probation of Offenders Act concerns statutes which provide that persons who are convicted for certain offence shall incur certain disqualifications and does not concern the Rules of dismissal from service/employment on account of conviction. The counsel for the Petitioner however contends that in both cases ultimately the order of reinstatement was made. He thus contends that whenever conviction results in a sentence on probation, reinstatement should follow.

12. A close scrutiny of the judgments aforesaid would show that while in Shankar Dass (supra) reinstatement was ordered finding the punishment of dismissal to be disproportionate to the offence for which the Petitioner was convicted, in Divisional Personnel Officer Southern Railway (supra) reinstatement was directed because the authorities concerned had failed to consider the punishment to be meted out owing to conviction and had wrongfully presumed that on every conviction the order of dismissal from service has to follow.

13. The facts of the present case are different. The Petitioner has been convicted of an offence u/s 498-A i.e. of subjecting his wife to cruelty. The conviction of the Petitioner has been maintained in appeal as well as the revision petition.

14. I have enquired form the counsel for the Petitioner whether the Petitioner has since arrived at any amicable settlement with his estranged wife. The answer is in the negative.

15. I am of the view that considering the nature of the offence of which the Petitioner has been convicted and considering the reasons for which the same was constituted as an offence and introduced in the IPC in the year 1983, if this Court were to hold that conviction for such an offence is not serious enough to result in dismissal from service, the same would be counter protective and would give impetus to the menace still prevalent of cruelty to women and which could not be controlled inspite of constituting the same an offence nearly 20 years ago. Thus, I am unable to find any error in the order of the University in dismissing the representation of the Petitioner and in maintaining the order of dismissal of the Petitioner from employment for the reason of conviction u/s 498-A of the IPC.

16. There is thus no merit in the petition. The same is dismissed in limine. No order as to costs.

CM No. 5209/2011 (Under Section 151 CPC for exemption)

Allowed, subject to just exceptions.