

(2014) 10 AHC CK 0110

In the Allahabad High Court

Case No : Special Appeal Defective No. 850 of 2014

Biresh Kumar

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 15-10-2014

Acts Referred:

Constitution of India, 1950 — Article 311, 311(2)
Penal Code, 1860 (IPC) — Section 147, 149, 324, 325, 452

Citation : (2014) 9 ADJ 768 : (2015) 1 ALJ 451

Hon'ble Judges : Dr. Dhananjaya Yeshwant Chandrachud, C.J.; P.K.S. Baghel, J

Bench : Division Bench

Advocate : Dhiraj Srivastava and B.K. Srivastava, Advocate for the Appellant

Judgement

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1. The appellant was appointed in a Group "D" post in the Trade Tax Tribunal on 08 September 1989. The appellant was convicted by the VIIth Additional Sessions Judge, Meerut in Session Trial No. 146 of 1986 of offences under Sections 147, 325 read with Section 149, 324 read with Section 149, and 452 of the Indian Penal Code and was sentenced to undergo rigorous imprisonment respectively for a period of six months, two years, three years and three years. Based on the order of conviction, the services of the appellant were terminated by the Chairperson of the Trade Tax Tribunal on 11 July 1990. The appellant filed a writ petition, being Civil Misc. Writ Petition No. 17805 of 1990 (Biresh Kumar v. State of U.P. and others), before the learned Single Judge questioning the legality of the termination. The writ petition has been dismissed by the impugned judgment and order dated 02 December 2011 on the ground that Article 311(2) of the Constitution provides that without any enquiry, an order of punishment can be passed if a civil servant has been convicted in a criminal case after considering his conduct which led to the conviction. The submission, which has been urged on behalf of the appellant, is that in view of the decision of the Constitution Bench of the Supreme Court in Union of India and Another Vs.

Tulsiram Patel and Others, , the disciplinary authority is required to consider whether the conduct of the Government servant was such as to require his dismissal or removal from service or reduction in rank following his conviction in a criminal case. In the present case, it was submitted that the disciplinary authority proceeded on a wrongful premise that a mere conviction would result in an order of termination.

2. Article 311 of the Constitution, insofar as is material, provides as follows:

"311. Dismissal, removal or reduction in rank of person employed in civil capacities under the Union or a State.--(1) No person who is a member of a civil service of the Union or an 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 by an authority subordinate to that by which he was appointed.

(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."

3. The provisions of Clause (a) of the second proviso to Clause (2) of Article 311 of the Constitution have been construed in the judgment of the Constitution Bench of the Supreme Court in *Union of India and another v. Tulsiram Patel* (supra), where it has been held as follows:

"127..... 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 *The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others*, . 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."

4. In the present case, the order of termination does not indicate that the disciplinary authority had applied its mind to the nature of conviction or to the question as to whether the conduct of the Government servant was such as to require his dismissal or removal from service. The decision in *Union of India and another v. Tulsiram Patel* (supra) specifically requires the disciplinary authority to bear in mind that a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank. In the counter-affidavit, which was filed on behalf of the State before the learned Single Judge, it was specifically admitted in paragraph-8 that the appellant was dismissed from service "on the basis of the conviction". Hence, it is clear that the order of dismissal has been passed on the erroneous basis that the conviction in the criminal case would ipso facto result in an order of termination. In this view of the matter, we are of the view that it would be appropriate and in the interest of justice to set aside the impugned order of the learned Single Judge and to remit the proceedings back to the disciplinary authority.

For the aforesaid reasons, the special appeal is allowed by setting aside the impugned order of the learned Single Judge dated 02 December 2011. The order passed by the disciplinary authority on 11 July 1990 is set aside. The disciplinary authority shall have due regard to the law laid down by the Supreme Court in *Union of India and Another Vs. Tulsiram Patel and Others*, , and then determine as to whether the conduct of the appellant is such as to warrant his dismissal, removal or reduction in rank within the meaning of proviso (a) to Clause (2) of Article 311 of the Constitution.

There shall be no order as to costs.