
(2017) 02 P&H CK 0253
In the Punjab And Haryana At Chandigarh
Case No : 26842 of 2015

Jai Bhagwan

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 14-02-2017

Acts Referred:

Constitution of India, Article 311(2)(a) - Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State
Indian Penal Code, 1860, <a href=1767-2

Citation : (2017) 02 P&H CK 0253

Hon'ble Judges : Ajay Tewari

Bench : SINGLE BENCH

Judgement

1. This order shall dispose of both the aforesaid writ petitions as similar questions of law and facts are involved therein.
2. By way of these writ petitions, the petitioners have challenged the orders of dismissal from service passed against them.
3. Brief facts are that petitioners-Roshan Singh and Jai Bhagwan were working as Warders in District Jail Bhiwani and while a gang of convicts was working outside the jail, one of them escaped. FIR under Section 223 of the IPC was lodged against the petitioners. Before proceeding further, Section 223 of the IPC is being quoted below : "223. Escape from confinement or custody negligently suffered by public servant.- Whoever, being a public servant legally bound as such public servant to keep in confinement any person charged with or convicted of any offence or lawfully committed to custody, negligently suffers such person to escape from confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both." ?
4. It bears mention that no departmental proceedings were initiated against the petitioners. They were convicted by the trial Court and sentenced to six months imprisonment. Ultimately, in revision their conviction was maintained but they

were directed to be released on probation, and fine of Rs. 3,000/- was converted into cost of litigation which was paid. Before the order of this Court passed in revision, the petitioners had been dismissed from service. After the order of this Court, they represented to the Government that since they had been released on probation by this Court and fine had been converted into cost of litigation, the orders of dismissal be reviewed. That representation having been rejected, petitioner-Jai Bhagwan approached this Court by way of CWP No.5935 of 2015, which was disposed of with the direction to the respondents to pass a speaking order. However, similar writ petition filed by petitioner-Roshan Singh bearing CWP No.4844 of 2015 kept pending. It deserves mention that petitioner-Roshan Singh has passed away during the pendency of the writ petition. As regards the order passed in CWP No.5935 of 2015, a fresh order (Annexure P-8) was passed which Jai Bhagwan has challenged by way of CWP No.26842 of 2015. On 14.12.2016, the following order was passed :

" CM No.9904 of 2015 in CWP No.4844 of 2015

Notice of the application.

Ms. Shruti Jain Goyal, AAG, Haryana, accepts notice on behalf of the non-applicant/respondents.

Having heard learned counsel for the parties, the instant application is allowed. Legal representatives of the petitioner - Roshan Singh as mentioned in Para.2 of the application are ordered to be impleaded as petitioners to defend the estate of the deceased - petitioner.

CWP No.4844 of 2015 & CWP No.26842 of 2015

Prima facie, the impugned orders in both the petitions, to my mind, will not pass the test of judicial scrutiny. In one of the cases earlier decided, the impugned order, which was identical to the one impugned in the connected writs, had been set aside by this Court with a direction to the respondents to pass a speaking order. The petitioners are before the Court against the subsequent order(s), which are equally non-speaking. The order(s) do not address the conduct of the late petitioner which led to the conviction on a criminal charge and therefore, the constitutional protection and safeguard under Article 311(2) (a) of the Constitution has not been afforded to the petitioner(s). Setting aside the order once again for the very reason it was set aside in the first instance and remanding the case for a fresh consideration may appear to be a mockery of the administrative process, which if resorted to would embarrass the Jail Department. Besides, no departmental enquiry was initiated against the petitioner(s) for the misconduct which constituted the criminal charge. Therefore, it can be safely presumed that the Jail Department itself did not view the conduct of the petitioner(s) as heinous warranting departmental proceedings. The authorities have also not looked at their past service, which was of long standing of more than 25 years at the time of acting on the order of conviction and sentence. The conviction of six months under Section 223 of the Indian Penal

Code recorded by the trial Court was, in appeal, converted to six months simple imprisonment and Rs. 3000/- as fine and the petitioners were let off on probation by this Court in the respective criminal revisions against. The fine was converted to cost of litigation and quantified at Rs. 3000/-, which was deposited by the petitioners. It may be that the conviction stands, but it does not follow automatically that a case of dismissal is made out. Even when the authority that passed the order has not dealt into the evidence and the role of the petitioners to examine their conduct which led to conviction. The Haryana amendment to the Punjab Police Rules, 1934, lists the gravest acts of misconduct and an offence under Section 223, IPC is not enumerated therein and, therefore, it cannot be said that the conviction as for gravest acts of misconduct. Haryana Government has instructions (Annex P-8) to suggest that a conviction of this kind does not fall in cases involving moral turpitude and there is sufficient judicial precedent to back up the legal proposition. Dismissal from service appears disproportionate and excessive.

In these circumstances, Ms. Shruti Jain Goyal to obtain instructions from the department as to why the orders of dismissal should not be converted into one of compulsory retirement with right to pension/family pension, as the case may be, in both the cases.

List again on 23.12.2016.

A copy of the order be given to Ms. Goyal under the signatures of the Bench Secretary.

Photocopy of this order be placed on the connected case(s)." ?

Thereafter, on 23.12.2016, the following order was passed :

" Ms. Goyal has not been able to obtain complete instructions from the Department on the interim order. She prays for and is granted time to file an additional affidavit which will inter alia address the observations made in the interim order dated 14.12.2016.

List again on 14.02.2017.

A photocopy of the order be placed on the connected file." ?

5. Today again, learned AAG Haryana seeks more time. In my opinion, no further time can be granted for this purpose. This Court does not really need any concurrence of the Government to pass the order. In *Union of India and another v. S.S.Ahluwalia*, 2007 (7) SCC 257 : (AIR 2007 SC 2952) the Supreme Court held as follows : " The scope of judicial review in the matter of imposition of penalty, as a result of disciplinary proceedings, is very limited. The Court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved. In such a case, the Court is to remit the matter to the disciplinary authority for reconsideration of the punishment. In an appropriate case, in order to avoid delay the court can itself

impose lesser penalty....."

6. In view of the facts brought out above, the punishment of dismissal from service of the petitioners is so dis-proportionate as to shock the conscience of this Court. Resultantly, I deem it appropriate to set aside the orders of dismissal and reduce the punishment of dismissal awarded to both the petitioners to that of compulsory retirement from the date of the impugned orders of dismissal. Ordered accordingly. Let consequential benefits be worked out and paid to the petitioners within three months from the date of receipt of a certified copy of this order, failing which they would be entitled to recover the same with interest @ 12% pa from the date/s the amount/s fell due. The writ petitions stand disposed of.

7. Since the main cases have been decided, the pending C.Ms, if any, also stand disposed of. Order accordingly.