
(2005) 07 P&H CK 0099

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11412 of 2005

Machhinder Singh

APPELLANT

Vs

Punjab State Electricity Board

RESPONDENT

Date of Decision : 28-07-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Penal Code, 1860 (IPC) — Section 109, 494

Probation of Offenders Act, 1958 — Section 4

Punjab State Electricity Board Employees (Punishment and Appeal) Regulations, 1971
— Regulation 4(4)

Citation : (2006) 142 PLR 383 : (2006) 1 RCR(Civil) 677 : (2006) 1 RCR(Criminal) 911

Hon'ble Judges : S.S. Nijjar, J;Nirmal Yadav, J

Bench : Division Bench

Advocate : Gurminder Singh, for the Appellant;

Final Decision : Dismissed

Judgement

S.S. Nijjar, J.—The petitioner was convicted u/s 494 read with Section 109 of the I.P.C. The petitioner was sentenced to one year R.I. Plus Rs.300/- as fine and two months Simple Imprisonment in default thereof. Against the aforesaid judgment, the petitioner filed an appeal, before the Appellate Court. At the initial stage itself, the petitioner submitted that a lenient view may be taken. He conceded to the finding of the trial Court in the judgment dated 11.12.2000. As noticed earlier, in the aforesaid judgment, the trial court had held the petitioner guilty u/s 494 read with Section 109 of the I.P.C. Before the appellate court, the petitioner merely sought reduction in the sentence on compassionate grounds. The plea of the petitioner was accepted by the appellate court and he was directed to be granted the benefit of probation u/s 4 of the Probation of Offenders Act. On the basis of the aforesaid judgment, the petitioner was dismissed from service on 5.3.2004 (Annexure P-3). The petitioner challenged the aforesaid dismissal before this Court by filing C.W.P. No. 5032 of 2004. The

writ petition was allowed by the Division Bench by passing a short order on 25.5.2005 which is reproduced in its entirety as under:-

We have heard the learned counsel for the parties.

The petitioner has been dismissed from service vide order, Annexure P-5, dated 5.3.2004 on the ground that he had abetted the 2nd marriage of his brother and was, therefore, liable for the offence punishable u/s 494 read with Section 109 of the Indian Penal Code. Admittedly, the petitioner has been released on probation, which as per the stand of the learned counsel for the petitioner, is deemed to be in effect an acquittal.

Mr. Gurminder Singh points out that the petitioner had put in 33 years of service on the date when his services had been terminated and this aspect had not been kept in mind by the disciplinary authority, while making the order.

We accordingly quash the order, Annexure P-5 dated 5.3.2004 and direct the respondents to reconsider the matter in accordance with law and also keeping in view the fact that the petitioner had been released on probation. It will be open to the petitioner to raise all pleas available to him before the authorities concerned. The writ petition is disposed of accordingly.

Sd/- H.S. Bedi, Judge 2.5.2005 Sd/- Viney Mittal, Judge

2. In obedience of the aforesaid orders, the respondents served a memo dated 20.5.2005 (Annexure P-6) asking the petitioner to submit his reply by raising all the pleas available to him in writing within 10 days from the receipt of the letter. The petitioner submitted a reply on the same date (Annexure P-7). It was stated that entire record pertaining to 33 years service of the petitioner is available with the Board. However, the entire record has been kept a secret and it was only to the knowledge of the concerned Office Superintendent. He also stated that even the entire record pertaining to his case was in the office of the Secretary Legal. He does not have any sort of record pertaining to his case. He, therefore, requested that the findings on which the clarification is required the record pertaining to the same may be made available to him. He also pointed out that since the order dated 5.3.2004 had been quashed by the Court, he should be taken back on duty, forthwith. After the receipt of the reply of the petitioner, the respondents have passed the impugned order dated 8.7.2005 (Annexure P-8). Order of dismissal dated 5.3.2004 had been withdrawn. The petitioner has been placed under deemed suspension w.e.f. 5.3.2004 as his case is being re-considered by the competent authority pursuant to the orders passed by this Court on 2.5.2005 and in accordance with the provisions contained in Regulation 4(4) read with other enabling provisions of the PSEB Employees (P&A) Regulation, 1971. Again, another notice has been issued to the petitioner on 11.7.2005 (Annexure P-9) directing him that in case he wishes to produce any new submission, then he should do it within 10 days of receiving the letter. In spite of submitting a reply to the aforesaid communication (Annexure P-9), the petitioner has filed the present writ petition under Articles 226/227 of the

Constitution of India.

3. Mr. Gurminder Singh, learned counsel for the petitioner submits that the order of dismissal dated 5.3.2004 having been quashed by this Court, the respondents have no jurisdiction to withdraw the aforesaid order. In fact, once the order of dismissal has been quashed, the petitioner is automatically entitled to be reinstated in service with all consequential benefits. He further submits that the order of dismissal is merely based on the conviction of the petitioner for the offence which has been committed by his brother. The petitioner has been punished because he attended the wedding of his brother 22 years ago. The respondents have wrongly dismissed the petitioner on the basis of conviction of the petitioner for the offence which has been committed by his brother. The respondents ought to have considered the conduct of the petitioner leading to his conviction. Learned counsel submits that the order of dismissal was quashed by this court on merits. It was not quashed on a mere technicality. Therefore, the respondents cannot be permitted to take any action on the basis of the judgment of the criminal court.

4. We have considered the submissions made by the learned counsel for the petitioner. We are of the considered opinion that it would be wholly inappropriate for this Court to make any observations whatsoever on the merits of the case of the petitioner. We are of the opinion that the writ petition is wholly premature. The petitioner has unnecessarily rushed to Court. The petitioner has only been placed under deemed suspension. The case of the petitioner is being reconsidered by the competent authority. The respondents have also sent communication to the petitioner asking him to explain any circumstances that may be in his favour. Surely whatever has been argued before us, could well be submitted before the authorities also. The petitioner is at liberty to raise the plea that such a harsh punishment of dismissal from service cannot be imposed on him, for merely attending the marriage of his brother. The respondents are duty bound to take all the pleas raised by the petitioner, into consideration. They are also duty bound to keep in mind that the conviction of the petitioner has been maintained. It was not challenged by the petitioner in the appellate court. He merely asked for a lenient view to be taken. Hence, he was given the benefit of probation. They are also required to keep in mind that the release of the petitioner on probation does not have the effect of wiping out the conviction.

5. With the aforesaid observations, we dismiss the writ petition being premature.

6. At this stage Mr. Gurminder Singh states that even suspension allowance has not been paid to the petitioner till date. If that is so, the respondents are directed to release the suspension allowance with effect from the date when he was suspended, within a period of 14 days of the receipt of a certified copy of this order.