
(1983) 12 RAJ CK 0030
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1432 of 1982

Pukh Raj

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-12-1983

Acts Referred:

Constitution of India, 1950 — Article 20, 226, 227, 31, 311
Penal Code, 1860 (IPC) — Section 302

Citation : (1983) WLN 383

Hon'ble Judges : S.K. Mal Lodha, J

Bench : Single Bench

Judgement

S.K. Mal Lodha, J.—Petitioner Pukhraj has filed this writ petition Under Articles 226 and 227 of the Constitution, seeking to quash the order Ex. 1 dated September 28, 1977, by which he was dismissed from service and also for all consequential benefits as if no such order has ever been passed.

2. The petitioner was a clerk in the time office Northern Railway Work Shop, Jodhpur. While he was working on this post, a criminal case was registered against him. The offence which he was charged was u/s 302, IPC. After trial, learned Additional Sessions Judge No. 2, Jodhpur convicted him u/s 302, IPC and sentenced to imprisonment for life and a fine of Rs. 2,000/-, and in default of payment of fine to suffer further rigorous imprisonment for one year, vide judgment dated April 16, 1978 passed in Sessions case No. 83/1974 As the petitioner was convicted, he was dismissed from service by order Ex. 1 dated September 26, 1977 passed by the Deputy Chief Mechanical Engineer (W) Northern Railway, Jodhpur (non-petitioner No 3). The petitioner filed D.B. Criminal Appeal No. 324 of 19/3: (Pukhraj v. State of Rajasthan in this Court. The appeal was admitted on May 6, 1973 and it will be heard in due course. Application for suspension of sentence was moved by him and the sentence was ordered to be suspended by order Ex. 3 dated September 28, 1976. The petitioner also filed a Departmental Appeal against the order of dismissal, That appeal has not been disposed of so far. The petitioner has challenged the order

Ex. 1 dated September 28, 1977 on the ground that he should not have been dismissed when the appeal against the conviction and sentence is pending in this Court and the conviction has not become final.

3. A show cause notice was issued and Mr. A.K. Mathur has appeared on behalf of the non-petitioners.

4. Mr. M.L. Kala, learned Counsel for the petitioner, has relied on *Gulraj Khatri v. State S.B. Civil Writ Petition No. 1127/76*, decided on July 7, 1976; *Gopal Singh v. State S.B. Civil Writ Petition No. 81/1976*, decided on December 4, 1978; *State of Rajasthan v. Gopal Singh S.B. Civil Special Appeal No. 10/1979*, decided on April 2, 1979; *Purshottam v. Union of India 1980 RLW 376*; *Kesar Kumar v. R.S.E.B. S.B. Civil Writ Petition No 368/1960*, decided on November 27, 1981 and *Jaskaran Singh v. Union of India S B Civil Writ Petition No. 1256/1979*, decided on December 2, 1981.

5. In *Gulraj Khatri's* case (supra), *Joshi, J* , observed as follows:

It is settled position of law that when the conviction is challenged by way of appeal, proceeding of dismissal cannot be taken on that ground till the matter is finally decided by the competent court". [Emphasis, italicized in print, by us].

It was held by *G.M. Lodha, J.*, in *Gopal Singh's* case (supra) that the order of dismissal could not have been passed during the pendency of the appeal. This decision was confirmed in *State of Rajasthan's* case (supra).

6 *Grover, J.*, as he then was, in *Firm Jagat Ram Om Prakash Vs. Excise and Taxation Office Assessing Authority, Amritsar*, quashed the order of dismissal on the ground that the word "con-viction" used in proviso (a) of Article 31(2) can have only one meaning that the person convicted must have been convicted finally, while following the decisions of this Court as well as that of *Firm Jagat Ram Om Prakash Vs. Excise and Taxation Office Assessing Authority, Amritsar*, it was held in *Purshattam Singh's* case 1980 RLW 376 that the petitioner, in that case, having been acquitted By the appellate court, he could not have been removed from service after conviction, when it was challenged in appeal.

7. After referring to the above decisions of this Court, *M.C. Jain, J.*, in *Kesar Kumar's* case (supra) opined that the order of dismissal of the petitioners was bad, in as much as his dismissal from service as a result of conviction, against which he has preferred an appeal, was bad, for, his conviction has not become final. *D.P. Gupta, J.*, in *Jaskaran Singh's* (supra), opined that the order of dismissal could not have been passed during the pendency of the appeal against conviction. He, therefore allowed the writ petition and quashed the order of removal.

8. Mr. Mathur, Additional Advocate General, has placed strong reliance on *State of Rajasthan v. Kedar Nath (3)*, wherein, it was observed as under:

In our considered opinion, the language of Article 311 is clear, as held by their

Lordships of the Supreme Court in various decisions cited above. The conviction by the first court entitles the employer to remove the delinquent officer from his job or dismiss him. Such dismissal is always subject to the decision of the appeal and he can be reinstated on his post with all consequential benefits if the employer does not intend to proceed against him under the Departmental enquiry after acquittal of the delinquent officer. Even after the acquittal of a Government servant in a criminal case, it is open to the Government to proceed against him departmentally on the same charge, after complying with Article 311(2), in such proceeding after acquittal by the criminal court is not barred by Article 20(2), in as much as a departmental proceeding does not constitute a "prosecution" within the meaning of Article 20(2).

It is, thus, clear that the view taken by the Division Bench, consisting of M.L. Shrimal and S.N. Bhargava, JJ., is not in conformity with the view taken by another Division Bench in *State of Rajasthan*'s case (supra) and other aforesaid decisions of this Court. In view of this conflict of decisions, I consider it proper that the matter should be decided by a Full Bench.

9. The following question is, therefore, framed for being referred to the Full Bench:

Whether, on the facts and in the circumstances of the case, the order Ex. 1 dated September 28, 1977, dismissing the petitioner from service is illegal on the ground of his conviction when the appeal against the conviction and sentence is pending in this Court and the conviction had not become final?

10. The writ petition may be put up before Hon"ble the Chief Justice for constituting a Full Bench for consideration of the question stated above.