
(1984) 01 AHC CK 0038
In the Allahabad High Court
Case No : Writ Petition No. 5411 of 1983

Radhey Govind Swarup

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 09-01-1984

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (1984) 01 AHC CK 0038

Hon'ble Judges : K.N.Goyal, J and S.S.Ahmad, J

Final Decision : Dismissed

Judgement

K.N. Goyal, J.—The petitioner was a Head Rakshak in the Railway Protection Force. He was prosecuted on a charge of murder, and after his conviction under Section 302 IPC by a Court of Sessions, he was given notice to show cause why he should not be dismissed from service. After considering his explanation, the competent authority has passed an order of dismissal, Annexure5. This has been challenged in this writ petition on the ground that the petitioner's appeal against conviction has been admitted by this Court and is still pending and that the petitioner has been released on bail.

2. It has been held by another Bench of this Court in Writ Petition No. 5742 of 1983 (Hari Mohan Shukla v. Basic Shiksha Parishad and another) decided on 271083, that mere admission and pendency of appeal against conviction does not have the effect of suspending the conviction, and grant of bail merely suspends the sentence. Accordingly, under clause (a) of the proviso to Article 311 (2) of the Constitution, the Government servant concerned can, even during the pendency of an appeal, be dismissed without a regular departmental inquiry, A similar view has been taken by the Punjab and Haryana High Court in Jarnail Singh v. State of Punjab, 1980 (3) SLR 173.

3. It is to be noted that in the instant case a notice was issued to the petitioner before action was taken on the basis of conviction. Thus, the requirements of Challappan's case reported in 1975 (2) SLR 587 (SC) were undisputedly fulfilled.

4. Learned counsel for the petitioner, however, contends that the Hon''ble Supreme Court has made certain observations in *State of Maharashtra v. Chandrabhan*, AIR 1983 SC 803, which suggest that it is necessary in order to enable the convict appellant to prosecute his criminal appeal against conviction that the petitioner should be allowed to continue in service. We find, however, that no such question was involved in that case. In that case the person who had been convicted was not dismissed from service, but was allowed by the appointing authority itself to continue in service. He was merely placed under suspension. While under suspension, he was paid a token subsistence allowance. It was the rule providing for a merely token subsistence allowance that was struck down by the Hon''ble Supreme Court on the ground that the grant of token subsistence allowance was meaningless and that if the appellant could not get even a proper subsistence allowance, he would not be in a position to prosecute his appeal. Nothing was, however, considered about a case where the convict is dismissed from service in accordance with the provisions of clause (a) of the proviso to Article 311(2) of the Constitution. If a Government servant is allowed to remain in service, it is but proper that he should receive either his salary or a reasonable subsistence allowance. But the principle cannot be extended to? the case of a person who is no longer in service.

5. No other point has been pressed.

6. Accordingly, we find no merit in the petition. It may be clarified that if and when the petitioner succeeds in having the conviction set aside, then the conviction will stand wiped out and the petitioner will be entitled to reinstatement.

7. Accordingly, the writ petition is dismissed in limine.

8. After this order was pronounced, learned counsel for the petitioner made an oral prayer under Article 133 read with Article 133A of the Constitution for a certificate. We are not satisfied that the case involves any substantial question of law of general importance which may require to be decided by the Supreme Court. As such, the certificate prayed for is refused.

(Petition dismissed in limine)