

(2025) 11 P&H CK 1999

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 16093 Of 2023

Rajwinder Kaur And Another

APPELLANT

Vs

Punjab State Civil Supplies Corporation And Another

RESPONDENT

Date of Decision : 21-11-2025

Acts Referred:

Constitution Of India, 1950 — Article 226, 311(2)
Negotiable Instruments Act, 1881 — Section 138
Payment Of Gratuity Act, 1971 — Section 4(6)

Citation : (2025) 11 P&H CK 1999

Hon'ble Judges : Harpreet Singh Brar, J

Bench : Single Bench

Advocate : Maninder Arora, Manbir Singh Batth

Final Decision : Dismissed

Judgement

Harpreet Singh Brar, J

1. The present petition has been preferred under Article 226 of the Constitution of India seeking issuance of a writ in the nature of mandamus directing the respondents to appoint petitioner No.2 on compassionate basis in lieu of death of his father who worked as a Chowkidar with the respondent-Corporation. Further, a prayer has been made for quashing of order dated 06.10.2020 (Annexure P-9) whereby the deceased employee was dismissed from service as well as order dated 16.09.2022 (Annexure P-10) vide which the representation submitted by the petitioners for release of service benefits and compassionate appointment for petitioner No.2 was rejected. Additionally, it is prayed that the retiral benefits of the deceased be released to petitioner No.1 at an interest of 12% p.a.

FACTUAL BACKGROUND

2. The husband of petitioner No.1 namely Dharampal Singh (hereinafter 'deceased') was a regular employee of the respondent-Corporation, working at the post of a Chowkidar. The services of the deceased were dispensed with vide

order dated 15.04.2015 on account of conviction under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter 'NI Act'). Aggrieved by the same, the deceased filed an appeal which was allowed by the learned Additional Sessions Judge, Ferozepur vide judgment dated 19.01.2016 (Annexure P-3), resulting in his acquittal. The deceased also filed a civil suit seeking declaration of order dated 15.04.2015 to be illegal. As an upshot of the same, the deceased was ordered to be reinstated vide judgment dated 19.07.2017 (Annexure P-4) which was also upheld by the appellate Court (Annexure P-5). The respondent-Corporation moved RSA-4209-2019 before this Court, challenging the same. Unfortunately, the deceased passed away on 15.06.2022. However, neither retiral benefits have been released to the petitioners nor has petitioner No.2 been considered for compassionate appointment. Hence, the present writ petition.

CONTENTIONS

3. Learned counsel for the petitioners contended that the deceased has been duly exonerated in the criminal case and, his termination orders have been set aside by the Civil Court. However, certain benefits like gratuity and leave encashment have not been released to the petitioners till date, which has caused great financial hardship on the family. Petitioner No.2, son of the deceased, approached the respondent-Corporation for release of said benefits and considering him for compassionate appointment, but no action was taken.

This Court while dismissing judgment dated 23.08.2023 in RSA-4209-2019 preferred by the respondent-Corporation specifically stated that conviction in a private complaint would not automatically lead to termination. Learned counsel also places reliance on the judgments rendered by Coordinate benches of this Court in Tarsem Singh vs. State of Punjab and another 2020(3) PLR 26. Further, the deceased was involved in criminal complaints under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter 'NI Act'), however they emanate from money borrowed by him for survival since he was unjustly dismissed from service vide order dated 15.04.2015 (Annexure P-2) and had no source of livelihood. Moreover, this Court in Jagroop Singh vs. The Punjab State Power Corporation Limited and others 2017(2) LAR 251 and Om Pal vs. State of Haryana and others 2015(26) SCT 231 has held dispute qua dishonour of a cheque issued for personal reasons, is private in nature and the same would not amount to an offence involving moral turpitude. In fact, the respondent-Corporation did not reinstate the deceased after dismissing him from service vide order dated 15.04.2015(Annexure P-2). As such, there was no occasion for the respondents to pass impugned order dated 06.10.2020, dismissing him for a second time.

4. Per contra, learned counsel for the respondents argued that the petitioners have not approached this Court with clean hands. The deceased was exonerated in one criminal case, however, he was involved in yet another complaint under Section 138, NI Act wherein he was convicted. The deceased was terminated from service vide order dated 06.10.2020 (Annexure P-9) on account of this

second conviction, which was concealed by the petitioners. The Instructions dated 05.08.1998 issued by the Department of Personnel, Government of Punjab enables the respondent-Corporation to dismiss the deceased from service in view of his conviction in a criminal case. Further, petitioner No.2 is not entitled to be considered for compassionate appointment as the deceased was dismissed from service in the year 2020 itself. The petitioners i.e. the legal heirs are not entitled to challenge the impugned order dated 06.10.2020 (Annexure P-9) at such a belated stage by means of the present petition. Learned counsel further submits that in terms of judgment dated 23.08.2023 in RSA-4209-2019, the respondents have already released the arrears of pay from the date of first dismissal i.e. 15.04.2015 till the date of dismissal of appeal against the second conviction i.e. 22.03.2018. An amount of Rs. 9,76,602/- has been disbursed to petitioner No.1 on 05.01.2024 and nothing else remains due. Owing to his dismissal for conviction in an offence involving moral turpitude, the legal heirs of the deceased are not entitled to leave encashment, gratuity etc. Reliance is also placed on the judgments rendered by a Division Bench of this Court in Pawan Kumar vs. State of Haryana 1994(4) SCT 75 and a Coordinate Bench in Anil Sandhir vs. State of Punjab and another 2013(3) SCT 60.

OBSERVATIONS AND ANALYSIS

5. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that the deceased worked with the respondent-Corporation as a Chowkidar. During his service, he was involved in a criminal complaint under Section 138 NI Act. Owing to his conviction therein, the deceased was dismissed from service vide order dated 15.04.2015 (Annexure P-2) stating that the conviction of the deceased for the said offence indicates moral turpitude. However, ultimately, an acquittal was secured. Be that as it may, it appears that there was yet another case registered against the deceased under Section 138 NI Act wherein he was convicted vide judgment dated 07.02.2017, which was also upheld by the appellate court vide judgment dated 22.03.2018. Even so, this Court finds force in the argument led by learned counsel for the petitioners that the deceased was pushed to borrow money from his acquaintances to avoid starvation as he was unfairly dismissed from service and had no other means of survival. A revision petition against this conviction was also filed before this Court; however, it was rendered infructuous as the deceased passed away during its pendency.

6. Notably, the deceased also preferred a civil suit against dismissal order dated 15.04.2015 (Annexure P-2) which was decreed in his favour vide judgment dated 19.07.2017 (Annexure P-4), wherein it was observed that the sole reason for dismissal of the deceased from service was his conviction under Section 138 NI Act, which has since been overturned. Accordingly, the respondent-Corporation was directed to reinstate the deceased and pay all admissible benefits. The appeal preferred by the respondent-Corporation against it was dismissed vide judgment dated 30.08.2018 (Annexure P-5) by the learned lower Appellate

Court, causing it to move a second appeal bearing No. RSA-4909-2019 before this Court. Vide judgment dated 23.08.2023 in RSA-4909-2019, this Court observed that the concerned authority was required to examine the conduct of the employee that led to his conviction before dispensing with his services. In the absence of such findings as well as in view of the eventual acquittal, the second appeal was also dismissed.

7. A perusal of the impugned order dated 06.10.2020 (Annexure P-9) indicates that the deceased was convicted in yet another complaint under Section 138, NI Act and sentenced to 01 year of imprisonment and a fine of Rs.3000/- vide judgment dated 07.02.2017. The conviction was also upheld by the appellate court vide judgment dated 22.03.2018. The Instructions dated 05.08.1998 allows for employee convicted for a serious offence to be dismissed from service even though if an appeal has been preferred by him. A clarification dated 24.01.2023 was issued by the Department of Personnel, Government of Punjab to ensure uniformity in the manner convicted employees are dealt with. The relevant part of the same is reproduced below:

"2. ...Earlier Department of Personnel, Government of Punjab vide its letter No. 3/23/19981PP2/10394 dated 05.08.1998 circulated an order in compliance with decision of Hon'ble Supreme Court in Civil Appeal No. 2992/1995 titled as The Deputy Director of Collegiate Education vs. S. Nagoor Meera 1995 AIR 1364 wherein it was held that employees convicted of a serious charge are not to be retained in service. It was further held that mere suspension of sentence will be of no use to the employees, unless the conviction itself was stayed or set aside. It would be relevant to examine the conduct of the Government servant which has led to his conviction on a criminal charge. If the employee is held guilty and convicted of a serious charge, then such an employee should not be retained in service.

3. The instructions and service rules contemplate that employees convicted of serious offences particularly offences involving moral turpitude are not to be retained in service and such employees are either to be dismissed or removed from service. The term 'moral turpitude' has not been defined in the rules or anywhere else and it may convey different meaning in different contexts, but it has generally been taken to mean a conduct contrary to justice, honesty, modesty or good morals. As a general rule, a crime will be considered as involving moral turpitude if it involves an act of baseness, vileness, or depravity when judged in the light of the social duties which a man owes to his fellow man or to society in general. If the actual commission of an offense involves moral turpitude, then an attempt to commit the offence, or a conspiracy to commit the offense, will likewise involve moral turpitude." (emphasis added)

8. In fact, in consultation with the Directorate of Prosecution and Litigation, a list of offences involving moral turpitude has been enclosed with the clarification dated 24.01.2023. The said list includes conviction of offences under the

Prevention of Corruption Act, 1988, the Narcotic Drugs and Psychotropic Substances Act, 1985, Prevention of Money Laundering Act, 2002, the Protection of Children from Sexual Offences Act, 2012, the Immoral Traffic (Prevention) Act, 1956, the Punjab Travel Professional Regulation Act, 2012, the Immigration Act, 1983, the Arms Act, 1959 and certain provisions of the Indian Penal Code, 1860. While the list is not exhaustive, the nature of offences wherein conviction would result in dismissal from service, can be inferred from it. The offence under the NI Act cannot reasonably be equated with the offences under the statutes listed above. While no specific definition has been provided for the phrase 'moral turpitude,' a two-Judge bench of the Hon'ble Supreme Court in *State Bank of India and others vs. P. Soupramaniam* (2019) 18 SCC 135 discussed the meaning thereof in detail and speaking through Justice L. Nageshwar Rao, held as follows:

"7. 'Moral Turpitude' as defined in the Black's Law Dictionary (6th ed.) is as follows:

"The Act of baseness, vileness, or the depravity in the private and social duties which man owes to his fellow man, or to society in general, contrary to accepted and customary rule of right and duty between man and man."

"implies something immoral in itself regardless of it being punishable by law";
"restricted to the gravest offences, consisting of felonies, infamous crimes, and those that are malum in se and disclose a depraved mind"

According to Bouvier's Law Dictionary, 'Moral Turpitude' is : "An act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man."

Burton Legal Thesaurus defines 'Moral Turpitude' as :

"Bad faith, bad repute, corruption, defilement, delinquency, discredit, dishonor, shame, guilt, knavery, misdoing, perversion, shame, vice, wrong."

8. There is no doubt that there is an obligation on the Management of the Bank to discontinue the services of an employee who has been convicted by a criminal court for an offence involving moral turpitude. Though every offence is a crime against the society, discontinuance from service according to the Banking Regulation Act can be only for committing an offence involving moral turpitude. Acts which disclose depravity and wickedness of character can be categorized as offences involving moral turpitude. Whether an offence involves moral turpitude or not depends upon the facts [*Allahabad Bank v. Deepak Kumar*] Bhola and the circumstances [*Pawan Kumar v. State of Haryana*, 1996(3) S.C.T 339 : (1996) 4 SCC 17] of the case. Ordinarily, the tests that can be applied for judging an offence involving moral turpitude are:

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a) Whether the act leading to a conviction was such as could shock the moral

conscience or society in general;

b) Whether the motive which led to the act was a base one, and

c) Whether on account of the act having been committed the perpetrators could be considered to be of a depraved character or a person who was to be looked down upon by the society. [Mangali v. Chakki Lal, AIR 1963 Allahabad 527]

The other important factors that are to be kept in mind to conclude that an offence involves moral turpitude are : the person who commits the offence; the person against whom it is committed; the manner and circumstances in which it is alleged to have been committed; and the values of the society. [Jorabhai Hirabhai Rabari v. District Development Officer, Mehsana, AIR 1996 Gujarat] . According to the National Incident Based Reporting System (NIBRS), a crime data collection system used in the United States of America, each offence belongs to one of the three categories which are: crimes against persons, crimes against property, and crimes against society. Crimes against persons include murder, rape, and assault where the victims are always individuals. The object of crimes against property, for example, robbery and burglary is to obtain money, property, or some other benefits. Crimes against society for example gambling, prostitution, and drug violations, represent society's prohibition against engaging in certain types of activities. Conviction of any alien of a crime involving moral turpitude is a ground for deportation under the Immigration Law in the United States of America. To qualify as a crime involving moral turpitude for such purpose, it requires both reprehensible conduct and scienter, whether with specific intent, deliberateness, willfulness or recklessness."

9. Further, a Constitution Bench of the Hon'ble Supreme Court in Union of India vs. Tulsi Ram Patel (1985) 3 SCC 398 has held that when the factum of the conviction of an employee comes to the knowledge of a disciplinary authority, it must examine the charges and consider all the facts of the case before deciding if any penalty is warranted. It has been categorically held that conviction in itself would not necessitate departmental action against the said employee. Speaking through Justice D.P. Madon, the following was held:

"127. Not much remains to be said about clause (a) of the second proviso to Article 311(2). 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 Challappan's case. 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. Having decided which of these three penalties is required to be imposed, he has to pass the requisite order. A Government servant who is aggrieved by the penalty imposed can agitate in appeal, revision or review, as the case may be, that the penalty was too severe or excessive and not warranted by the facts and circumstances of the case. If it is his case that he is not the Government servant who has been in fact convicted, he can also agitate this question in appeal, revision or review. If he fails in all the departmental remedies and still wants to pursue the matter, he can invoke the court's power of judicial review subject to the court permitting it. If the court finds that he was not in fact the person convicted, it will strike down the impugned order and order him to be reinstated in service. Where the court finds that the penalty imposed by the impugned order is arbitrary or grossly excessive or out of all proportion to the offence committed or not warranted by the facts and circumstances of the case or the requirements of that particular Government service the court will also strike down the impugned order. Thus, in *Shankar Dass v. Union of India and another*, 1985(2) RCR (Criminal) 117 : [1985] 2 S.C.C. 358, this Court set aside the impugned order of penalty on the ground that the penalty of dismissal from service imposed upon the appellant was whimsical and ordered his reinstatement in service with full back wages. It is, however, not necessary that the Court should always order reinstatement. The Court can instead substitute a penalty which in its opinion would be just and proper in the circumstances of the case."

(emphasis added)

10. As far as the matter of withholding gratuity is concerned, Section 4(6) of the Payment of Gratuity Act, 1971 ought to be studied. The same is reproduced below:

"(6) Notwithstanding anything contained in subsection (1),

(a) the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee may be wholly or partially forfeited--

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment." (emphasis added)

11. The deceased employee, in the present case, was denied gratuity and leave

encashment owing to his conviction under Section 138, NI Act. However, it is not the case of the respondents that the cheques qua which criminal complaints had been filed against the deceased were issued by him in an official capacity to make unlawful gains for himself or cause unlawful loss to respondent-Corporation. As such, no moral turpitude can be attributed to the deceased. As such, in terms of the judgment rendered by a Division Bench of the Madras High Court in L. Manjula vs. State of Tamil Nadu 2015(27) SCT 840, the respondent-Corporation has erred in denying gratuity and leave encashment to the petitioners i.e. legal heirs of the deceased.

CONCLUSION

12. In view of the discussion above, this Court does not find it justifiable to categorize a matter involving dishonor of a cheque, issued in a personal capacity, as an offence involving moral turpitude. Accordingly, the present petition is allowed in the following terms:

- i. The order dated 06.10.2020 (Annexure P-9) as well as order dated 16.09.2022 are hereby quashed and set aside. The deceased would be deemed to be in service till his death on 15.06.2022.
- ii. The respondent-Corporation shall release all the admissible service benefits, including gratuity and leave encashment, accrued to the deceased till the date of his death, to petitioner No.1, subject to the applicable service rules. The amount shall be settled against Rs. 9,76,602/- already disbursed to petitioner No.1 on 05.01.2024. Further, an interest at the rate of 6% p.a. shall be paid on the differential amount, from the date of filing of the present petition till actual payment.
- iii. The respondent-Corporation is further directed to consider the case of petitioner No.2 for compassionate appointment strictly in terms of the applicable policy at the time of death of the deceased employee.