
(2013) 08 P&H CK 0128

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 16226 of 2012

Sudagar Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 12-08-2013

Acts Referred:

Citation : (2014) LabIC 544 : (2013) 4 PLR 839

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : R.S. Randhawa, for the Appellant; Sudeepti Sharma, Deputy Advocate, General, Punjab, for the Respondent

Final Decision : Allowed

Judgement

Tejinder Singh Dhindsa, J.—The petitioner has filed the instant writ petition impugning the order dated 15.5.2009, Annexure P4, passed by the Civil Surgeon, Sangrur whereby while working on the post of Sweeper-cum-Chowkidar, he was dismissed from service. Further challenge is to the order dated 6.6.2012, Annexure P6, whereby the Appellate Authority i.e. the Director, Family and Health Welfare, State of Punjab has affirmed the order of dismissal passed by the Punishing Authority. Facts of the present case are in a very narrow compass. Petitioner was appointed as a Safai Sewak-cum-Chowkidar by Civil Surgeon, Sangrur, vide order dated 14.12.1981. FIR No. 61 dated 26.5.1991 was registered at Police Station Ahmedgarh, District Sangrur and the petitioner was convicted u/s 30 of the Arms Act vide order dated 18.10.2001 passed by the Additional Sessions Judge, Sangrur and directed to undergo six months rigorous imprisonment. The petitioner filed Crl. Appeal No.

1275-SB of 2001 before this Court, but the same was dismissed on 24.10.2002. On 11.4.2003, the petitioner was taken into custody and having

undergone the sentence of six months, he was released on 15.8.2003. Immediately thereafter, the petitioner submitted a request to the Civil

Surgeon, Sangrur to be permitted to join back on duty and he was allowed to do so. After a period of almost four years i.e. on 13.9.2007, a

show-cause notice was issued to the petitioner contemplating the imposition of extreme penalty of dismissal on account of his conviction. The

petitioner responded by submitting reply on 3.10.2007. However, vide impugned order dated 15.5.2009, Annexure P4, the petitioner was

dismissed from service. The petitioner availed of his statutory remedy by filing appeal dated 10.6.2009. Since no decision was being taken upon

the appeal, the petitioner was constrained to file Civil Writ Petition No. 2339 of 2012 in this Court and the same was disposed of on 9.2.2012

with a direction to the concerned respondent to decide the appeal in accordance with law after affording an opportunity of personal hearing and to

pass a final speaking order within a period of six months. In purported compliance of directions of this Court dated 9.2.2012, the Appellate

Authority has passed the order dated 6.6.2012, Annexure P6, affirming the penalty of dismissal imposed by the Punishing Authority i.e. Civil

Surgeon, Sangrur.

2. Learned counsel for the petitioner has strenuously argued that the action of the respondent-authorities is arbitrary and violative of Article 14 of

the Constitution of India. Learned counsel contends that the petitioner had more than 27 years of unblemished service to his credit prior to the

passing of the order dated 15.5.2009. It has further been argued that having undergone six months imprisonment upon conviction, the petitioner

had been permitted to rejoin in 2003 and had worked to the complete satisfaction of his superiors till the passing of the impugned order dated

15.5.2009. Learned counsel argues that it was in continuation of the attitude of harassment and victimization that even the statutory appeal was

kept pending and not decided for a considerable length of time. The learned counsel has also referred to the order of dismissal dated 15.5.2009

which is solely based on conviction and wherein there is no discussion as regards the judgment of conviction passed against the petitioner, the

gravity of offence which led to his conviction as also whether the offence involved any moral turpitude. Learned counsel further argues that even the

grounds and submissions raised in the appeal dated 10.6.2009, Annexure 5, have not been considered and dealt with by the Appellate Authority

while passing the order dated 6.6.2012, Annexure P6.

3. Upon notice of motion having been issued, a joint reply on behalf of respondent Nos. 1 to 4 has been filed in Court. The stand taken on behalf

of the State is that due procedure had been followed by the Punishing Authority inasmuch as a show-cause notice had been served upon the

petitioner prior to passing the order of dismissal. Learned State counsel would submit that the petitioner as a convict had been held guilty of the

offence under the provisions of the Arms Act and as such, no leniency could be shown towards such an employee. That apart, reliance has been

placed upon the instructions dated 5.8.1998 issued by the State Government, Department of Personnel and Administrative Reforms appended as

Annexure R1 along with the written statement to contend that on account of the petitioner having been convicted on a criminal charge and such

conviction having been upheld even by this Court, there was no requirement of holding any detailed departmental enquiry and such conviction fully

justified the passing of the order of dismissal.

4. Learned counsel for the parties have been heard at length.

5. It is by now well settled that mere conviction would not automatically entail dismissal, removal or reduction in rank. Even if an employee is

convicted, the competent authority is obligated to consider the conduct of the employee which, in turn, has led to his conviction. Reliance in this

regard may be placed on a Constitutional Bench judgment of the Hon'ble Supreme Court in Union of India and Another Vs. Tulsiram Patel and

Others, wherein the following observations were made in para 127 of the judgment:

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 penalty and, if so, what that penalty should be.

For the 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 Challapan'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.

6. Such view of Hon"ble the Supreme Court has been followed and applied by this Court in the case of " Kulwant Singh Vs. The Dy. District

Primary Education Officer and Another, and Kaur Singh and Another Vs. Punjab State Electricity Board and Others,

7. In the present case, a murder case FIR No. 59 dated 19.5.1991 had been registered against one Resham Pal Singh. During the process of

interrogation, he suffered a disclosure statement as regards having kept a .303 rifle along with 28 cartridges concealed in a polythene bag buried in

the earth near the bridge of a canal in the area of village Mahal Khurd. Such disclosure statement led to the recovery of the weapon and live

cartridges. As aforementioned Resham Pal Singh could not produce any licence or permit for possessing the rifle and ammunition, resultantly, a

separate case under Sections 25 and 30 of the Arms Act was registered and during the course of investigation, it came to be revealed that such

rifle stood allotted to the present petitioner under the Village Defence Scheme that had been introduced during the peak period of terrorism in the

State of Punjab. In a nut-shell, the petitioner stood convicted under the provisions of the Arms Act for having allowed access of the rifle and

ammunition to Resham Pal Singh.

8. The dismissal order dated 15.5.2009 passed by the Civil Surgeon, Sangrur and the reasoning contained therein is to the following effect:

Keeping in view the above said facts the employee has been served with a show-cause notice, and by affording the opportunity of personal hearing

under the Rules 8 and 13 of the Punjab Civil Services (Punishment and Appeal Rules) 1970, his services are liable to be suspended. And there is

no need to any enquiry and charge sheet against the employee, because as per the order of Hon"ble Court dated 18.10.2001 and the certificate

issued by jail superintendent on 23.05.2007, it is endorsed that employee is a prisoner/convict. Employee also endorsed being a prisoner in his personal hearing.

I, Dr. Daldeep Kumar, Civil Surgeon, Sangrur dismissed the services of Shri Sudagar Singh sweeper-cum-chowkidar son of Shri Nahar Singh,

P.H.G., Fatehgarh, Panjgrain under the Rules 8 and 13 of the Punjab Civil Services (Punishment and Appeal Rules) 1970, with immediate effect

from 15.05.2009 after extending the opportunity of personal hearing to Sudagar Singh sweeper-cum-chowkidar on 04.05.2009 and keeping in

view main facts under the F.I.R. No. 61, dated 26.05.1991, u/S. 25/30 of Arms Act, and the employee been convicted and has undergone sentence.

Sd/-

Civil Surgeon, Sangrur.

9. Likewise, the Appellate Authority i.e. the Director, Family and Health Welfare, Punjab while passing the impugned order dated 6-6-2012 has reasoned in the following terms:

In compliance with these orders of Hon"ble High Court Saudagar Singh was given the opportunity of personal hearing on 24.05.2012. He

admitted at the time of personal hearing that he has been punished with sentence to 6 months and a fine of Rs. 500/- by the orders of R.P.

Nagrath, Additional Sessions Judge, Sangrur on 18th August, 2001. He filed an appeal in the Hon"ble Punjab and Haryana High Court against this

decision which was dismissed on 11.04.2003. So, it has become crystal clear during the personal hearing that Sh. Saudagar Singh has been

correctly dismissed by the Civil Surgeon Sangrur Punjab Govt. (Promotional Administrative Reforms Department (PP Branch-2) vide letter No.

3/23/98-1 PP11/10394 dated 05.08.1998. Keeping in view these facts appeal filed by Sh. Saudagar Singh is being dismissed on 10.06.2009.

J.P. Singh

Director Family and Health

Welfare Punjab

10. It would be clear that the Punishing Authority as also the Appellate Authority have completely discarded the principles of law laid down by the

Hon"ble Supreme Court in Union of India and Another Vs. Tulsiram Patel and Others,) and the impugned orders do not reflect any consideration

as regards the conduct of the petitioner which led to his conviction. The judgment of the Criminal Court was required to be read by the competent

authority which passed the order and only after due application of mind, a view was to be taken as to whether the petitioner was worthy of

retention in service or to be inflicted with the major penalty of dismissal. The impugned orders dated 15.5.2009 passed by the Civil Surgeon at

Annexure P4 and order dated 6.6.2012, Annexure P6, passed by the Appellate Authority do not reflect any such application of mind. Impugned

orders, as such, cannot sustain.

11. The instructions dated 5.8.1998 issued by the Department of Personnel and Administrative Reforms, Government of India appended as R1

and placed reliance upon by the learned State counsel, in fact, support the petitioner. Such instructions also enjoin upon the competent authority to

take into account the conduct of a Government servant which has led to his conviction on a criminal charge.

12. For the reasons recorded above, the writ petition is allowed. Impugned orders dated 15.5.2009, Annexure P4, and dated 6.6.2012,

Annexure P6, are quashed. The petitioner is reinstated in service with all consequential benefits. Keeping in view the fact that the petitioner was

initially appointed in the year 1981 and would now be close to attaining the age of superannuation, the liberty of passing a fresh order in the light of

his conviction is being denied. Writ petition allowed in the aforesaid terms.