

(2011) 02 DEL CK 0041
In the Delhi High Court
Case No : Writ Petition (C) 1825 of 2008

Sultan Singh

APPELLANT

Vs

Administrator, NCT of Delhi and Others

RESPONDENT

Date of Decision : 24-02-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi School Education Rules, 1973 — Rule 115
Penal Code, 1860 (IPC) — Section 409, 420, 463, 465, 467
Probation of Offenders Act, 1958 — Section 12, 3, 4, 4(1), 6

Citation : (2011) 02 DEL CK 0041

Hon'ble Judges : P.K. Bhasin, J

Bench : Single Bench

Advocate : R.S. Soni, for the Appellant; Rajeev Sharma, for R-1 and R-2, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Bhasin, J.—The Petitioner was working as a head clerk in Lions Vidya Mandir Secondary School, Kashmir House, New Delhi(hereinafter to be referred to as "the School") where he had joined as a UDC on 16th May, 1967. Sometime in the year 1994 a criminal case under Sections 420/467/468/471/409 of the Indian Penal Code was registered against the Petitioner at Chanakya Puri Police Station vide FIR No. 263/1994 on the complaint of the then acting Vice-Principal of the School. The main allegation against him was that he had withdrawn a sum of about ` 50,000/- from the GPF accounts of some of the teachers of the School by forging documents. As a result of registration of that criminal case against the Petitioner he was suspended from service on 17th September, 1994 and during the period of his suspension he was paid subsistence allowance as per rules. He was tried by the Court of concerned Metropolitan Magistrate and finally he was held guilty also for the commission of the offences punishable under Sections 463/465 and 471 IPC vide judgment dated 31st October, 2002 by the Court of Shri L.K. Gaur, Metropolitan Magistrate, New Delhi. However, he was not awarded

any punishment and instead he was released on probation vide order dated 11th December, 2002. The Petitioner did not challenge his conviction by filing appeal against the judgment of the convicting Court.

2. On successful completion of the probation period of one year the Petitioner was re-instated by the management of the School w.e.f. 29th January, 2003 but the management did not take any decision regarding the payment of his salary and other allowances etc. for the period he had remained under suspension i.e. from 17th September, 1994 to 28th January, 2003 despite the Petitioner having made representations to the management of the School as well as to the Director of Education (Respondent No. 2 herein). After waiting for positive response from the Respondents regarding his request for payment of full salary and other service benefits for the period of his suspension for over one year he filed a writ petition in this Court (being W.P. (C) No. 12477/2004) in which a prayer was made for issuance of writ of mandamus directing the Respondents to give him all the consequential benefits of full pay and allowances, annual increments, benefits of continuity of service, revised pay-scale etc. treating the period of his suspension as period spent on duty. It appears that after the filing of the writ petition the management of the school informed the Director of Education that the period of suspension of the Petitioner not to be treated as period spent on duty and it be treated as Dies-Non and payment of pay etc. be restricted to subsistence allowance already paid to him. However, before that writ could be heard and disposed of the Petitioner withdrew the same on 1st May, 2006 as he was expecting some amicable settlement with the Respondents in that writ petition who are the Respondents in the present writ petitions also. After withdrawing that writ petition the management of the School recommended to the Director of Education vide letter dated 16th May, 2006 that the period of suspension of the Petitioner be treated as period spent on duty and he should be given all the consequential benefits of pay and allowances etc. as per Rules and also for inclusion of that period for the purposes of giving him pensionary benefits. However, the Respondents No. 1 and 2 did not accept that recommendation and vide letter dated 2nd August, 2007 the management of the School was informed that the request for regularization of the period of suspension of the Petitioner as proposed by it had been rejected and the pensionary benefits had been approved after excluding the period of suspension. Feeling aggrieved, the Petitioner once again approached this Court by filing the present writ petition under Article 226 of the Constitution of India for issuance of an appropriate writ directing the Respondents No. 1 and 2 to pay to the Petitioner all the arrears to pay his salary and pensionary benefits for the period of his suspension treating the same as period spent on duty.

3. This writ petition was opposed on behalf of Respondents No. 1 and 2 as well as by the management of the School, Respondent No. 3 herein, primarily on the ground that the Petitioner was not entitled to the various service benefits he was claiming since the fact was that he had actually been convicted in a criminal case and his release on probation did not change his status as a convict and the same

also does not exonerate him of the crime found by the Court to have been committed by him.

4. Learned Counsel for the Petitioner had argued that once the Petitioner was re-instated after revocation of his suspension he could not be deprived of any part of his salary and other allowances etc. because of his having been convicted in the criminal case since in that case he had not been awarded any sentence but was extended the benefit of probation which in turn also gave the benefit to him u/s 12 of the Probation of Offenders Act according to which provision the conviction of the accused who is given the benefit of probation is not to be considered a disqualification for any purpose and since the stigma of conviction had been wiped off completely. Therefore, counsel contended, merely because of the conviction of the Petitioner he could not have been deprived of the service benefits in respect of the period of his suspension. This was the only ground pressed to in service by the learned Counsel for the Petitioner placing strong reliance upon one judgment of a Division Bench of this Court in "Iqbal Singh v. Inspector General of Police and Ors. AIR 1970 Delhi 24.

5. The argument that since the Petitioner was extended the benefit of probation by the Criminal Court after finding him guilty the Respondents could not have refused to treat the period of his suspension as period spent on duty is totally devoid of merit and the reliance placed on the judgment of the Division Bench judgment of this Court in Iqbal Singh's Case (supra) is also equally misplaced since that judgment has already been overruled way back in 1972 by a Full Bench of this Court in a judgment reported as 1972 LIC 736; "Director of Postal Services v. Daya Nand 1972 LIC 736". The Supreme Court also had in a judgment reported as The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others, , in which the effect of release of an employee-accused on probation had come up for termination, noticed that Iqbal Singh's judgment had been overruled by the Full Bench of this Court. Regarding the scope of Section 12 of the Probation of Offenders Act the Supreme Court had observed as under:

11. This brings us to the consideration of two interconnected questions, namely, as to what is the effect of the order of the Magistrate releasing the accused on probation and the effect of Section 12 of the Probation of Offenders Act. It was suggested by the Respondents that if the Magistrate does not choose, after convicting the accused, to pass any sentence on him, but releases him on probation then the stigma of conviction is completely washed out and obliterated, and, therefore, Rule 14(i) of the Rules of 1968 will not apply in terms. We are, however, unable to agree with this somewhat broad proposition. A perusal of the provisions of the Probation of Offenders Act, 1958, clearly shows that the mere fact that the accused is released on probation does not obliterate the stigma of conviction. The relevant portion of Section 3 of the Probation of Offenders Act, 1958, hereinafter referred to as "the Act" runs thus:

... notwithstanding anything contained in any other law for the time being in

force, the Court may, instead of sentencing him to any punishment or releasing him on probation of good conduct u/s 4, release him after due admonition....

Similarly the relevant part of Section 4(1) of the Act runs thus:

...notwithstanding anything contained in any other law for the time being in force, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the Court may direct, and in the meantime to keep the peace and be of good behaviour....

Section 9 (3) and (4) of the Act reads as under:

9. (3) If the Court, after hearing the case, is satisfied that the offender has failed to observe any of the conditions of the bond or bonds entered into by him, it may forthwith-

(a) sentence him for the original offence; or

(b) where the failure is for the first time, then, without prejudice to the continuance in force of the bond, impose upon him a penalty not exceeding fifty rupees.

(4) If a penalty imposed under Clause (b) of Sub-section (3) is not paid within such period as the Court may fix, the Court may sentence the offender for the original offence.

These provisions would clearly show that an order of release on probation comes into existence only after the accused is found guilty and is convicted of the offence. Thus the conviction of the accused or the finding of the Court that he is guilty cannot be washed out at all because that is the sine qua non for the order of release on probation of the offender. The order of release on probation is merely in substitution of the sentence to be imposed by the Court. This has been made permissible by the statute with a humanist point of view in order to reform youthful offenders and to prevent them from becoming hardened criminals. The provisions of Section 9(3) of the Act extracted above would clearly show that the control of the offender is retained by the criminal court and where it is satisfied that the conditions of the bond "have been broken by the offender who has been released on probation, the Court can sentence the offender for the original offence. This clearly shows that the factum of guilt on the criminal charge is not swept away merely by passing the order releasing the offender on probation. Under Sections 3, 4 or 6 of the Act, the stigma continues and the finding of the misconduct resulting in conviction must be treated to be a conclusive proof. In these circumstances, therefore, we are unable to accept the argument of the Respondents that the order of the Magistrate releasing the offender on probation obliterates the stigma of conviction.

(emphasis supplied)

6. In Iqbal Singh's case (supra) the employee concerned was suspended because of his involvement in some criminal case. After trial he was convicted but was released on probation. Despite his release on probation that employee was dismissed from service because of his having been held guilty in the criminal case. That employee invoked Section 12 of the Probation of Offenders Act while challenging his dismissal from service by filing a writ petition. While allowing that writ petition the Division bench of this Court had observed that once an accused is released on probation after conviction there was express immunity from any kind of departmental proceedings against him provided by Section 12 of the Probation of Offenders Act and the conviction was unactionable. As noticed already, this judgment stands overruled by a Full Bench of this Court and therefore, the Petitioner cannot derive any benefit from the judgment of the Division Bench.

7. As far as grant of full pay and allowances and other benefits to an employee who has been found guilty in a criminal case but released on probation for the period he had remained under suspension is concerned, it was not contended by learned Counsel for the Petitioner that the Respondents did not have any authority to deny him those benefits upon his being reinstated after revocation of his suspension. It was also not argued that there was any violation of any rule governing the services of the Petitioner by any of the Respondents. In this regard a reference can be made to a Division Bench judgment of this Court in Naresh Ahlawat Vs. Mahanagar Telephone Nigam Ltd., wherein also the question of payment of full salary and allowances etc. for the period of suspension of the concerned employee of that case who had been held guilty in a criminal case by the trial Court but acquitted in appeal had come up for consideration. The Division Bench after taking note of some judgments of the Supreme Court to the effect that mere acquittal of an employee in a criminal case will not ipso facto entitle him to get all the consequential benefits for the period of his suspension including that of treating that period as spent on duty for the purposes of computing pensionary benefits observed that unless it is shown that the decision of the authorities in not treating the suspension period as the period spent on duty by the suspended employee was totally illegal or perverse Writ Court would not interfere in that administrative decision of the concerned authority. In the present case the decision was sought to be challenged only on the ground that with the release of the Petitioner on probation his conviction could not come in his way for getting consequential benefits after revocation of his suspension and in that contention I have found no merit. The Respondents could justifiably place him under suspension the moment criminal case was registered against him as is provided under Rule 115 of the Delhi School Education Rules, 1973 and after being held guilty could restrict his entitlement to subsistence allowance only and I do not find any illegality in that decision taken by Respondents No. 1 and 2 despite the fact that the management of the School had changed its earlier recommendation to the Respondent No. 1 and 2 not to pay to the Petitioner full pay and allowances for the period of his suspension by recommending to

Respondents 1 and 2 after withdrawal of the earlier petition by the Petitioner that he should be treated as on duty during the period of suspension. In fact regarding this subsequent recommendation the management's stand here was that it had wrongly made that recommendation relying upon the judgment of this Court in Iqbal Singh's case (supra) when the Supreme Court's decisions were to the contrary.

8. This writ petition, thus, being devoid of any merit, is dismissed but without any orders as to costs.