

(1990) 03 P&H CK 0013

In the Punjab And Haryana At Chandigarh

Case No : Letter Patent Appeal No. 616 of 1989 in Civil Writ Petition No. 3714 of 1985

The State of Punjab

APPELLANT

Vs

Amrik Singh

RESPONDENT

Date of Decision : 09-03-1990

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 304(1)

Citation : (1990) 97 PLR 615

Hon'ble Judges : J.V. Gupta, Acting C.J.; M.S. Liberhan, J

Bench : Division Bench

Advocate : M.L. Sarin, A.A.G. and Jai Shree Thakur, for the Appellant; Gurmukh Singh, for the Respondent

Final Decision : Allowed

Judgement

J.V. Gupta, Acting C.J.—Shri Amrik Singh, respondent, joined the service as a Clerk, on December 20, 1966. On April 26, 1971, a criminal case was registered against him u/s 302 Indian Penal Code. He was convicted by the Sessions Judge on August 31, 1977, for murder. In view of this conviction by the criminal Court, he was dismissed from service vide order dated August 31, 1978. In appeal against the judgment of the Sessions Judge, his conviction was converted u/s 304(1) Indian Penal Code and was sentenced to seven years rigorous imprisonment vide order dated August 22, 1979. Later on, on October 17, 1981, he was prematurely released on account of his good conduct. Later on, he made a representation dated November 13, 1981, and reminder dated November 21, 1982 was also received by the department. According to the return, he was given personal hearing by the Chief Secretary on October 22, 1983, and after considering the matter, it was decided to reject the representation and the petitioner was informed accordingly on March 11, 1985. He then filed the civil writ petition challenging the said, order of dismissal dated August 31, 1978 as well as the order dated March 11, 1985, whereby his representation was

dismissed Therein, the learned Single Judge gave a categorical finding that the offence under which the petitioner was convicted squarely fell within the purview of moral turpitude and he could not escape his liability. However, in spite of this finding, the learned Single Judge was of the view that the punishment of dismissal from service was not called for due to changed circumstances and, therefore, the respondents were directed to review his case and to award punishment proportionate to the offence with which he had been charged in view of his conduct which had led to his premature release from jail and taking back in service the similarly situated employees.

2. The learned counsel for the State of Punjab (the appellant) submitted that after recording the finding that the offence under which the petitioner was convicted squarely fell within the purview of moral turpitude, there was nothing to be reviewed. Moreover, argued the learned counsel, the petitioner was already given personal hearing by the Chief Secretary and it was found that the petitioner was not entitled to reinstatement because of his conviction u/s 304(1) Indian Penal Code, in appeal. In any case, argued the learned counsel, the dismissal order passed on August 31, 1978. was never challenged as such and. therefore, the writ petition filed in the year 1985 was highly belated to challenge the said order. According to the learned counsel, the subsequent order dismissing his representation dated March 11, 1985, did not give him a fresh cause of action He also produced in this Court the original record to show that there was due application of mind while passing the dismissal order dated August 31, 1978 as well as subsequently when his representation was dismissed on March 11, 1985.

3. On the other hand, the learned counsel for the respondent (the writ petitioner) submitted that while passing the dismissal order, his conduct was never taken into consideration The dismissal order was passed simply on the ground of his conviction u/s 202, Indian Penal Code Thus, argued the learned counsel, since later on the said conviction was altered to Section 304(1), Indian Penal Code and he was also released prematurely on account of his good conduct in the jail, he was entitled to be reinstated and for re consideration of his case afresh. In support of the contention, the learned counsel relied upon the The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others, and Union of India and Another Vs. Tulsiram Patel and Others, .

4. After hearing the learned counsel for the parties, we are of the considered opinion that once the learned Single Judge recorded the finding that the offence under which the petitioner was convicted squarely fell within the purview of moral aptitude and he could not escape his liability, then, there was nothing to be reviewed taking into consideration his subsequent conduct. Moreover, it was for the department as regards the punishment to be awarded whether of dismissal or a lesser punishment. The same could not be interfered with in the writ jurisdiction.

5. Apart from the above, on the representation filed by the writ-petitioner, he was given personal hearing by the Chief Secretary and his conduct was duly

considered and after considering the same, the dismissal order was maintained. It could not be successfully argued on behalf of the writ-petitioner that there was no applicability of the mind on the part of the authorities while dismissing him in the year 1978 when he was convicted u/s 302, Indian Penal Code by the Sessions Judge vide order dated August 31, 1978. From the date of the said order, the writ petition filed in the year 1985 was highly belated. The authorities relied upon by the learned counsel for the respondent have no applicability to the facts of the present case.

6. In T. R. Ckallappan's case (supra), the employee was convicted on a charge u/s 51(A) of the Kerala Police Act, whereas in Tuhiram Patel's case (supra) the conviction was u/s 332 of the Indian Penal Code and was also released on probation. Thus, from the facts and circumstances of the case and from the original record produced in this Court, it could not be said that it was a case where there was no applicability of mind by the dismissing authority.

7. Consequently, this appeal succeeds. The order of the learned Single Judge is set aside and the writ petition is dismissed with no order as to costs