

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.19578 of 2011 (O&M)
DATE OF DECISION: 28.2.2013

H.C. Arora

.....Petitioner

versus

State of Punjab and others

.....Respondents

CORAM:- HON'BLE MR.JUSTICE A.K. SIKRI, CHIEF JUSTICE
HON'BLE MR. JUSTICE RAKESH KUMAR JAIN, JUDGE

Present: Mr.H.C. Arora, Advocate for the petitioner
Ms.Rita Kohli, Addl. Advocate General, Punjab

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A.K. SIKRI, C.J.:

1. The petitioner is a practising advocate in this Court and as a public-spirited person, has filed this writ petition in the nature of public interest litigation. It is averred in this petition that some time in the year 2010, the petitioner received a list of convicted police officers/officials who were still serving in the police department despite the fact that they were convicted for various criminal offences. They were convicted under various provisions of IPC or other statutes for an offence the maximum sentence prescribed whereof was less than three years. Based on conviction of such a crime, the disciplinary authority imposed lesser kind of penalty than the dismissal from service.

2. Details of 20 such officers are given in Para-10 of the writ petition. A perusal of the particulars of offences committed by those 20 police officials for which they have been convicted shows that offences are mostly of the following types:

- "(i) Section 223 of IPC (escape from confinement or custody negligence suffered by public servant).
- (ii) Section 224 of IPC (resistance or obstruction by a person to his lawful apprehension);
- (iii) Section 225 of IPC (resistance or obstruction to lawful apprehension of another person);
- (iv) Section 167 (Public Servant framing an incorrect document with intent to cause injury);
- (v) Section 322 of IPC (Voluntarily causing grievous hurt);
- (vi) Section 336 of IPC (Act endangering life or personal safety of others);
- (vii) Section 353 IPC (assault or criminal force to deter public servant from discharge of his duty);
- (viii) Section 217 IPC (Public Servant disobeying direction of law with intent to save person from punishment or property from forfeiture);
- (ix) Section 278 IPC (making atmosphere noxious to health);
- (x) Section 379 (theft);
- (xi) Section 342 IPC (wrongful confinement);
- (xii) Section 346 IPC (wrongful confinement in secret);
- (xiii) Section 142 IPC (being a member of unlawful assembly);
- (xiv) Section 304-A IPC (causing death by negligence);
- (xv) Section 427 IPC (Mischief causing damage);
- (xvi) Section 131 of Representation of People Act, 1951 (disorderly conduct in or near police station);

(xvii) Section 132 of Representation of people Act, 1951
(misconduct at polling station)

(xviii) Section 134 of Representation of People Act, 1951
(Breach of official duty in connection with elections)

(xix) Section 15 of NDPS Act, 1985 (Contravention in
relation to poppy straw).

3. The departmental action taken varies from imposition of punishment of forfeiture of one year of approved service to three years of approved service. In some cases, no action is taken because of the reason that the appeals are filed by the convicted officials which are pending either in the court of Additional Sessions Judges or this High Court. In some cases, though initially the orders of dismissal were passed, these orders were withdrawn and the officers/officials reinstated.

4. The petitioner has drawn attention to Circular dated 5.8.1998 issued by the Department of Personnel and Administrative Reforms, Union of India which was addressed to all heads of departments with specific directions that in the case of conviction for criminal offence, action should be taken against the concerned government employee on the basis of conduct which led to conviction on criminal charge. However, if such a convicted employee succeeds in appeal/revision, his case may be reviewed in such a manner that he suffers no prejudice. It is stated that ignoring the spirit of the said circular, the Director General of Police, Punjab has issued Circular dated 18.5.2010 to various punishing authorities in the police department, directing them that the police officials, who are convicted for criminal charges for the offences where the prescribed maximum punishment is less than 3 years, such officials

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“16.2(2) – An enrolled police officer convicted and sentenced to imprisonment on a criminal charge shall be dismissed.

Provided that in case of the conviction of a police officer is set aside in appeal or revision, the officer empowered to appoint him shall review his case keeping in view the instructions issued by the Government in this behalf.

Provided that a punishing authority may, in an exceptional case involving manifestly extenuating circumstances for reasons to be recorded and with the prior approval of the next higher authority impose any punishment other than that of dismissal.”

Second proviso to Article 311(2) is also relevant. We reproduce Article 311(2) with its provisos hereunder:

“(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed.

Provided further that this clause shall not apply —

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.”

Rule 13 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970 lays down special procedure in certain cases and by enlisting those categories of cases, regular departmental enquiry is not needed before imposing the punishment in those cases. Sub-rule(i) thereof mentions the cases where penalty is imposed on a government employee on the ground of conduct which has led to conviction on a criminal charge.

"13. **Special Procedure in certain cases.**- Notwithstanding anything contained in Rules 8,9,10,11 and 12-

(i) where any penalty is imposed on a Government employee on the ground of conduct which led to his conviction on a criminal charge; or

(ii) where the punishing authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or

(iii) where the Governor is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules, the punishing authority may consider the circumstances of the case and make such orders thereon as it deems fit:

Provided that the Commission shall be consulted where such consultation is necessary, before any orders are made in any case under this rule."

6. On the basis of aforesaid provisions, the petitioner argues that those police officials, who are convicted of certain offences for which the prescribed maximum punishment is less than 3 years, are not fit to be retained in service. Therefore, the Director General of Police could not issue such a circular like the one issued on 18.5.2010 giving a mandate to the disciplinary authorities not to impose punishment of dismissal, but inflict a punishment other than dismissal. For this reason, the petitioner has sought quashing of the said circular as illegal and ultra vires the Constitution of India.

7. The respondents have filed the counter-affidavit, contesting the aforesaid petition. It is explained that earlier 72 convicted police officials were retained in service. However, their cases have been reviewed by the competent authority under Rule 16.2(2) of the Punjab Police Rules and 18 police officials have been dismissed from service by the competent authority. The status-report of each convicted police official is given in Annexure R-1. It is also mentioned in the affidavit that out of 72 convicted police officials, 47 convicted police officials have been

either dismissed from service or retained in service due to stay of conviction. So far as the cases emanating from the nation's fight against the terrorism are concerned the State of Punjab had framed guidelines to deal with such cases. It is also contended that the circulars of the Ministry of Personnel & Public Administration, Government of India are not applicable, as the police officials in the State of Punjab are governed by the Punjab Police Rules.

8. We have heard Mr. Arora, who appeared in person as well as Ms. Rita Kohli, Additional Advocate General, who advanced arguments on behalf of the respondents.

9. At the outset, we would like to observe that neither any provision of the Constitution nor any rules provide that in case of conviction in a criminal matter, a government employee has to be necessarily dismissed from service. We have already extracted above the relevant provisions. No doubt, Rule 16.2 of the Punjab Police Rules, 1934 stipulates that an official convicted and sentenced to imprisonment on a criminal charge shall be dismissed, however, second proviso to this very rule gives discretion to the punishing authority to impose lesser punishment than that of dismissal "in an exceptional case involving manifestly extenuating circumstances". It would, thus, show that though the normal rule is dismissal, but at the same time if the circumstances are exceptional which disclose extenuating features, the punishing authority can impose punishment other than that of dismissal as well. Of course, in such a case, the punishing authority has not only to record the reasons which would obviously reflect how it is exceptional involving manifestly extenuating circumstances, but punishing authority is also supposed to take prior approval of the next higher authorities.

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10. Insofar as Rule 13 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970 is concerned, it only empowers the Governor to dispense with the holding of the regular departmental enquiry, as provided in those rules, in 3 types of cases. One such circumstance is where any penalty is imposed on a government employee on the ground of conduct which led to his conviction on a criminal charge. Therefore, in such a case, the punishment can be imposed without holding enquiry. However, the punishment need not necessarily be that of dismissal from service.

11. Almost to similar extent is the second proviso to Article 311 of the Constitution where penalty may be imposed without holding the enquiry in those cases where conduct has led to conviction of the government servant on a criminal charge. However, it specifically provides that penalty can be that of dismissal or removal or reduction in rank which means, the punishment other than dismissal can also be given.

12. Thus, it becomes clear that on conviction of a police officer/official in a criminal case, it is not necessary that it has to be a punishment of dismissal in all circumstances and without any exception.

13. So far so good. However, the moot question which still remains to be addressed is as to whether there can be a direction by the Director General of Police in the form of aforesaid guidelines by issuing a general circular to the disciplinary authorities not to impose the punishment of dismissal in those cases where the sentence is less than three years.

14. As pointed out above, Rule 16.2 of the Punjab Police Rules stipulates that a police officer/official convicted and sentenced to

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imprisonment on a criminal charge shall be dismissed. It merely talks of conviction and sentence and does not lay down that the dismissal is only in those cases where the offence for which police officer/official was convicted carries the sentence of more than three years. In a given case, therefore, if the punishing authority wants to impose the punishment other than dismissal, *i.e.*, less punishment, the proviso while giving him this discretion, also lays down that the punishing authority should exercise such a discretion objectively, inasmuch as, such a course of action can be taken only when: (i) it is an exceptional case involving manifestly extenuating circumstances; (ii) the punishing authority has to record the reasons for taking this course of action, namely, how the case is exceptional and what are those extenuating circumstances which justify imposition of lesser punishment; and (iii) there is a pre-condition of taking prior approval of next higher authority as well. Thus, it follows that though it is not mandatory to dismiss a government employee in every case of conviction by a judicial court, at the same time, whenever lesser punishment is to be given, the power is to be exercised fairly, justly and reasonably. It is for the punishing authority to decide in each and every case the quantum of punishment to be inflicted on the convicted employee, keeping in view the gravity of conduct which has led to his conviction on a criminal charge. However, the impugned circular takes away this discretion. Once it is found that a particular police officer/official is convicted of an offence for which the maximum sentence is up to 3 years, whether it is an exceptional case or not and there are extenuating circumstances or not, the punishing authority has to give lesser punishment, that is, other than that of dismissal.

15. The learned Additional Advocate General, however, submitted that the aforesaid guidelines have been issued pursuant to the directions of this Court in **Ramesh Verma vs. State of Punjab, CWP-5845-2006, decided on 1.9.2009** where the Court had directed the Government to consider formulating guidelines/broad parameters for deciding appeal/mercy petitions of dismissed police officials, so that any arbitrariness should be removed. She also took umbrage under the judgment of the apex Court in the case of **Deputy Director of Collegiate Education (Administration), Madras vs. S. Nagoor Meera, (1995) 3 Supreme Court cases 377**, submitting that the guidelines are pursuant to the directions given in the said judgment. A reading of the judgment in S. Nagoor Meera (supra) would clearly reveal that the same would be of no assistance to the respondent, as the issue involved in the said case was altogether different. The Court was concerned with second proviso to Article 311(2). The respondent in that case was convicted of an offence under the Prevention of Corruption Act, 1988. In appeal, the Court had suspended the sentence. In the meantime, the appellant had issued show cause notice to the employee as to why action under second proviso to Article 311(2) be not taken. This show cause notice was challenged by filing Application before the Tamil Nadu Administrative Tribunal which allowed the application on the ground that since the sentence imposed upon the respondent was suspended, no proceedings could be taken for terminating his services. The Supreme Court while upturning the order of the CAT held that as per the second proviso, punishment of dismissal, removal or reduction in rank can be imposed if the conduct of the government employee had led to conviction. The Court held that the proviso, thus, speaks of "conduct"

and not sentence or punishment awarded. Merely because the sentence is suspended and/or accused is released on bail, conviction does not cease to operate and there can be no question of "suspending the conduct". Of course, the Supreme Court also clarified that recourse to second proviso to Article 311(2) should be taken only where the conduct, which has led to conviction, is such that it deserves any of the three major punishments, viz., dismissal, removal or reduction in rank, as mentioned in Article 311(2).

16. In the present case, however, there is a specific rule in the form of Rule 16.2 of the Punjab Police Rules. It is stated at the cost of repletion that the main provision of this rule stipulates penalty of dismissal in the case of conviction and sentence to imprisonment on a criminal charge. It nowhere states that the offence for which the police official/officer was charged and convicted should carry a maximum punishment of more than 3 years' rigorous imprisonment. We are not examining the validity of this rule nor it has arisen in the present case. On the contrary, the petitioner is invoking the provisions of this rule and making this rule as foundation for challenging the impugned guidelines. The respondent-State has not amended this rule. Second proviso to this rule, which is exception to the main rule, gives the punishing authority discretion only when the conditions mentioned therein are satisfied. There cannot be general directions not to inflict the punishment of dismissal at all in the cases of conviction for those offences where the maximum punishment is up to three years. It has to be left to the punishing authority, to be exercised in each individual case, having regard to exceptional cases wherein extenuating circumstances are found on record.

17. As far as orders passed in CWP-5845-2006 are concerned, we find that that writ petition was filed by a police official, namely, Head Constable who had been proceeded against departmentally on account of his wilful absence from duty which proceedings culminated in the order of dismissal against him. His statutory appeal and revision petition were also dismissed. Thereafter, he filed a mercy petition. That was accepted and the order of dismissal from service was substituted by an order forfeiting his five annual increments. He was still not satisfied with the punishment of forfeiture of five annual increments and, therefore, filed the writ petition challenging that order. While considering that case, the Court took cognizance of the fact that the mercy petitions were dealt with indiscriminately which had resulted into different kinds of orders. The Court also found a discernible trend that in one year 44 Constables, who were dismissed from service on account of charge of wilful absence from duty having been proved against them, were re-instated into service by accepting mercy petitions and out of these 44 orders, approximately 40 orders were passed by one single officer within a span of about one year. It was in these circumstances that the Court observed that there should be some guidelines for dealing with these mercy petitions so that objectivity is introduced in the decision making process and it should not be left to *ipse dixit* of a particular officer. Pursuant thereto, affidavit was filed stating that issue under reference was being examined in the right perspective by the State Government and taking note of the said affidavit, the writ petition was disposed of with directions to the respondents to abide by the undertaking given to the Court and recorded in the affidavit dated 1.9.2009.

18. It is clear from the above that validity of the guidelines was not the issue nor looked into. It would also be pertinent to mention that sub-para (ii) of para-1 of the impugned guidelines also does not leave any discretion with the punishing authority as it provides that in all those cases where the maximum sentence for an offence is more than three years, the convicted police officer has to be necessarily dismissed. Even in such cases, there can be exception and extenuating circumstances. In a recent judgment dated May 03, 2011 in **Civil Appeal No.3844 of 2011 titled as The Joint Action Committee of Airlines Pilots Associations of India & Ors. vs. The Director General of Civil Aviation & Ors.**, entire law on this question is revisited and lucidly explained by the apex court in the following manner:


26. The contention was raised before the High Court that the Circular dated 29.5.2008 has been issued by the authority having no competence, thus cannot be enforced. It is a settled legal proposition that the authority which has been conferred with the competence under the statute alone can pass the order. No other person, even a superior authority, can interfere with the functioning of the Statutory Authority. In a democratic set up like ours, persons occupying key positions are not supposed to mortgage their discretion, volition and decision making authority and be prepared to give way to carry out commands having no sanctity in law. Thus, if any decision is taken by a statutory authority at the behest or on suggestion of a person who has no statutory role to play, the same would be patently illegal. (Vide: **The Purtabpur Co., Ltd. v. Cane Commissioner of Bihar & Ors.**, AIR 1970 SC 1896; **Chandrika Jha v. State of Bihar & Ors.**, AIR 1984 SC 322; **Tarlochan Dev Sharma v. State of Punjab & Ors.**, AIR 2001 SC 2524; and **Manohar Lal (D) by LRs. v. Ugrasen (D) by LRs. & Ors.**, AIR 2010 SC 2210). 27. Similar view has been reiterated by this Court in **Commissioner of Police, Bombay v. Gordhandas Bharji**, AIR 1952 SC 16; **Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia & Ors.**, AIR 2004 SC 1159; and **Pancham Chand & Ors. v. State of Himachal Pradesh & Ors.**, AIR 2008 SC 1888, observing that an authority vested with the power to act under the

statute alone should exercise its discretion following the procedure prescribed therein and interference on the part of any authority upon whom the statute does not confer any jurisdiction, is wholly unwarranted in law. It violates the Constitutional scheme.

28. In view of the above, the legal position emerges that the authority who has been vested with the power to exercise its discretion alone can pass the order. Even senior official cannot provide for any guideline or direction to the authority under the statute to act in a particular manner."

19. We, therefore, set aside sub-paras (ii) and (iii) of Para-1 of the impugned guidelines in the present form, however, giving liberty to the respondents, at the same time, to take out fresh guidelines in the modified form taking care of the law stated in this judgment.

20. Writ petition is, accordingly, disposed of.


(A.K. SIKRI)
CHIEF JUSTICE


(RAKESH KUMAR JAIN)
JUDGE

28.2.2013

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