

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

O R D E R

S.B.Civil Writ Petition No. 401/2007
(Inayat Khan Vs. The State of Rajasthan & Ors.)

.....

Date of Order : 28/11/2008

P R E S E N T

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. M. Mridul Senior Advocate with
Mr. R.N.Upadhyay, for the petitioner.
Mr. S.S.Ladrecha, Govt. Counsel for the respondents.

BY THE COURT
Reportable

By the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks quashing of order dated 13.09.2006 and consequential benefits flowing therefrom.

Briefly stated the facts and circumstances of the case to the extent they are relevant and necessary for the decision of this writ petition are that the petitioner was appointed as Teacher Gr.III by the respondent. The petitioner and other persons while in Govt. service, alleged to have involved in commission of crime punishable under various sections of IPC causing murder of one Madanlal. A crime report came to be lodged against the petitioner and others

on 31.3.1973. He was put to trial for the offences under Sections 147, 302/149, 307/149, 323/149, 324/149, 153-A/149 and 148 IPC along with other co-accused in Sessions Case No.25/74. The petitioner was arrested by the police and therefore, the respondent employer placed the petitioner under suspension by order dated 12.09.1973. After holding the trial, learned Additional Sessions Judge, Udaipur by its judgment and order dated 22.2.1978 convicted the petitioner and other co-accused for the offences under Sections 302/149, 323/149, 324/149 and 148 IPC and sentenced to undergo life imprisonment for the offence under Section 302/149 IPC and for the offences under Sections 323/149 and 148 IPC three months rigorous imprisonment and a fine of Rs. 100/- each on each count and for offence under Section 324/149 IPC six months rigorous imprisonment and a fine of Rs. 200/- each. The co-accused Sher Mohammed and others including the petitioner filed appeal before Division Bench of this Court being D.B.Criminal Appeal No. 104/78 which came to be decided by judgment dated 06.04.1998 setting aside the conviction and sentence for the offences under Sections 302/149, 323/149 and 324/149 IPC. However, the conviction and sentence of the accused petitioner and other co-accused for the offence under Section 148 IPC was maintained. The sentence for the offence under Section 148 IPC was for three months rigorous imprisonment, which the petitioner has already undergone by remaining in custody for more

than the period for which the sentence has been awarded. The petitioner moved for revocation of his suspension order, however, he failed to succeed. Thereafter the petitioner filed a writ petition before this Court being SBCW No.3396/03, though in the instant writ petition, in para 12 of the writ petition at internal page 8, the petitioner and his counsel stated that no such writ petition has previously been filed in this matter either before Hon'ble Supreme Court or before this Court by the petitioner. Be that as it may, such averment in para 12 of the writ petition runs contrary to the record as the petitioner himself annexed an order of this Court passed in SBCW No.3396/03 which came to be dismissed as withdrawn with liberty to file a fresh by order dated 01.12.2006. The petitioner came to be dismissed from service by order dated 13.09.2006 exercising Rule 19 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (for short 'the CCA Rules' hereinafter). Hence this writ petition.

A reply to the writ petition has been filed by the respondents stating therein that the petitioner was arrested on a crime report lodged against him for the offence under Section 302/149 IPC and other offences including offence under Section 148 IPC. He was convicted and sentenced by the order of learned Additional Sessions Judge, Udaipur. The petitioner came to be suspended by order dated 12.09.1973 on the ground that he was arrested in a crime report for causing murder and remained in jail

for a long period and thereafter in the year 1998 almost after about expiry of 25 years, he filed application Annex.2 challenging the suspension which according to the respondents suffers from delay and laches and the decision relied on by the counsel for the petitioner in the writ petition is distinguishable on facts as the petitioner was initially appointed on the post of Teacher and has been working as Teacher Gr.III for few years and thereafter got himself involved in a criminal case of causing murder of a person and rioting etc. and lastly it was contended that indisputably the petitioner stood convicted and sentenced for rigorous imprisonment and therefore, there was no necessity for providing an opportunity of hearing and conducting inquiry as contemplated under Rule 16,17 and 18 of the CCA Rules and the respondents were justified in dismissing the petitioner from service invoking Rule 19 of the CCA Rules.

Learned counsel for the petitioner has relied on a decision of Hon'ble Supreme Court in Ram Raj Singh and Others Vs. State of M.P. 1990 (Supp) SCC 61 and a decision of this Court in Hanuman Singh Vs. The State of Rajasthan and Anr. 1991 (1) WLC (Raj.) 369.

I have given my thoughtful consideration to the rival submissions made by counsel for the parties.

Rule 19 of the CCA Rules reads as under :-

"Rule 19:- Special Procedure in certain cases..-

Notwithstanding anything contained in rule 16, 17 and 18.- (i) where a penalty is imposed on a Government Servant on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) where the Disciplinary Authority is satisfied for reasons to be recorded in writing that it is not reasonably practicable to follow the procedure prescribed in the said rule; or

(iii) where the Governor is satisfied that in the interest of the security of the State, it is not expedient to follow such procedure.

The Disciplinary Authority may consider the circumstances of the case and pass such orders as it deem fit.

Provided that the Commission shall be consulted before passing such orders in any case in which such consultation is necessary."

In the instant case, indisputably, the petitioner was involved in a criminal case. A crime report came to be lodged against him alleging therein that the petitioner while working on the post of Teacher being a Govt. servant along with other persons formed unlawful assembly and in furtherance thereof committed murder of one Madanlal and caused injuries to other for the offences punishable under Sections 147, 302/149, 307/149, 323/149, 324/149, 153-A/149 and 148 IPC. The petitioner was put to trial and by judgment and order passed by Additional Sessions Judge, Udaipur, he was convicted and sentenced to rigorous imprisonment as noticed above. However, on an appeal, the conviction and sentence awarded to the petitioner by the learned

Additional Sessions Judge, Udaipur for the offence under Section 148 IPC was maintained. It is not in dispute that the petitioner was arrested in the said crime report soon after the occurrence and remained in jail for a long period and while he was in jail, he was placed under suspension by order dated 12.9.1973. It has also not been disputed that the conduct of the petitioner led to his conviction on a criminal charge. Not only that he was convicted but he was sentenced for rigorous imprisonment also and also undergone the rigorous imprisonment. Rule 19 (i) and (ii) of the CCA Rules clearly provides that where a penalty is imposed on a Government Servant on the ground of conduct which has led to his conviction on a criminal charge and where the Disciplinary Authority is satisfied for reasons to be recorded in writing that it is not reasonably practicable to follow the procedure prescribed in the said rules, the Disciplinary Authority may consider the circumstances of the case and pass such order as it deems fit. In the instant case, even holding of the inquiry as contemplated under Rule 16, 17 and 18 of the CCA Rules would be nothing but a futile exercise for the reason that it is an undisputed fact that the petitioner has been convicted and sentenced to undergo rigorous imprisonment by the order of Additional Sessions Judge, Udaipur and on an appeal before the Division Bench of this Court, the conviction and sentence for the offence under Section 148 IPC was maintained and that order has attained finality and therefore, the

fact of conviction and sentence even if the inquiry is conducted would remain as such and cannot be controverted.

In *Ram Raj Singh and Others Vs. State of M.P. (supra)*, appellant Ram Raj Singh and Others filed criminal appeal against the judgment of conviction and sentence for the offences under Sections 147, 148, 149, 455 and 324 IPC. The issue before the Hon'ble Supreme Court was that as to whether the judgment and order of conviction and sentence rendered by the High Court of M.P. is legal and proper. The Apex Court did not find any ground to differ from the view taken by the Sessions Judge and the High Court as regards the occurrence and culpable acts of the accused resulting in injuries being caused to Netraprakash Sharma and Goverdhan Lal Sharma. However, the Hon'ble Supreme Court held that since the initiative for the occurrence was taken solely by the appellant Ram Raj Singh and that the injured witnesses had sustained only simple injuries, the ends of justice would be met by modifying the sentences awarded to the appellants Surat Singh, Tej Bhadur and Mulchand to the period of imprisonment already undergone by them. So far as appellants Ram Raj Singh and Diwan Singh are concerned, they have already served out their sentences and also remitted the fines imposed on them and the appeals filed by appellant Ram Raj Singh and others were dismissed with the modification in the substantive sentence awarded to the appellants Surjit Singh, Tej Bahadur and Mulchand. However, an observation

was made in respect of appellant therein Tej Bahadur that he is employed as a Manager in a Cooperative Society. Because of minor role played by him in the occurrence, the Apex Court did not think that the conviction awarded to him should stand in the way of his continuing in service.

In the instant case, the petitioner has not been in service since from the date of his arrest in the year 1973.

In Hanuman Singh Vs. The State of Rajasthan and Anr. (supra) this Court observed that dismissal, removal or reduction in rank without enquiry on ground of conviction by criminal court, by resorting to first proviso to Art. 311 (2), the competent authority must apply its mind objectively, fairly and justly to facts of the case, the conduct of employee convicted and circumstances coming before Court during trial of offence leading to conviction of employee and held that the order of dismissal against petitioner is passed without proper application of mind and is not sustainable.

So far as the observation of Hon'ble Supreme Court in Ram Raj Singh and Others Vs. State of M.P. (supra), is concerned, the observation therein appears to have been made under Article 142 of the Constitution of India. Hon'ble Supreme Court is clothed with the power under Article 142 of the Constitution of India which this Court do not have. In this respect, reference may be made to the decision of the Hon'ble Supreme Court in Common Cause Vs. Union of India and Others (2004) 5 SCC 222 wherein Hon'ble

Supreme Court observed as under:-

"Reliance is also placed on the observations contained in paragraph 5 of Supreme Court Legal Aid Committee Vs. Union of India (1998) 5 SCC, 762. Such observations, or simply what was done in a given case, without laying down the law cannot be read as a ratio of the judgment and certainly not as a precedent. Whether a writ of mandamus of the nature which was prayed for before the Court can be issued or not was not a point argued and decided by the Court."

In Mehboob Dawood Shaikh Vs. State of Maharashtra (2004) 2 SCC 362, the Hon'ble Supreme Court held that a decision is available as a precedent only if it decides a question of law. A judgment should be understood in the light of facts of that case and no more should be read into it than what is actually says. It is neither desirable nor permissible to pick out a word or a sentence from the judgment of the Supreme Court divorced from the context of the question under consideration and treat it to be complete law decided by the Supreme Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before the Supreme Court.

In Ajit Kumar Nag Vs. General Manager, Indian Oil Corporation Ltd. and others, AIR 2005 SC 4217, the Hon'ble Supreme Court held that acquittal by a criminal court would not debar an employer from exercising power in accordance with Rules and Regulations in force. The two proceedings criminal and departmental are entirely different. They operate in different fields

and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service Rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a Court of Law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of the 'preponderance of probability'. Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation and the contention of the appellant therein that since he was acquitted by a criminal court, order dismissing him from service deserves to be quashed and set aside was held to be not tenable.

In the instant case, admittedly the petitioner was arrested by the police in a crime report lodged against him for causing murder of one Madanlal and for offences as noticed above. He was put to trial and thereafter convicted for the offences including offence of murder and sentenced to life imprisonment and rigorous imprisonment. However, on an appeal, the conviction for the offence under Section 148 IPC and sentence awarded for that offence i.e. rigorous imprisonment was maintained. Thus, the fact remains that the petitioner has been convicted and sentenced to rigorous imprisonment on a criminal charge and such conduct of the petitioner is not disputable and the respondents invoking Rule 19 of the CCA Rules imposed the penalty of dismissal from service which clearly falls within Rule 19 (1) and (2) of the CCA Rules. It cannot be said that the order of dismissal from service has been passed without application of mind. What was required to be ascertained by the authority imposing punishment was that as to whether the petitioner has been convicted and sentenced on a criminal charge which in my view indisputably stands proved. Even if the inquiry as contemplated under Rules 16, 17 and 18 of the CCA Rules is held, the conclusion would be the same that the petitioner stood convicted on a criminal charge and has been sentenced to rigorous imprisonment and the petitioner has suffered the imprisonment on such conviction, the misconduct on such conviction and the sentence of rigorous imprisonment have

tarnished the image of the respondent department and therefore, in my view, the respondents were justified in dismissing the petitioner from service. So far as the decision relied on by learned counsel for the petitioner in Ram Raj Singh and Others Vs. State of M.P. (supra) is concerned, the issue before Hon'ble Supreme Court was that as to whether the conviction and sentence awarded by learned Sessions Judge and the High Court of M.P. for the offences under Sections 147, 148, 149, 455 and 324 IPC was justified, the Hon'ble Supreme Court did not interfere with the conviction and sentence awarded to the appellants therein and dismissed the appeals and one of the appellant therein who was employed as Manager in a Cooperative Society and continuing in service, observation was made to the extent that the conviction awarded to him should not stand in the way of his continuing in service. Such observation was made in the facts and circumstances of that particular case and more particularly under Article 142 of the Constitution of India and therefore, is not the point of law decided in the said decision in view of two decisions of Hon'ble Supreme Court in Common Cause Vs. Union of India and Others (supra) and Mehboob Dawood Shaikh Vs. State of Maharashtra (supra). So far as decision of this Court in Hanuman Singh Vs. The State of Rajasthan and Anr. (supra) is concerned, it cannot be said that the respondent authority imposing punishment of dismissal from service had not applied its mind. In the instant case, the decision

has been rendered by the respondent authority imposing the punishment of dismissal from service on undisputed facts and therefore, the decision relied on by learned counsel for the petitioner turn on their own facts and is of no help to him.

In this view of the matter, I do not find any merit in the writ petition. The writ petition is therefore, dismissed. Stay petition also stands dismissed. However, there shall be no order as to costs.

(H.R.PANWAR), J.

rp