

L.MOHAPATRA, J & S.K.MISHRA, J.

W.P.(C) NO.2509 OF 2010 (Decided on 18.05.2011)

PRASANT KUMAR SAHOO

..... Petitioner.

.Vrs.

STATE OF ORISSA & ANR.

..... Opp.Parties.

For Petitioner - M/s. Manoj Kumar Mishra,
P.K.Das & D.K.Pattnaik

For Opp.Paries - Addl. Standing Counsel

S.K.MISHRA, J. The petitioner in this case assails the order dated 12.11.2009 passed by the Orissa Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 204 (C) of 1993, wherein the Original Application filed by the petitioner challenging his dismissal from service on the basis of conviction in a criminal case was rejected by the Tribunal.

2. The facts of the case are not disputed. The petitioner was working as a driver in the office of the Collector, Balasore since 1986. He was placed under suspension on 02.03.1991 and charges were framed against him. In a criminal case, he was found guilty of the offence under Section 380 of the Indian Penal Code, 1860, hereinafter referred to as "I.P.C.", for brevity, as per the judgment dated 11.10.1991 of the court of Judicial Magistrate First Class, Balasore in C. R. No.136 of 1991, but he was released on probation under section 3(3) of the Probation of Offenders Act, 1958, hereinafter referred to as "P.O. Act", for brevity. Thereafter, on the basis of allegations made in the criminal case and some other allegations, a departmental proceeding was drawn up under Rule 15 of the Orissa Civil Services (Classification Control and Appeal) Rules, 1962, hereinafter referred to as "C.C.A. Rules". The charges were for misappropriation of Government property, negligence in duty, unauthorized absence from duty and gross misconduct. An enquiry officer was appointed. However, the enquiry could not be concluded as the Disciplinary Authority i.e. the Collector, Balasore took recourse to the Rule 18 of the C.C.A. Rules and dismissed the petitioner from service.

3. Such dismissal order has been challenged before the Tribunal in the aforesaid Original Application. The Tribunal held that the order passed by the Collector by taking recourse to Rule 18 is not illegal and that the release of the petitioner under the provision of the P.O. Act does not absolve him from the conviction of criminal charges, which involve moral turpitude and, therefore, the order passed by the Collector was upheld by the Tribunal.

4. In course of hearing of this writ petition, Sri Manoj Kumar Mishra, learned Senior Advocate appearing for the petitioner raised three points; firstly it is contended that when the departmental proceeding was initiated on the basis of the conviction as well as on some other charges, the Collector had no authority to take recourse to Rule 18 of the

C.C.A. Rules, 1962; secondly it is contended that as provided under section 12 of the P.O. Act, the conviction cannot be taken to be a disqualification and only on the basis of such conviction in view of his release under the provisions of the P.O. Act, the Disciplinary Authority cannot remove the petitioner from service; and thirdly it is contended that the order of removal from service which shall be a disqualification for future employment is also illegal in view of the express provision of Section 12 of the P.O. Act. Learned Addl. Standing Counsel, on the other hand, submitted that the order passed by the Tribunal is illegal and it does not require any interference. Hence, he prayed to dismiss the writ application.

5. It is not disputed that the petitioner has been convicted for the offence under Section 380 of the I.P.C. It is also not disputed that he has been released on probation as per the provisions of the P.O. Act. Section 4 of the P.O. Act, which was resorted to in this case by the learned J.M.F.C., Balasore, in Sub-section (i) provides

“....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.”

In this case, the learned J.M.F.C. convicted him but released him under section 4(3) of the P.O. Act and directed that the convict shall remain under the supervision of the District Probation Officer for a period of one year and he was further directed to execute a bond of Rs.500/-. Sub-sections (3) and (4) of Section 9 of the P.O. Act provides that on failure to observe any of the conditions of the bond or bonds entered into by the convict, the court may impose upon him a penalty not exceeding fifty rupees and in case of non-payment of such penalty to sentence him for the original offence. In dealing with this provision of law, the Apex Court in **The Divisional Personnel Officer, Southern Railway and another v. T. R. Chellapan**, (1976) 3 SCC 190 held that these provisions clearly show that an order of release on probation comes into existence only after the accused was 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 it is the *sign qua non* for the order of release on probation. The order of release on probation is merely in substitution of the sentence to be imposed by the court. The Apex Court further rules that the factum of guilt on criminal charges is not swept away merely by passing the order releasing the offender on probation. Under sections 3, 4 and 6 of the P.O. Act, the stigma continues and the finding of misconduct resulting in conviction must be treated to be a conclusive proof. Thus, the Hon'ble Supreme Court rejected the submission that release of the offender on probation does not obliterate the stigma of conviction.

6. Section 12 of the P.O. Act provides that “Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of section 3 or section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law.” In the aforesaid case, the Apex Court held that the words “attaching to a conviction for an offence under such law” refer to two contingencies; (i) that there must be a disqualification resulting a conviction and (ii) that such

disqualification must be provided by some law other than the P.O. Act. The Indian Penal Code does not contain any such disqualification. Therefore, it cannot be said that Section 12 of the Act contemplates an automatic disqualification attaching to a conviction and obliteration of the criminal misconduct of the accused. It also manifest that disqualification is essentially different from the context of 'misconduct'. Disqualification cannot be an automatic consequence of the conduct unless the statutes require so. Proof of misconduct may or may not lead to disqualification, because this matter rests on facts and circumstances of that case or the language in which the particular statute is covered.

7. Article 311 of the Constitution of India at Clause (2) provides that "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." In the second proviso to the clause, it is laid down that this clause shall not apply to a person dismissed or removed or reduced in rank on the ground of conduct which led to his conviction on a criminal charge and on some other situations, which are not relevant for this case. Thus, sub-clause (a) of second proviso to Clause (2) of Article 311 of the Constitution provides that whenever a person is convicted on a criminal charge, he can be dismissed or removed or reduced in rank on the ground of his conduct which has led to his conviction on a criminal charge. This is an enabling provision, which does not disqualify the employee on such conviction. It only empowers the employer to remove him from service or include some major penalty without conducting a disciplinary proceeding.

8. Similar provision appears at Rule 18 of the C.C.A. Rules. It is apposite to quote the said Rule. It reads as follows:

"18. Special Procedure in certain cases- Notwithstanding anything contained in Rules 15, 16 and 17 –

- (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 by that authority that it is not reasonably practicable to follow the procedure prescribed in the said rules; 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 thereon as it deems fit;

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

This provision is also an enabling provision and it does not ipso facto disqualify the person on his conviction. On a conviction by a criminal court an employee may be

discharged or removed from service without following the principles of natural justice as enshrined in Rules 15, 16 and 17 of the C.C.A. Rules, 1962. Thus, the contention that mere fact that the accused has been convicted for criminal charges does not attach with disqualification by virtue of Article 311 of the Constitution of India or Rule 18 of the C.C.A. Rules. Since there is no other provision disqualifying the petitioner, Section 12 shall not absolve him of the conviction, which has been recorded. Similar view has been taken in ***Trikha Ram v. V.K.Seth and another***, 1987 (Supp) SCC 39. Thus, it is concluded that even if the petitioner is extended the benefit under section 4 of the P.O. Act, the stigma of conviction continues and the findings of the misconduct resulting in conviction must be directed to be a conclusive proof. Thus, the contention raised by the learned Senior Advocate for the petitioner is not acceptable. The first contention raised by the learned counsel is that once a proceeding has been initiated under Rule 15 of the C.C.A. Rules, the Collector should not have resorted to Rule 18 of the said Rules. However, the provision itself provided that notwithstanding anything contained in Rules 15, 16 and 17 of the C.C.A. Rules in certain cases, the Disciplinary Authority may consider all the circumstances of the case and pass such orders thereon as he deems fit. The power vested under Rule 18 of the said Rules is, therefore, unfettered and not restricted the Rules 15, 16 and 17 of the C.C.A. Rules. Hence, we conclude that the action of the Collector, Balasore shall not be illegal or irregular in any way requiring interference of this Court.

9. Coming to the third contention raised by the learned Senior Advocate for the petitioner that the punishment is inappropriate in this case, though we consider that the punishment of removal from service is not shockingly disproportionate keeping in view the conviction proved, we consider that since it is statutorily provided that an offender who has been released on probation shall not suffer disqualification attaching to a conviction of an offender, in which he has been convicted notwithstanding anything contained in any other law, instead of dismissing him from service, which shall be a disqualification for future employment, the Collector should have imposed a lesser punishment like removal from service which does not operate as bar or disqualification for future requirement or compulsory retirement.

10. Having considered the facts of the case, we consider that the punishment of compulsory retirement from service is more appropriate in this case and, therefore, we hold that the punishment imposed in Annexure -7 by Order No.72/Estt. Dated 30.11.1992 by the District Office, Balasore (Establishment Section) should be modified to that of compulsory retirement from service. The petitioner shall get all retiral benefits like gratuity etc. and such punishment shall not act as a bar or disqualification for future employment.

With such observation, the writ application is disposed of.

Writ petition disposed of.