
does not contain administrative reasons for transferring the petitioner nor any public interest has been disclosed in the order as well as in the written statement. On the other hand, the petitioner has also not disclosed any *mala-fide* intention on the part of the employer as also the colourable exercise of power. Thus, in the totality of the facts disclosed before us, we conclude that since no reasons have been given by either side, the stipulation contained in the policy ought to have been adhered to in the facts and circumstances of this case. It would mean that each case which falls within the ambit of the policies/guidelines has to be examined by the concerned quarters and the orders should be passed accordingly. Resultantly, the petition is allowed and the impugned order of transfer dated 20th June, 2005, Annexure P11, is quashed with no order as to costs.

R.N.R.

Before Surya Kant, J.

KAULWANT SINGH,—*Appellant/Applicant*

versus

STATE OF PUNJAB,—*Respondents*

CrI. Misc. No. 7065 of 2005 in

CrI. Appeal No. 237/SB of 2005

8th August, 2005

Code of Criminal Procedure, 1973—Ss. 389 & 482—Prevention of Corruption Act, 1988—Ss. 7 & 13—A Junior Engineer convicted and sentenced for the offences under Sections 7 & 13 of the 1988 Act—High Court while admitting the appeal suspended the sentence—Prayer for suspension of conviction also—Whether departmental proceedings to dismiss the appellant from service likely to be initiated is a sufficient ground for suspension of conviction—Held, no—However, on exoneration of the charges, the case of appellant can be revised by the competent authority with all consequential benefits:

Held, that the 'conviction' of the applicant-appellant who has been found guilty of offences under Sections 7 & 13 of the Prevention of Corruption Act, 1988, cannot be suspended merely because the disciplinary action to dismiss him from service is likely to be initiated by the competent authority. Needless to say that if the applicant-appellant finally earns exoneration of the charges, the order, if any passed dismissing him from service, can be revised by the competent authority with all consequential benefits.

Mohammed Salim, Advocate, for the applicant appellant.

H.S. Grewal, Deputy Advocate General, Punjab, for the respondent.

ORDER

Surya Kant, J. (Oral)

In this application under Section 389 read with Section 482 Cr.P.C., prayer has been made for suspension of sentence as well as 'conviction' imposed upon the applicant-appellant by the Special Judge, Patiala vide order dated 8th January, 2005, whereby after holding him guilty under Section 7 of the Prevention of Corruption Act, 1988, the applicant-appellant was sentenced to undergo RI for a period of 2-1/2 years and to pay a fine of Rs. 1,500. Similarly, the applicant-appellant was also held guilty of an offence under Section 13(2) read with Section 13(1) (d) of the Prevention of Corruption Act, 1988, and was sentenced to undergo RI for a period for 2-1/2 years and to pay a fine of Rs. 1,500, though both the sentences were directed to run concurrently.

(2) On February, 3,2005, the appeal against the aforementioned conviction and sentence was admitted and the sentence imposed upon the applicant-appellant was ordered to be suspended during the pendency of the appeal. Notice to the State of Punjab regarding suspension of 'conviction' was also issued.

(3) In support of the prayer for suspending the 'conviction', it has been argued that the applicant-appellant, who is working as a Junior Engineer in the Punjab State Electricity Board, has been falsely implicated and has been erroneously convicted by the Special Judge, Patiala, though there is hardly any admissible evidence on

record to prove that the applicant–appellant took illegal gratification. It is contended that in case “conviction” of the applicant–appellant is not suspended, serious consequences like departmental proceedings to dismiss the applicant–appellant from service are likely to flow. Reliance has been placed upon orders dated 11th January, 2005 passed in Crl. M No. 29486/2004 in Crl. A. No. 1022-SB of 2004 (**Deepak Mattu versus State of Punjab**); dated 13th January, 2005 passed in Crl. M. No. 2122/2005 in Crl. A. No. 2379-SB of 2003 (**Dr. Charanjit Singh versus State of Punjab**); and **Jai Bhagwan versus State of Haryana (1)**.

(4) On the other hand, learned State counsel has opposed the prayer for suspension of ‘conviction’ on the ground that the applicant–appellant having been found guilty of offences under the Prevention of Corruption Act, 1988, this Court should not pass any interlocutory order which allows him to continue in service and that too when the power of suspension of ‘conviction’ under Section 389 Cr. P.C., is required to be exercised sparingly. He has placed reliance upon an order passed by Division Bench of this Court dated 19th August, 2004, passed in Crl. M. No. 18348 of 2004 in Crl. A. No. 461-DB of 1999 (**Manga Ram @ Manga versus State of Punjab**).

(5) In **Deputy Director of Collegiate Education (Administration) Madras versus S. Nagoor Meera, (2)** it was held by the Apex Court that power to dismiss a government servant under Clause (a) of the second proviso to Article 311 (2) of the Constitution of India, can be invoked having regard to the conduct which has led to the conviction of such government servant on a criminal charge and since there can be no question to “suspend the conduct” by an appellate court under Section 389 Cr.P.C., therefore, such power is exercisable even when appeal against conviction is pending and execution of sentence has been suspended by the Appellate Court. Their Lordships further observed that “the more appropriate course in all such cases is to take action under clause (a) of the second proviso to Article 311(2) once a government servant is convicted of a criminal charge and not to wait for the appeal or revision, as the case may be. If, however, the government servant–accused is acquitted on appeal or other proceeding, the order can

(1) 2004 (3) R.C.R. (Criminal) 512

(2) 1995 (3) S.C.C. 377

always be revised and if the government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to had he continued in service. The other course suggested, viz., to wait till the appeal, revision and other remedies are over, would not be advisable since it would mean continuing in service a person who has been convicted of a serious offence by a criminal court". (emphasis applied)

(6) The aforesaid view was reiterated by the Apex Court in **Union of India and others versus Ramesh Kumar, (3)**.

(7) In **B. R. Kapur versus State of T. N. and another, (4)** their Lordships of the Supreme Court held that "presumption of innocence" in favour of an accused person comes to an end when lower court convicts and sentences him and no such presumption continues thereafter, even if the appeal against such conviction and sentence is pending and/or execution of the sentence has been suspended.

(8) In **K. C. Sareen versus C.B.I., Chandigarh, (5)** the Apex Court held that though the power to suspend an order of conviction, apart from the order of sentence, is not alien to Section 389 Cr. P. C., its exercise should be limited to very exceptional cases. Their Lordships further held that "when conviction is on a corruption charge against a public servant the appellate court or the revisional court should not suspend the order of conviction during the pendency of the appeal even if the sentence of imprisonment is suspended". It would be a sublime public policy that the convicted public servant is kept under disability of the conviction in spite of keeping the sentence of imprisonment in abeyance till the disposal of the appeal or revision". (emphasis applied)

(9) In **Union of India versus Attar Singh and another, (6)** the Apex Court held that order regarding suspension of 'conviction' pending appeal should not be passed mechanically. An order,—*vide* which the High Court had suspended the 'conviction'

(3) 1997 (7) S.C.C. 514

(4) (2001) 7 S.C.C. 231

(5) (2001) 6 S.C.C. 584

(6) (2003) 12 S.C.C. 434

under Section 409 IPC and Section 13 of the Prevention of Corruption Act, 1988, solely on the ground that non-suspension of conviction may entail removal of the delinquent public servant from office, was also set aside.

(10) A Division Bench of this Court in **Manga Ram @ Manga and another versus State of Punjab**, (*supra*) also reiterated that the discretionary power vested in an appellate or revisional court to suspend 'conviction' of an accused should be exercised rarely having regard to the facts and circumstances of a case.

(11) Following the dictum of law as laid by the Apex Court in the cases referred to above, I am of the view that the 'conviction' of the applicant-appellant who has been found guilty of offences under Sections 7 and 13 of the Prevention of Corruption Act, 1988, cannot be suspended merely because the disciplinary action to dismiss him from service is likely to be initiated by the competent authority. Needless to say that if the applicant-appellant finally earns exoneration of the charges, the order, if any passed, dismissing him from service, can be revised by the competent authority with all consequential benefits.

(12) Thus, no case for suspending the conviction of the applicant-appellant is made out. Dismissed.

R.N.R.