

Before Nirmaljit Kaur, J.

SHAM LAL,—Petitioner

versus

STATE OF HARYANA AND OTHERS,—Respondent(s)

CWP No.12563 of 2011

1st August, 2011

Constitution of India, 1950 - Art. 311(2) - Prevention of Corruption Act, 1988 - Ss.7, 13(1) (d), 13(2) - Petitioner convicted u/s 7, 13(1) (d), 13(2) of the Act,1988 - Dismissed from service - Challenged dismissal order - Whether protection in Art. 311(2) of the Constitution would be available to a person convicted by a criminal Court for offence involving moral turpitude - Held that there was no requirement for issuance of show cause notice in such a case - Petition dismissed.

Held, That thus, there was no requirement for issuance of any show cause notice before taking any punitive action in the matter as is also the observation in para 8 of the judgment rendered by the Division Bench of this Court in the case of Vashampine (supra) itself which reads as under:-

"[8]. It goes without saying that the protection under Article 311(2) of the Constitution against 'dismissal', 'removal' or 'reduction in rank', unless a reasonable opportunity of being heard is given, would not be available if such a punitive action is taken on the basis of conduct which has led to the conviction on a criminal charge. In other words, if an order of dismissal or removal from service is founded upon misconduct leading to the conviction of a civil servant on a criminal charge, there is no need for any further hearing before taking action in the matter."

(Para 8)

Further held, That in view of the above discussion and taking into account that the order of dismissal has been passed on the basis of serious allegation against the petitioner and his conviction by the Criminal Court in

an offence involving moral turpitude, the protection of Article 311(2) of the Constitution of India is not available to him.

(Para 9)

R K Handa, Advocate, *for the petitioner.*

NIRMALJIT KAUR, J.

(1) The petitioner while serving as Field Officer in the respondent Corporation at Ambala was allegedly caught red handed by the State Vigilance Bureau for taking bribe of Rs.1,000/- from Smt. Shakuntla wife of Shri Om Parkash resident of Krishna Colony, Near Naya Gaon, Ambala City for sanctioning the loan for the purchase of buffaloes. In view of the allegation, the petitioner was placed under suspension w.e.f. 28.10.2005 vide order dated 31.10.2005. Finally, he was charge sheeted vide memo dated 23.01.2006 and prosecution sanction was also accorded vide order dated 21.03.2006. Thereafter, the petitioner remained suspended for sometime. However, he was exonerated of the charges by the Inquiry Officer vide his report dated 24.02.2009, whereas, in the criminal proceedings initiated against the petitioner, the Special Judge, Ambala convicted and sentenced the petitioner vide order dated 23/24.03.2011 to undergo RI for one year under Section 7 of the Prevention of Corruption Act, 1988 and in default of payment of fine to further undergo RI for a period of one month and RI for two years and to pay a fine of Rs.2000/- under Section 13 (I) (d) read with Section 13 (2) of the Prevention of Corruption Act, 1988 and in default of payment of fine, to further undergo RI for a period of two months. The appeal against the said judgment is pending before the High Court. Meanwhile, respondent No. 2 dismissed the petitioner from service vide order dated 01.06.2011.

(2) While praying for setting aside the order dated 01.06.2011, learned counsel for the petitioner submitted that the petitioner has been dismissed from service without issuing any show cause notice or affording him any opportunity of being heard.

(3) Reliance is placed on the judgments rendered by this Court in the cases of **Hari Ram versus Dakshin Haryana Bijli Vitaran Nigam Limited and another (1)**, *Vashampine alias Kunni v. State of Haryana*

and others (**LPA No. 204 of 2007**, decided on 04.10.2008) as well as on the judgment rendered by the Apex Court in the case of **Union of India versus Tulsi Ram Patel (2)**.

(4) It was further submitted by the learned counsel for the petitioner that before dismissing the petitioner from service, his conduct should have been taken into consideration.

(5) Heard.

(6) There is no dispute with regard to the proposition of law laid by Division Bench of this Court in the case of *Vashampine as well as* by the Apex Court in the case of *Union of India v. Tulsi Ram Patel* (supra), which lays down that “a conviction on a criminal charge do not automatically entail dismissal, removal or reduction in rank of the government servant concerned and, therefore, it is not mandatory to impose any of these major penalties”. However, in the present case, the petitioner stands convicted for an offence under Sections 13 (I) (d) read with Section 13 (2) of the Prevention of Corruption Act, 1988 and the Punishing Authority duly considered the conduct of the petitioner that his job was to maintain liaison and tie up with Banks, so that the poor and needy did not face any problems in getting financial assistance. Instead of doing his said duties, he indulged in extorting bribe from the poor beneficiaries in order to get loan sanctioned/ disbursed in their favour.

(7) Therefore, the judgment rendered by the Division Bench of this Court in the case of *Vashampine* (supra) does not help the petitioner in the present case as the petitioner, in that case, was convicted for an offence under Section 326 IPC. In the facts of that case, Hon’ble Division Bench was pleased to hold as under:-

“We fail to understand as to how an offence committed with a single blow caused with an unconventional weapon, could be termed as “gravest act of misconduct”. It was a private dispute which led the appellant to inflict an injury in the spur of a moment. The offence was committed at a time when the appellant was off-duty. Further, this is the solitary misadventurous act brought on record by the respondents against the appellant. We cannot

appreciate as to how such an isolated misconduct was suffice to hold the appellant an “incorrigible” employee. The expression “incorrigible” connotes a definite meaning like someone being habitual or repetitive in his misdemeanors.”

(8) Whereas, a perusal of the dismissal order dated 01.06.2011 shows that the respondents duly examined the judgment of the Criminal Court and the allegations contained therein. The action herein is based on the conduct which led to the conviction of the petitioner. Thus, there was no requirement for issuance of any show cause notice before taking any punitive action in the matter as is also the observation in para 8 of the judgment rendered by the Division Bench of this Court in the case of *Vashampine (supra)* itself which reads as under:-

“[8]. It goes without saying that the protection under Article 311(2) of the Constitution against ‘dismissal’, ‘removal’ or ‘reduction in rank’, unless a reasonable opportunity of being heard is given, would not be available if such a punitive action is taken on the basis of conduct which has led to the conviction on a criminal charge. In other words, if an order of dismissal or removal from service is founded upon misconduct leading to the conviction of a civil servant on a criminal charge, there is no need for any further hearing before taking action in the matter.”

(9) In view of the above discussion and taking into account that the order of dismissal has been passed on the basis of serious allegation against the petitioner and his conviction by the Criminal Court in an offence involving moral turpitude, the protection of Article 311(2) of the Constitution of India is not available to him.

Dismissed.

(10) However, the petitioner is always at liberty to seek the setting aside of the dismissal order dated 01.06.2011, in case, his appeal is allowed. The observation made herein shall not stand in the way, in case, the appeal is allowed.

J.S. Mehndiratha