The Punjab Agricultural University and others (1), in support of his contention that the constitution of the Administrative Committee was illegal and that, as in that case, the petitioner hereto was entitled to a *mandamus* directing the university to appoint him. I am afraid I do not find myself in agreement with some of the board observations made by the learned Judge but, be that as it may, the case of Dr. Sidhu is distinguishable on facts. Apart from other distinguishing features in that case the petitioner there had not only been selected by the Selection Committee but was recommended by the Vice-Chancellor as well to the Board of Management. The petitioner herein had not even been picked up by the Vice-Chancellor.

(9) In the result, I find no merit in this petition and dismiss the same. The parties are left to bear their own costs.

J.S.T.

Before : *Jawahar Lal Gupta, J.*

SUKHCHAIN SINGH ATWAL,—*Petitioner.*

versus

UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 14913 *of* 1989.

13th November, 1991.

Constitution of India, 1950—*Art.* 226—*Army Rules,* 1954—*Rls.* 13, 14 & 17—*Discharge of J.C.O. from Army service—J.C.O. convicted by criminal court under section* 323 *read with S.* 34 *I.P.C., however, released on probation of good conduct—Discharge made on the ground that retention in service is not desirable since J.C.O. was not acquitted but punished—Before order of discharge passed petitioner granted extension of service upto* 1994—*Order of discharge not based on conduct which led to conviction is bad—Reinstatement with consequential benefits ordered—Termination of service does not follow from mere conviction.*

Held, that the order of discharge in this case has not been passed against the petitioner on the ground that the conduct leading to conviction rendered him unsuitable for retention in service. The action, on the contrary, has been taken primarily on the ground of his conviction and the fact that the petitioner had remained as an

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(1) 1991 (1) S.L.R. 689.

inmate of District Jail, Hoshiarpur for about one year. In my view, neither of these grounds could lead to the conclusion that the petitioner was unsuitable for retention in service. The petitioner was no doubt found guilty of the offence under Section 323 of the Indian Penal Code. However, termination of services cannot be the direct consequence of conviction. It is the conduct which has to be examined to consider as to whether or not it is desirable to retain the person in public service. This has not been done in the present case.

(Para 5)

Held further, that the order of discharge has apparently been passed under Army Rule 13 which enumerates authorities who are empowered to authorise discharge. Rules 14 and 17 indicate that it is 'conduct which has led to conviction' that is relevant for deciding the question of retention in or dismissal from service. Mere factum of conviction is not decisive. In the present case, no reference has been made to the conduct of the petitioner. It has not been considered at all. In such a situation, I find that the discharge from service on the ground of conviction alone cannot be sustained.

(Paras 6 & 7)

Held further, that the other ground which has been taken into consideration by the authorities is that the petitioner had been an inmate of the jail for about one year. By itself, retention in jail without anything more cannot be a good ground for holding that the person is unsuitable for further retention in service. A wholly innocent person may be involved in a totally false case and may remain in police custody or in jail for a considerable length of time. Would this be sufficient to dub him as unsuitable for retention in service ? I do not think so. It may be ultimately found that the man was totally innocent. His retention in jail was wholly unwarranted. The factum of retention in jail even in the company of criminals, would not by itself make him unsuitable for retention in service. It is no doubt correct that the petitioner was ultimately found guilty of an offence under Section 323 of the I.P.C. His retention in jail may not have been totally unwarranted. But in the circumstances of the case, I am clearly of the opinion that neither the factum of conviction nor retention in jail was sufficient to hold that the petitioner was guilty of such misconduct as may render him unsuitable for retention in service.

(Para 8)

Petition under Articles 226/227 of the Constitution of India praying that a writ of certiorari, mandamus *or any other suitable writ, order or direction be issued directing the respondents.*

(*a*) *to produce the complete records of the case;*

(*b*) *to issue an appropriate writ, order or direction for setting aside Annexure P-9 dated 30th September, 1989 passed by respondent No. 2 directing the termination of the services of the petitioner.*

(c) *to issue an appropriate writ, order or direction specially in the nature of* mandamus *directing the respondents to pay the petitioner the arrears of his salary and other allowances for the period from 8th June,* 1985 *to 17th July,* 1986 *and other allowances for the said period to which the petitioner is entitled.*

(d) *to issue an appropriate writ, order or direction holding the petitioner to be fully qualified for service and incurring no disqualification after his release on probation by the Sessions Judge, Hoshiarpur.*

(e) *any other writ, order or direction which this Court may deem fit and proper in the circumstances of the case may kindly be issued;*

(f) *the service of the advance notice of the petition required under the writ Rules may please be dispensed with;*

(g) *the costs of the writ petition be awarded to the petitioner.*

J. B. S. Gill, Advocate, *for the Petitioner.*

A. Mohunta, Advocate with Major S. K. Aggarwal, Advocate, *for the Respondents.*

JUDGMENT

Jawahar Lal Gupta, J.

The petitioner who was recruited as a Sepoy on January 28, 1969 in the Defence Security Corps is aggrieved by his discharge from service,—*vide* orders dated September 30, 1989. A few facts may be noticed.

(2) On May 19, 1985, an incident took place in Village Taggar Kalan, Police Station Mukerian in which Madan Lal was run over by a truck. In another incident on the same day, certain persons received injuries. As a result, F.I.R. No. 94 was recorded on May 20, 1985 at Police Station Mukerian. The case was registered under sections 323, 325, 302/34 and 120-B of I.P.C. Petitioner was one of the persons who were named in the F.I.R. On June 8, 1985, petitioner was handed over by the Army authorities to the civilian police *Vide* judgment dated July 17, 1986, Sessions Judge, Hoshiarpur acquitted the petitioner of the charge of murder. It was, however, held that "in furtherance of common intention of these three accused, namely, Harbhajan Singh, Sukhchain Singh and Milkhi Ram, they voluntarily caused simple hurt by means of dang to Tarsem Singh, Gurbachan Singh and Rattan Lal and thereby committed an offence punishable under section 323 I.P.C. individually and section 323/34 I.P.C. vicariously. They are held guilty

of these offences and convicted accordingly." However, the learned Sessions Judge found that "it was a fit case where the accused should be released on probation of good conduct." The petitioner was accordingly released on probation. Against this order, the petitioner has filed criminal appeal No. 631-SB of 1986. This appeal was admitted on October 21, 1986 and is still pending in this Court.

(3) In pursuance to the judgment of the learned Sessions Judge, the petitioner claims to have been released from the jail and he reported for duty on July 18, 1986. It is averred that the arrears of salary and allowances for the period from June 8, 1985 to July 17, 1986 were duly paid to the petitioner. However, on November 30, 1987, the Accounts Officer wrote a letter to the Officer-in-Charge, D.S.C. Records, Cannanore, making certain observations regarding the validity of the payment made. It was also observed that the petitioner "was not acquitted put punished." After protracted correspondence, the petitioner was given a notice,—*vide* letter dated June 22, 1989 calling upon him to show cause "as to why your service be not terminated by sanctioning your discharge under AR 13 Table-I (iii)." The petitioner submitted his reply,—*vide* his letter dated July 26, 1989, a copy of which has been appended with the writ petition as Annexure P-6. Ultimately,—*vide* orders dated September 30, 1989, respondent No. 2 ordered the termination of the petitioner's service. A copy of this order is at Annexure P-9 with this petition. *Vide* orders dated November 2, 1989, directions for the issue of discharge orders were issued. It appears that the petitioner's services were ultimately terminated on January 28, 1990. Aggrieved by the order of termination, the petitioner has approached this Court through the present writ petition and prayed for the setting aside of the order at Annexure P-9 and for directions to the respondents for the payment of arrears of salary and other allowances.

(4) Written statement has been filed on behalf of the respondents. While there is no dispute regarding the factual position as stated by the petitioner, it has been, *inter alia*, averred that "the termination of service has been ordered as the petitioner involved in a civil offence which was proved by the Sessions Judge, Hoshiarpur and the petitioner was found guilty by him." However, it has been admitted that prior to the order of termination the petitioner had been granted extension in service from January 28, 1989 to January 27, 1994.

(5) I have heard Mr. J. B. S. Gill, learned counsel for the petitioner and Mr. Ashutosh Mohunta alongwith Major S. K. Aggarwal

for the respondents. Mr. J. B. S. Gill, learned counsel for the petitioner has contended that the petitioner had been called upon to show cause against this discharge from service on the ground that he had been "convicted under section 323 read with section 34 of the I.P.C. and had remained inmate of District Jail, Hoshiarpur for about one year". It was on this ground that his retention in service was considered as undesirable. After the petitioner had submitted his reply, the order of termination was passed on the ground that "his retention in service is not desirable." Mr. Gill contends that the order of termination has been passed solely on the ground of conviction under section 323 of the I.P.C. and the fact that the petitioner had remained inmate of District Jail. Hoshiarpur for about one year. It has actually not been found that the petitioner had committed such a misconduct as rendered his retention in service undesirable. He submits that the services have not been terminated on the ground "of conduct which has led to his conviction by a criminal court———but on the grounds of conviction and detention in Jail." The learned counsel contends that discharge from service on these grounds is wholly illegal and untenable in law. This stand of the learned counsel for the petitioner has been controverted on behalf of the respondents. However, the file relating to the case was produced before me. A perusal of the file indicates that the case of the petitioner for retention in service and regularisation of absence period was recommended by the Commander, 21 Sub-Area and the G.O.C.-in-C, Northern Command. This recommendation was initially endorsed by the Officiating Additional Director General, Discipline and Vigilance. The matter was then placed before the Chief of the Army Staff. Thereafter, it appears that the Additional Director General, Discipline and Vigilance,—*vide* his letter dated May 25, 1989. directed the Headquarters of the Northern Command as under :—

"xx xx xx

2. The case has been examined at this HQ. It was placed before the Chief of the Army Staff, who after due consideration has directed that the JCO should not be accepted back in the Army. JAG Deptt. at this HQ have opined that the desirability of further retention in service may not be conducive to discipline, particularly when he was in jail for one year in the company of hardened criminals. The JCO may, therefore, be discharged from service under AR 13 Table I (iii).

3. As regards pay and allowances it may be stated that he is not entitled to the same on the principle of no work no pay.

4. In view of the foregoing, immediate action to discharge the JCO from the service be taken, under intimation of this Headquarters".

It is thereafter that the show cause notice was issued to the petitioner. The record does not indicate any consideration of the reply to the show cause notice. However, the order of discharge was passed. On a perusal of the record, I find that the impugned action has not been taken against the petitioner on the ground that the conduct leading to conviction rendered him unsuitable for retention in service. The action, on the contrary, has been taken primarily on the ground of his conviction and the fact that the petitioner had remained as an inmate of District Jail, Hoshiarpur for about one year. In my view, neither of these grounds could lead to the conclusion that the petitioner was unsuitable for retention in service. The petitioner was no doubt found guilty of the offence under section 323 of the Indian Penal Code. However, termination of services cannot be the direct consequence of conviction. It is the conduct which has to be examined to consider as to whether or not it is desirable to retain the person in public service. This has not been done in the present case.

(6) The order of discharge has apparently been passed under Army Rule 13 which enumerates authorities who are empowered to authorise discharge. A perusal of rules 14 and 17 shows that the termination can be "on the ground of conduct which has led to his conviction by a criminal court". Similarly, under rule 17 also "save in a case where a person is dismissed or removed from service on the ground of *conduct which has led to his conviction by a criminal court* or a court martial no person shall be dismissed or removed———unless he has been informed———" It is no doubt correct that rule 14 relates to cases of officers. However, both these rules indicate that it is "conduct which has led to conviction" that is relevant for deciding the question of retention in or dismissal from service. Mere factum of conviction is not decisive.

(7) In the present case, no reference has been made to the conduct of the petitioner. It has not been considered at all. In such a situation, I find that the discharge from service on the ground of conviction alone cannot be sustained.

(8) The other ground which has been taken into consideration by the authorities is that the petitioner had been an inmate of the jail for about one year. By itself, retention in jail without anything more cannot be a good ground for holding that the person is unsuitable for further retention in service. A wholly innocent person may be involved in a totally false case and may remain

in police custody or in jail for a considerable length of time. Would this be sufficient to dub him as unsuitable for retention in service ? I do not think so. It may be ultimately found that the man was totally innocent. His retention in jail was wholly unwarranted. The factum of retention in jail even in the company of criminals, would not by itself make him unsuitable for retention in service. It is no doubt correct that the petitioner was ultimately found guilty of an offence under Section 323 of the I.P.C. His retention in jail may not have been totally unwarranted. But in the circumstances of the case, I am clearly of the opinion that neither the factum of conviction nor retention in jail was sufficient to hold that the petitioner was guilty of such misconduct as may render him unsuitable for retention in service.

(9) The only other matter which requires consideration is with regard to the salary for the period from June 8, 1985 to July 17, 1986. It appears that this amount had been initially paid to the petitioner. If later on, the authorities considered that the payment was illegal, and the amount of money had to be recovered from the petitioner, he had to be given an opportunity to show cause. Nothing of the sort was done.

(10) It is note worthy that prior to his discharge from the Army, the petitioner on the basis of his record of service was considered suitable for retention upto January 19, 1994. Apparently, his record of service is good. Taking the totality of circumstances into consideration, I set aside the order of discharge (Annexure P-9) and direct the respondents to decide the question regarding payment of salary and allowances for the period from June 8, 1985 to July 17, 1986 after hearing the petitioner. The consequential reliefs in the nature of arrears of salary shall follow. In the circumstances of the case, I leave the parties to bear their own costs.

R.N.R.

Before : *M. S. Liberhan & G. C. Garg, JJ.*

DALIP SINGH GILL,—*Petitioner.*

versus

UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 9759 *of* 1982.

4th August, 1992.

Constitution of India, 1950—*Art.* 226—*Petitioner making wild and reckless allegations against Judges, their kith and kin practicing in the High Court etc., thereby undermining the independence*