

Karam Singh

Vs

State of Punjab and Another

Spl. Leave, Petn. (Civil) No. 903 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

29.01.1996

ORDER

1. We have heard the learned counsel for the petitioner. The admitted facts are that the petitioner and others were charged for an offence under Section 302 read with Section 34, I. P. C. and also under Sections 323 and 324. The Sessions Court convicted the petitioner and others but on appeal, the High Court set aside the conviction of the petitioner under Section 302 read with Section 34 and also under Section 324 but maintained the conviction under Section 323 and released him on probation. Thereafter, the petitioner sought for reinstatement. The authorities, since have had already dismissed the petitioner declined to reinstate him into the service, in view of the provisions of Rule 16.2 (2) of the Punjab Police Rules. He challenged its correctness thereof. The Division Bench of the High Court in L. P. A. 657/95 by order dated 8-8-1995 dismissed the same. Thus this special leave petition.

2. It is contended by Shri Kapoor, learned counsel for the petitioner that since the petitioner had been acquitted of the charges for the offence under Sections 302 and 324, I. P. C. and he having been released on probation for offence under Section 323, it cannot be said that there is any impediment in his way for reinstatement and that, therefore, the view of the authorities and the High Court is not valid in law. We find no force in the contention. It is true that this Court in *Shankar Das v. Union of India*, (1985) 2 SCC 358 : (AIR 1985 SC 772), had held that on acquittal and release on probation under Section 12 of the Probation of Offenders Act, 1958, the authorities are entitled to consider on the facts in each case whether the appellant therein could be reinstated into the service. It is to be remembered that conviction is one part of it and release on probation is another. Later part only enables the delinquent not to undergo the sentence on showing his good conduct during the period for which probation was granted. Suppose during the period of probation, he commits another offence, then his probation gets terminated and he would be liable to undergo the sentence. When a civil servant is convicted for an offence, it is his misconduct that led to the dismissal. The conviction in this case is on the ground of his participation in causing the death of and causing injury to one person. Though he was acquitted of the offence of murder, he being a Constable at the relevant time and being a disciplined member of the Force, he was not expected to participate in the commission of crime; instead, he was expected to prevent the commission. In *Shankar Das's case* (AIR 1985 SC 772), (supra), it was held that since opportunity was not given before taking the decision, the removal from service was held not valid in law.

3. In *Union of India v. Bakshi Ram*, (1990) 2 SCC 426 : (AIR 1990 SC 987), this Court considered the effect of Section 12 of the Probation of Offenders Act and of the power to remove a public

servant and also the conviction as a disqualification, though he was released on probation. After approving the consistent reasoning given by several High Courts as noted in para 11 of the judgment, this Court held that though Section 12 gives a right to delinquent, it does not wipe out the offence and it would be a disqualification attached to the conviction. The authorities would be entitled to take that factor into consideration in imposing punishment of removal from service. In that case, the penalty of dismissal from service was altered into one of removal from service.

4. In *Dy. Director of Collegiate Education (Admn.) v. S. Nagoor Meera*, (1995) 3 SCC 377 : (1995 AIR SCW 1360), another Bench of this Court has considered the controversy whether, when the accused is convicted by the Criminal Court, the disciplinary authority would still await the outcome of the case. This Court opined that once the accused was convicted, it forms basis for taking the action under proviso to Article 311 (2) of the Constitution, which will, however, be subject to the ultimate result of the prosecution case. In the event the case ends in favour of the accused and honourably gets acquitted, then the authorities are required to reconsider the order of removal. The ratio also does not help the petitioner since he has already been convicted under Section 323 and it is a disqualification though he was released on probation. Under these circumstances, the ratio, in *Bakshi Ram's case* (AIR 1990 SC 987), would be applicable to the facts in this case. In that view, the petitioner being a member of the disciplined Police Force, the authorities were justified in rejecting his reinstatement. However, we convert the penalty of dismissal into one of removal from service. The S. L. P. is accordingly dismissed. Petition dismissed.