

J. Jaishankar

Vs

Government of India and Another

SLP (C) No. 15036 of 1996

(K. Ramaswamy, S. B. Majmudar JJ)

14.08.1996

### JUDGMENT

1. This Special leave petition arises from the judgment and order of the Division Bench of the Andhra Pradesh High Court made on 4-3-1996 in WA No. 111 of 1996. The admitted position is that the petitioner was convicted for an offence under Section 509 IPC and sentenced to pay a fine of Rs. 200. The conviction and sentence had become final. Subsequently, the petitioner sought for a reference under Section 10 of the Industrial Disputes Act, 1947 (for short "the Act") for adjudication of his dismissal from service. The Central Government had refused to refer the dispute. Consequently, he filed the writ petition in the High Court. The learned Single Judge by judgment dated 19-9-1995 allowed the writ petition and directed the Central Government to make a reference to the Industrial Tribunal for adjudication whether his dismissal from service was in accordance with law. On appeal, the Division Bench modified the order of the learned Single Judge and on the basis of the concession made by the counsel appearing for the respondent, the order of dismissal from service was converted into discharge from service without retrial benefits. However, the Division Bench directed the respondent to pay him the gratuity which is payable in accordance with the rules. Calling that order in question, this SLP has been filed.

2. Shri L. Nageshwara Rao, the learned counsel for the petitioner, has contended that under Rule 10(1)(b)(i) of the Act, no employee of a banking company who is, or at any time has been convicted by a criminal court of an offence involving moral turpitude, shall be appointed. He placed reliance on paragraphs 14 and 15 (SCC paras 13 and 14) of the judgment of this Court in Pawan Kumar v. State of Haryana [(1996) 4 SCC 17, 22, 23 : 1996 SCC (Cri) 583 : (1996) 4 Scale 480, 484] (Scale at p. 484) and contended that when an offence leading to conviction and sentence of a fine up to Rs. 2000 was involved, necessary recommendation came to be made to Parliament to step in and amend the law so as to remove the embargo for appointment in future period. Therefore, in the light of the above judgment and the law laid down by this Court, the view taken by the High Court is not correct in law. We find no force in the contention.

3. In view of the admitted position that the conviction of the petitioner for an offence under Section 509 IPC had attained finality, it undoubtedly involves moral turpitude as it is impermissible for such an employee to continue in service. When a government servant is dismissed from service on conviction by a criminal court involving moral turpitude, it automatically leads to removal from service, without further enquiry. Can a worker be put on a higher pedestal than as a government servant? The obvious answer is 'No. In view of the conviction for moral turpitude of the petitioner and due to conviction for an offence under Section 509 IPC, the order of dismissal was rightly passed. The recommendation made by this Court was made after noticing the trivial offences like traffic offences, municipal offences and other petty offences under the IPC which do not involve

moral turpitude. This Court recommended to Parliament to step in and make necessary alteration in law so that consequence of the conviction and sentence would suitably be modulated and mitigated in the light of the judgment. That ratio is clearly inapplicable to the facts of this case. As a fact, on the basis of the concession made by the learned counsel for the respondents, the Division Bench of the High Court modified the order of dismissal to one of discharge from service without consequential retrial benefits but with payment of gratuity in accordance with law. The learned Single Judge was obviously in error in directing reference to the Industrial Tribunal. We do not, therefore, find any illegality warranting interference.

4. The special leave petition is accordingly dismissed.