

SUPREME COURT OF INDIA

State of Haryana

Vs.

Ved Kaur

C.A.No.6066 of 2017

(Adarsh K.Goel and uday Umesh Lalit,JJ.,)

03.05.2017

JUDGMENT

Uday Umesh Lalit,J.,

SLP(Civil) No.21622 of 2015

1. Leave granted.
2. The appellants seek to challenge the judgment and order dated 25.08.2014 of the High Court of Punjab and Haryana at Chandigarh passed in LPA No.1353 of 2014 (OM), affirming the view taken by the Single Judge of the High Court on 22.01.2014 in CWP No.14998 of 2007.
3. One Dharam Singh (since deceased and represented by his widow, the respondent herein) was working as JBT teacher in Education Department in State of Haryana since 07.10.1967. He and two others were convicted under Section 304 Part-II IPC vide judgment and order passed by the trial court on 29.10.1994 and were sentenced to undergo rigorous imprisonment for four years. On the basis of said conviction and sentence, Dharam Singh was dismissed from service, without holding any enquiry, vide order dated 28.03.1995 on the ground that he was convicted and sentenced for an offence involving moral turpitude.
4. While the appeal preferred against the judgment of conviction and sentence was pending, Dharam Singh expired on 11.12.2002 and his appeal abated. Subsequently the appeal of the co-accused was partly allowed and they were acquitted of the offence under Section 304 Part II IPC but were convicted under Section 323 read with Section 34 IPC. The role of the co-accused was admittedly similar to that of Dharam Singh.
5. After the acquittal of the co-accused, the respondent called upon the State to set aside the order of dismissal of her husband in the light of the finding recorded by the appellate court and to release all the service benefits to which her deceased husband was entitled. This claim having been rejected, the respondent filed CWP No.10134 of 2005 which was disposed of by

the High Court directing the State to reconsider the claim of the respondent. The matter was, therefore, reconsidered by the State but the claim was again rejected.

6. The rejection of claim was challenged afresh by the respondent by filing CWP No.14998 of 2007 which was allowed by the Single Judge of the High Court, relying on the instructions dated 26.03.1975 issued by State of Haryana wherein offences involving “moral turpitude” stand enlisted. It was observed that the offence under Section 323 IPC did not fall under said category of offences. It was further observed that the role attributed to the deceased husband of the respondent was similar to that of his co-accused and that the appellate court had held that the death in the case was not because of the injuries attributed to the accused but it was because of renal failure.

7. The decision of the Single Judge was questioned by the State by filing Letters Patent Appeal No.1353 of 2014 (OM). Affirming the view taken by the Single Judge, the Division Bench dismissed the aforesaid LPA and held the respondent to be entitled to all consequential benefits.

8. The instructions dated 26.03.1975 which were relied upon in the present case, had been considered by this Court in *Pawan Kumar v. State of Haryana and another*¹ and paragraph 12 of the decision is relevant for present purposes. The said paragraph was as under:

"12. Moral turpitude" is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity. The Government of Haryana while considering the question of rehabilitation of ex-convicts took a policy decision on 2-2-1973 (Annexure E in the Paper-book), accepting the recommendations of the Government of India, that ex-convicts who were convicted for offences involving moral turpitude should not however be taken in government service. A list of offences which were considered involving moral turpitude was prepared for information and guidance in that connection. Significantly Section 294 IPC is not found enlisted in the list of offences constituting moral turpitude. Later, on further consideration, the Government of Haryana on 17/26-3-1975 explained the policy decision of 2-2-1973 and decided to modify the earlier decision by streamlining determination of moral turpitude as follows:

. The following terms should ordinarily be applied in judging whether a certain offence involves moral turpitude or not;

(1) whether the act leading to a conviction was such as could shock the moral conscience of society in general.

(2) whether the motive which led to the act was a base one.

(3) whether on account of the act having been committed the perpetrator could be considered to be of a depraved character or a person who was to be looked down upon by the society. Decision in each case will, however, depend on the circumstances of the case and the competent authority has to exercise its discretion while taking a decision in accordance with the above-mentioned principles. A list of offences which involve moral turpitude is enclosed for your information and guidance. This list, however, cannot be said to be exhaustive and there might be offences which are not included in it but which in certain situations and circumstances may involve moral turpitude.”

Section 294 IPC still remains out of the list. Thus the conviction of the appellant under Section 294 IPC on its own would not involve moral turpitude depriving him of the opportunity to serve the State unless the facts and circumstances, which led to the conviction, met the requirements of the policy decision above-quoted.”

9. The aforesaid decision shows that Section 294 IPC was not part of the list of offences appended to the instructions dated 26.03.1975 and as such it was held by this Court that the conviction of the appellant therein under Section 294 IPC would not involve moral turpitude depriving him of the opportunity to serve the State unless the facts and circumstances which led to his conviction, met the requirement of the policy decision.

10. In the aforesaid context, decision of the Division Bench of the High Court of Punjab and Haryana in *State of Haryana and another v. Ram Chander*² on which reliance was placed by the respondent, is also significant wherein same instructions dated 26.03.1975 were considered by the Division Bench and paragraphs 11 and 12 of the said decision were as under:

“11. Following principles can be culled out, as contained in the aforesaid instructions:-

(a) Those who are involved in moral turpitude should not be taken in government service.

(b) Those who are convicted of offences, which do not involve moral turpitude or those who are released under the Probation of Offenders Act, should not suffer any disability in respect of obtaining government service.

(c) With regard to those convicted of offence not involving moral turpitude, laying down uniform policy, is not possible and it is left to the appointing authority in each case to make detailed inquiry and satisfy himself fully that ex-convict has reformed himself after release from jail and nothing adverse about his conduct has come to notice after his conviction. Such an inquiry is to be made invariably through Police Department.

(d) What amounts to moral turpitude is also stated in para (iii) of the instructions.

(e) Discretion is given to the competent authority while taking decision in accordance with principle mentioned in these instructions.

12. On the basis of these instructions, when competent authority is to invoke its power under Rule 7(2)(b) of the P&A Rules, 1978, the first question would be as to whether the offences for which the employee is convicted constitute moral turpitude. If the answer is in the affirmative, it would be open to the competent authority to pass the order of termination without holding inquiry. However, if the offences for which an employee is convicted have no shades of moral turpitude, the disciplinary authority has to look into the attendant circumstances leading to the conduct of such an employee to see whether he is suitable for rejection in government service or not.”

11. In the aforesaid decision of the Division Bench, the conviction under Section 323 was not held to constitute one involving moral turpitude in terms of the test laid down in instructions dated 26.03.1975. In the premises, the decision of the Division Bench affirming that of the Single Judge in the present case does not call for any interference. However, it must be noted at this stage and it was fairly accepted by Mr. Tushar Bakshi, learned Advocate appearing for the respondent that in view of the decision of this Court in *State Bank of India and another v. Mohammed Abdul Rahim*³ the order regarding payment of backwages as directed by the courts below needed modification. Paragraph 12 of said decision was as under:

“The respondent was acquitted on 22-2-2002, the demand for reinstatement was made by him on 22-4-2002 and he was reinstated in service by the appellant bank on 7-11-2002. On the view that we have taken, at the highest, what can be said in favour of the respondent is that he is entitled to wages from the date he had lodged the demand for the same following his acquittal, namely, from 22-4-2002, until the date of his reinstatement, if the same has not already been granted by the appellant Bank.”

12. In the present case by the time the benefit of acquittal of the co-accused was pressed in service and claim was raised by the respondent, Dharam Singh had already expired. In the circumstances, we direct that the respondent shall be entitled to all the benefits in terms of the judgment under appeal except the payment of back wages. All the other consequential benefits be computed and released to the respondent within two months from the date of this Judgment. With the aforesaid modification, the appeal stands disposed of.

Judgment Referred.

¹(1996) 4 SCC 0017

²(1997) 5 SCC 0253

³(2013) 9 SCALE 0222