

Premkumar

Vs.

Union of India

M.P. No. 19 of 1970

(Bishambhar Dayal, C.J. and K.L. Pandey, J.)

19.01.1971

ORDER

**Bishambhar Dayal, C.J.**

1. This is a petition under Article 226 of the Constitution by Premkumar challenging the order of his dismissal.

2. The petitioner was working as a clerk in the Postal Department. While on duty he quarreled with another employee of the department and tried to beat him with a shoe. A criminal case was thereupon started and he was convicted under Section 353 of the Indian Penal Code as a result of which he was sentenced to pay a fine of ₹ 200 or, in default, to undergo simple imprisonment for four months. On appeal his conviction was maintained but he was given benefit of Probation of Offenders Act and released after admonition. Thereafter the disciplinary authority, taking action under Rule 19 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, dismissed him from service by order dated 6th June, 1969 which runs as follows:

"Whereas Sri P.R. Damle, Clerk, Sausar has been convicted on a criminal charge" under Section 353, IPC.

And whereas it is considered that the conduct of the said Sri P.R. Damle, Clerk, Sausar, which has led to his conviction, is such as renders his further retention in the public service undesirable,

Now, therefore, in exercise of the powers conferred by Rule 19(i) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 the undersigned hereby dismisses the said Sri P.R. Damle, Clerk, Sausar, at present under suspension, from service w.e.f. 6-6-69, the date of issue of this order."

Against the above order the petitioner preferred an appeal which was dismissed and

further representation also was dismissed. Against the aforesaid orders he has filed the present writ petition.

3. Learned Counsel for the petitioner relied on Section 12 of the Probation of Offenders Act and contended that the effect of the petitioner's conviction is completely removed and he cannot be dismissed from service on the ground of conviction of an offence. Section 12 is quoted below:--

"Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of Section 3 or Section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law,

Provided that nothing in this section shall apply to a person who, after his release under Section 4, is subsequently sentenced for the original offence."

4. We have heard the learned Counsel at some length but we find ourselves unable to agree with the above contention. The relevant words of the section are 'shall not suffer disqualification, if any, attaching to a conviction of an offence under such law'. The words can only be read so as to remove the disqualification which under some law may attach to a person on account of his conviction. For instance, if a person is convicted of an offence, he is disqualified from standing for election to the Central or State Legislatures. But if such a person is given benefit under the Probation of Offenders Act, then by virtue of Section 12 of that Act the disqualification for that purpose (standing for election) will stand removed. In the present case, however, both under Rule 19 of the Central Civil Services (Classification, Control and Appeal) Rules and under Article 311(2) of the Constitution the departmental action of dismissal from service is taken not because of any disqualification attaching on account of the petitioner's conviction but because conviction is considered as sufficient proof of the conduct which resulted in his conviction and any further departmental enquiry into his conduct to find out facts is obviated. The proviso to Article 311(2) reads:

"Provided that this clause shall not apply--

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge;

\* \* \*

Thus, the ground of action is the conduct which leads to the conviction and not the conviction itself. Moreover, there is no question of disqualification in such cases. It is on account of the conduct of the delinquent that he is given the punishment of dismissal. Obviously, therefore, Section 12 of the Probation of Offenders Act, relied upon by learned Counsel for the petitioner has no application to such cases. The dismissal order quoted above has clearly taken into consideration the conduct of the delinquent and the punishment has been imposed on that basis.

5. This point came up for consideration before a Division Bench of the Andhra Pradesh High Court in *A. Satyanarayana Murthy v. L.I., Corporation*,<sup>1</sup> The 'learned Judges who decided the case, relying upon the observations of the Madras High Court in two cases where the language of the Probation of Offenders Act was very similar, came to the following conclusion:

"We are of the view that what Section 12 of the Central Act (Probation of Offenders Act) has in view is an automatic disqualification flowing from a conviction and not obliteration of the misconduct of the official concerned. The disciplinary authority is not precluded from proceeding under Regulation 39(4)."

With respect we entirely agree with this conclusion.

6. Learned Counsel for the petitioner, however, relied on a Division Bench decision of the Delhi High Court in *Iqbal Singh v. I.G. of Police, Delhi*,<sup>2</sup> That case was very different. In that case departmental action had been taken against a police officer but he was reinstated. After reinstatement he was convicted by a criminal Court whereupon merely on the basis of his conviction his services were terminated. The learned Judges in paragraph 14 of their judgment observed as follows:--

"...the authorities concerned considered that the petitioner had become disqualified for being reinstated in service because of his having suffered the conviction mentioned in the impugned order."

The learned Judges also considered the rule under which the order was supposed to have been passed and which provided termination of service on conviction and not on the basis of conduct.

7. Learned Counsel for the petitioner further argued that, in any case, before awarding the punishment, the petitioner should have been served with a notice in regard to the quantum of punishment to be imposed upon him. We are unable to agree. Though such a notice is required by Article 311(2) of the Constitution, the proviso thereto expressly says that the provision relating to notice etc., will not apply in case of conviction. If that protection is taken away, then the services of Government servants are governed by Article 310 of the Constitution and are during the pleasure of the President. Consequently, the order imposing the punishment of dismissal cannot be quashed on the ground that no such notice was given.

8. We, therefore, see no force in this petition and dismiss the same. Parties are, however, directed to bear their own costs. The security for costs deposited by the petitioner shall be refunded to him.

Petition dismissed.

Cases Referred.

1. AIR 1969 AP 37
2. AIR 1970 Del 240