

as per the requirement and the conditions laid down in Advertisement No. 6/92 issued by the Secretary, Subordinate Services Selection Board, Haryana.

(10) The petitioner himself, from the very day when his physical test was conducted by the Board, was apprehensive that he had not come to the mark, for it was found that he was short by $\frac{1}{2}$ " in height and $1\frac{1}{2}$ " \times $1\frac{1}{2}$ " in chest and, therefore, according to him, he got himself measured in the office of the Superintendent of Police, Faridabad, and his height was found to be 5'-7". He failed in the physical test before the competent authority when his test was held by the Board in presence of an expert who happened to be the Deputy Inspector General of Police and who was in a better position to say whether the petitioner was holding the requisite physical standards for selection as Assistant Sub Inspector of Police, as laid down by the recruiting Board. No illegality or impropriety has been committed by respondent No. 2 in rejecting the petitioner for selection as Assistant Sub Inspector of Police, for the fact that he did not qualify the requisite test and, as such, was not called for interview. He, therefore, rightly could not be selected. This, petitioner, therefore, being without substance, is dismissed. The file be consigned to the records.

S.C.K.

Before Hon'ble N. K. Sodhi, J.

PUNJAB STATE ELECTRICITY BOARD,—*Petitioner.*

versus

THE PRESIDING OFFICER, LABOUR COURT, PATIALA AND ANOTHER,—*Respondents.*

C.W.P. No. 5047 of 1993

6th February, 1995

Probation of Offenders Act, 1958—Ss. 12, 4—Standing Orders Clause 15(2)(d)—Workman convicted but released on probation—Departmental proceedings—Employer proceeded against him departmentally—Termination of services—Whether termination can be retrospectively—Validity of.

Held, that when a person is convicted for an offence and is, thereafter, released on probation, his conviction stands but only the sentence is substituted by the order of release on probation. Section

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Court, Patiala and another (N. K. Sodhi, J.)

12 of the Act has the effect of removing those disqualifications on account of conviction but does not prevent a departmental action being taken against an employee for a conduct which has led to his conviction by a Criminal Court. It is open to the Board to proceed against him departmentally in terms of the regulations governing his employment. In terms of Clause 15(2)(d) of the Standing Orders, no notice was required to be served on the workman if he was convicted on a criminal charge by a Court of law.

(Para 4)

Further held, that the benefit for the period of service actually rendered by an employee cannot be denied to him and, therefore, the order of termination could not be made effective retrospectively.

(Para 2)

Rakesh Garg, Advocate, for the Petitioner.

Sabina, Advocate for Respondent No. 2.

JUDGMENT

N. K. Sodhi, J.

(1) Jaswant Singh, the second respondent (hereinafter called 'the workman') was working as a T-mate on workcharge basis with the Punjab State Electricity Board (for short, the Board) and was drawing Rs. 500 per month as wages. A case of theft under section 411 of the Indian Penal Code was registered against him and he was convicted by the Court of Judicial Magistrate 1st Class, Rajpura on 23rd May, 1986. The learned Magistrate, however, released the workman on probation under the Probation of Offenders Act, 1958 (for brevity, the 1958 Act) directing him to keep peace and be of good behaviour in future. The probationary period fixed was of two years. The Executive Engineer of the Board, who was the competent authority, after taking note of his conviction as also his conduct terminated the services of the workman as per his order dated 15th December, 1986 (Annexure P-1 with the writ petition). The termination was made effective from 24th September, 1983, the date on which the workman was suspended. This termination gave rise to an industrial dispute and the same was referred for adjudication to the Presiding Officer, Labour Court, Patiala, under Section 10(1)(c) of the Industrial Disputes Act, 1947. The Labour Court after recording evidence of the parties held that the order of termination could not be retrospective and directed that the same would be operative from the date on which it was passed. The workman was thus held entitled to the wages of or the period from 24th September, 1983 to 15th December,

1986. The order of termination was also set aside as, according to the Labour Court, in view of the bar contained in section 12 of the 1958 Act, the workman could not be dismissed from service merely because he stood convicted by the criminal Court. It is this award that has been impugned by the Board in the present petition filed under Article 226 of the Constitution.

(2) The learned counsel for the petitioner has not seriously challenged that part of the award and in my opinion rightly whereby the Labour Court directed that the order of termination would operate with effect from 15th December, 1986 i.e. the date on which it was passed and not retrospectively. It is by now well settled that the benefit for the period of service actually rendered by an employee cannot be denied to him and, therefore, the order of termination could not be made effective retrospectively. No fault can, therefore, be found with that part of the award.

(3) The question that has been seriously debated before me is that the Labour Court was not justified in setting aside the order of termination because the workman stood convicted for an offence under section 411 of the IPC and instead of being asked to suffer the sentence he was released on probation under section 4 of the 1958 Act. According to the learned counsel for the petitioner, in view his conviction, the services of the workman could be terminated in terms of regulation 14(1) of the Punjab State Electricity Board Employees (Punishment and Appeal) Regulations, 1971. Ms. Sabina, on the other hand, submitted on behalf of the workman that the services of the workman could not be automatically terminated merely because the workman stood convicted by a criminal court and that it was necessary for the Board to have conducted a departmental enquiry before terminating his services.

(4) I have heard counsel for the parties and find merit in the contention advanced by counsel for the petitioner. It is not in dispute that the workman stood convicted under section 411 of the IPC and was released on probation under section 4 of the 1958 Act. When a person is convicted for an offence and is thereafter released on probation, his conviction stands but only the sentence is substituted by the order of release on probation. Section 12 of the 1958 Act which deals with the removal of disqualifications attached to a conviction provides that notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under section 4 shall not suffer disqualification attached to a conviction for an offence under such law. There are laws which impose disqualifications on

a convicted person. Section 12 has the effect of removing those disqualifications under those laws but does not prevent a departmental action being taken against an employee for a conduct which has led to his conviction by a criminal Court. In the present case, the workman stood convicted by a criminal Court and it was open to the Board to proceed against him departmentally in terms of the regulations governing his employment. In terms of clause 15(2)(d) of the Standing Orders, no notice was required to be served on the workman if he was convicted on a criminal charge by a Court of law. The Labour Court was, therefore, not justified in setting aside the order of termination and the reliance placed by it on the provisions of section 12 of the 1958 Act was unwarranted. The question raised in this petition not *res integra* and has been authoritatively settled by their Lordships of the Supreme Court in *Union of India and others v. Bakshi Ram* (1), wherein it was held as under :—

“In criminal trial the conviction is one thing and sentence is another. The departmental punishment for misconduct is yet a third one. The Court while invoking the provisions of Sections 3 and 4 of the Act does not deal with conviction; it only deals with the sentence which the offender has to undergo. Instead of sentencing the offender, the Court releases him on probation of good conduct. The conviction however, remains untouched and the stigma of conviction is not obliterated. In the departmental proceedings the delinquent could be dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge.

Section 12 of the Act does not preclude the department from taking action for misconduct leading to the offence or to his conviction thereon as per law. The Section was not intended to exonerate the person from departmental punishment. The question of reinstatement into service from which he was removed in view of his conviction does not therefore, arise. That seems obvious from the terminology of Section 12.”

(5) Ms. Sabina, however, relied upon the decision of the Supreme Court in *Shankar Dass v. Union of India and others* (2).

(1) A.I.R. 1990 S.C. 987.

(2) A.I.R. 1985 S.C. 772.

In that case, the appellant was a cash clerk in the Delhi Milk Supply Scheme and was prosecuted for breach of trust in respect of a sum of Rs. 500. He repaid that amount and pleaded guilty to the charge. He was convicted by the Magistrate under Section 409 of the IPC and was released on probation under Section 4 of the 1958 Act. Thereafter, the Government dismissed him from service summarily in view of his conviction. His suit challenging the dismissal was dismissed right upto the High Court. Taking note of the peculiar circumstances of that case, their Lordships of the Supreme Court observed that the Government was not justified in terminating that services of the workman without applying its mind to the appropriate penalty to be imposed. It was because of those peculiar circumstances that the order of termination was described as whimsical. In the present case, the competent authority has applied its mind to all relevant aspects of the matter and after taking note of his conviction as well as his conduct which led to his conviction, his services were terminated.

(6) In the result, the writ petition is allowed, the impugned award of the Labour Court set aside and the order of termination passed by the competent authority upheld. There is no order as to costs.

S.C.K.

Before Hon'ble R. P. Sethi and S. S. Sudhalwar, JJ.

MAHARSHI DAYANAND UNIVERSIYT, ROHTAK THROUGH ITS
REGISTRAR AND ANOTHER,—*Petitioners.*

versus

NITASHA PAUL AND OTHERS,—*Respondents.*

L.P.A. 212 of 1994

23rd February, 1995

Letters Patent Appeal, 1919—Clause X—Admission—Migration sought—University directed to create additional seats for petitioners—Such order cannot be upheld as the Court has no jurisdiction to create seats.

Held, that the direction given to admit the writ petitioners by creating more seats cannot be upheld inasmuch as the Court has no jurisdiction to direct the creation of additional seats for accommodating such persons who approach the Court by way of writ petitions. The possibility of there being more meritorious candidates