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शिक्षा झाली म्हणून नोकरीवरून काढता येणार नाही: कोर्ट.....

महाराष्ट्र टाइम्स.कॉम | Updated: 15 Jan 2020, 09:37:00 AM

.... एखाद्या गुन्ह्याप्रकरणी कर्मचाऱ्याला कोर्टाने शिक्षा सुनावली म्हणून त्या कर्मचाऱ्याला नोकरीवरून काढून टाकता येणार नाही. त्याला नोकरीवरून काढताना त्याच्या वर्तवणुकीचा विचार केला पाहिजे, असा महत्त्वपूर्ण निर्णय अलाहाबाद उच्च न्यायालयाने दिला आहे. कोर्टाने झांशीमधील एका कर्मचाऱ्याच्या हकालपट्टीचे आदेश रद्द करतानाच संबंधिताना नव्याने निर्णय घेण्याचे आदेशही दिले आहेत.....प्रयागराज: एखाद्या गुन्ह्याप्रकरणी कर्मचाऱ्याला कोर्टाने शिक्षा सुनावली म्हणून त्या कर्मचाऱ्याला नोकरीवरून काढून टाकता येणार नाही. त्याला नोकरीवरून काढताना त्याच्या वर्तवणुकीचा विचार केला पाहिजे, असा महत्त्वपूर्ण निर्णय अलाहाबाद उच्च न्यायालयाने दिला आहे. कोर्टाने झांशीमधील एका कर्मचाऱ्याच्या हकालपट्टीचे आदेश रद्द करतानाच संबंधिताना नव्याने निर्णय घेण्याचे आदेशही दिले आहेत.

अलहाबाद उच्च न्यायालयाचे **न्यायाधीश एस. पी. केशरवानी** यांनी शिपाई **राम किशन** यांच्य।

काढताना त्याच्या वतेवणुकीचा विचार केला पाहिजे, असा महत्त्वपूर्ण निर्णय अलाहाबाद उच्च न्यायालयाने दिला आहे. कोर्टाने झांशीमधील एका कर्मचाऱ्याच्या हकालपट्टीचे आदेश रद्द करतानाच संबंधिताना नव्याने निर्णय घेण्याचे आदेशही दिले आहेत.

अलहाबाद उच्च न्यायालयाचे **न्यायाधीश एस. पी. केशरवानी** यांनी शिपाई **राम किशन** यांच्या याचिकेवर सुनावणी करताना हे आदेश दिले. यावेळी कोर्टाने सर्वाच्च न्यायालयाच्या विधी सिद्धांताचा आधार घेतला असून नैतिक गुन्ह्याच्या परिस्थितीत सेवा प्रभावित होत असल्याचं म्हटलं आहे.....

याचिकाकर्त्या पोलीस शिपायाला सत्र न्यायालयाने हत्येच्या आरोपात जन्मठेपेसह १० हजाराचा दंड ठोठावला आहे. अपीलात गेल्यामुळे त्याला जामीन मिळाला आहे. मात्र कोर्टाने शिक्षा ठोठावल्यानंतर एसएसपीने त्याला सेवेतून काढून टाकलं होतं. त्याविरोधात या पोलीस शिपायाने कोर्टात याचिका दाखल केली होती. त्यावर कोर्टाने आरोपीच्या वर्तवणुकीचा विचार करूनच त्याच्या शिक्षेवर निर्णय घेण्याचे आदेश संबंधितांना दिले. आरोपीची शिक्षा रद्द झाल्यास थकीत वेतन आणि पीएफ मिळण्याचाही त्याला हक्क पोहोचत असल्याचं कोर्टानं म्हटलं आहे.

6:58 pm ✓✓

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Court No. - 05
Case :- WRIT - A No. - 14570 of 2009

Petitioner :- Ram Kishan
Respondent :- State of U.P. and Others
Counsel for Petitioner :- A.K. Ojha
Counsel for Respondent :- C.S.C.

Hon'ble Surya Prakash Kesarwani,J.

1. Heard Sri A.K. Ojha, learned counsel for the petitioner and Sri Anil Kumar Pandey, learned standing counsel for the State-respondents.
2. This writ petition has been filed praying to quash the order of removal from service dated 17.12.2008 passed by the respondent No.2. The petitioner has also prayed for a writ, order or direction in the nature of mandamus directing the respondents to continue the petitioner in service and pay regular salary month by month.
3. Briefly stated facts of the present case are that the petitioner was a constable in Civil Police. By judgment and order dated 05.05.2008, the petitioner was convicted under Sections 302/34 I.P.C. with life imprisonment and a fine of Rs.10,000/- in S.T. No.178 of 2005 arising from Case Crime No.649 of 2005 passed by the Additional Session Judge, Court No.3, Jhansi. By the impugned order dated 17.12.2008, the petitioner was removed from service on the ground that he has been convicted in the aforesaid Session Trial. Against the aforesaid judgment and order dated 05.05.2008, the petitioner filed a Criminal Appeal No.3060 of 2008 (Ram Kishan vs. State of U.P.) in which an order dated 17.10.2008 was passed by a Division Bench of this Court releasing the petitioner on bail during pendency of the appeal and realisation of fine was stayed. Subsequently, by order dated 20.07.2009, the execution of the sentence during pendency of the appeal was also stayed by the Dvision Bench. Under these facts, the petitioner has filed the present writ petition challenging the impugned order of removal from service dated 17.12.2008 passed by the Senior Superintendent of Police, Jhansi.
4. Learned counsel for the petitioner submits that the fine imposed by the judgment and order dated 05.05.2008 passed in S.T. No.178 of 2005 has

been stayed by the Division Bench in Criminal Appeal No.3060 of 2008 and the petitioner has been released on bail and the execution of sentence has also been stayed, therefore, the impugned order cannot be sustained and deserves to be quashed. He further submits that no finding has been recorded in the impugned order on the conduct of the petitioner leading to his conviction so as to inflict the punishment of removal from service. He, therefore, submits that the impugned order deserves to be quashed.

5. Learned standing counsel supports the impugned order.

6. I have carefully considered the submissions of the learned counsels for the parties.

7. Perusal of the impugned order dated 17.12.2008 shows that it has been passed by the respondent No.2 merely on the ground that the petitioner has been convicted with life imprisonment under Section 302/34 I.P.C. and with fine of Rs.10,000/-. The respondent No.2 while passing the impugned order has not considered at all the conduct of the petitioner, which has led to his conviction.

8. The judgment and order dated 05.05.2008 passed by the Additional Session Judge, Court No.3, Jhansi in S.T. No.178 of 2005 under Section 302/34, I.P.C. convicting the petitioner with life imprisonment and a fine of Rs.10,000/-, has been challenged by the petitioner in Criminal Appeal No.3060 of 2008 (Ram Kishan vs. State of U.P.), in which an order dated 17.10.2008 was by the Division Bench releasing the petitioner on bail and staying the realisation of fine. By order dated 20.07.2009 passed in the aforesaid criminal appeal, the execution of sentence was also stayed during pendency of the appeal. It has been stated before me by the learned counsel for the petitioner that the aforesaid criminal appeal is still pending.

9. In **Union of India vs. Tulsiram Patel, (1985) 3 SCC 398,** Hon'ble Supreme Court has considered the provisions of Article 311(2) of the

Constitution of India and held as under:-

> *"The second proviso will apply only where the conduct of a government servant is such as he deserves the punishment of dismissal, removal or reduction in rank. If the conduct is such as to deserve a punishment different from those mentioned above, the second proviso cannot come into play at all, because Article 311(2) is itself confined only to these three penalties. Therefore, before denying a government servant his constitutional right to an inquiry,* ***the first consideration would be whether the conduct of the concerned government servant is such as justifies the penalty of dismissal, removal or reduction in rank.*** *Once that conclusion is reached and the condition specified in the relevant clause of the second proviso is satisfied, that proviso becomes applicable and the government servant is not entitled to an inquiry."*

10. In **Shyam Narain Shukla vs. State of U.P., (1988) 6 LCD 530,** a Division Bench of this court has considered similar question and held as under:-

> *"In view of the above decision of the Supreme Court, it has to be held that* ***whenever a Government servant is convicted of an offence, he cannot be dismissed from service merely on the ground of conviction but the appropriate authority has to consider the conduct of such employee leading to his conviction and then to decide what punishment is to be inflicted upon him.*** *In the matter of consideration of conduct as also the quantum of punishment the employee has not to be joined and the decision has to be taken by the appropriate authority independently of the employee who, as laid down by the Supreme Court, is not to be given an opportunity of hearing at that stage."*

11. Another Division Bench of this Court in **Sadanand Mishra v. State of U.P. 1993 LCD 70** held that on conviction of an employee of a criminal charge, the order of punishment cannot be passed unless the conduct which has led to his conviction, is also considered. It was further held that the scrutiny or exercise of conduct of an employee leading to his conviction is to be done *ex parte* and an opportunity of hearing is not to be provided for this purpose to the employee concerned.

12. In **Shankar Das v. Union of India, 1985 (2) SCR 358**, Hon'ble Supreme Court while referring to power under Clause (a) of second proviso of Article 311(2)of the Constitution of India, has observed as under: -

> *"Be that power like every other power has to be exercised fairly, justly and reasonably."*

13. Proviso (a) to Article 311 of the Constitution of India, is an exception to clause (2) of Article 311, which is applicable 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. In case of **Divisional Personnel Officer, Southern Railway Vs. T.R. Chellappan, 1976 (3) SCC 190 (para-21)**, Hon'ble Supreme Court considered Article 311(2), Proviso (a) and held that this provision confers power upon the disciplinary authority to decide whether in the facts of a particular case, what penalty, if at all, should be imposed on the delinquent employee, **after taking into account the entire conduct of the delinquent employee, the gravity of the misconduct committed by him, the impact which his misconduct is likely to have on the administration and other extenuating circumstances or redeeming features, if any,** present in the case and so on and so forth. The conviction of the delinquent employee would be taken as sufficient proof of misconduct and then the authority will have to embark upon a **summary inquiry as to the nature and extent of the penalty to be imposed on the delinquent employee** and in the course of the inquiry, if the authority is of the opinion that the offence is too trivial or of a technical nature it may refuse to impose any penalty in spite of the conviction. The disciplinary authority has the undoubted power after hearing the delinquent employee and considering the circumstances of the case to inflict any major penalty on the delinquent employee without any further departmental inquiry, if the authority is of the opinion that the employee has been guilty of a serious offence involving moral turpitude and, therefore, it is not desirable or conducive in the interests of administration to retain such a person in service. In **Sushil Kumar Singhal vs. Regional Manager, Punjab National Bank, 2010 (8) SCC 573 (Paras-24 and 25),** Hon'ble Supreme Court explained the meaning of the words 'moral turpitude' to mean anything contrary to honesty,

modesty or good morals.

14. Thus, in view of the law laid down by Hon'ble Supreme Court in the cases of **Tulsiram Patel** (supra), **T.R. Chellapan** (supra) and **Shankar Das** (supra), and two Division Bench judgments of this court in **Shyam Narain Shukla** (supra) and **Sadanand Mishra** (supra), it can safely be concluded that while removing the petitioner from service, the respondents were bound to consider the conduct of the petitioner, which has led to his conviction in the session trial. This was the condition precedent for the competent authority to acquire jurisdiction to impose punishment of removal from service. However, the impugned order is unfortunately silent and does not show consideration of conduct of the petitioner which has led to his conviction in the S.T. No.178 of 2005. It was necessary for the respondents, while passing the impugned order, to consider the conduct of the petitioner leading to his conviction and then to decide what punishment is to be inflicted upon him. This has not been done by the respondent No.2 while removing the petitioner from service. Therefore, the impugned order cannot be sustained and is hereby quashed.

15. For all the reasons afore-stated, the **writ petition is allowed**. Matter is remitted back to the Senior Superintendent of Police, Jhansi to pass an order afresh, in accordance with law, within one month from the date of presentation of a certified copy of this order. In the event, the petitioner is reinstated in service, he shall be entitled to all consequential benefits and shall also be entitled to arrears of salary only for the period he actually worked.

Order Date :- 07.01.2020
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