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*Before Swatanter Kumar & J.S. Narang, JJ.*

FATEH SINGH,—*Petitioner*

*versus*

STATE OF HARYANA AND ANOTHER,—*Respondents*

C.W.P. No. 16753 of 2002

The 20th November, 2003

*Constitution of India, 1950—Arts. 226—Involvement of a Head teacher in a criminal case—Suspension—Conviction after the date of superannuation—Dismissal from service with retrospective effect—Challenge thereto—Order of conviction upheld by the High Court and the Supreme Court—Petitioner not entitled to grant of any opportunity of being heard—No irregularity/ illegality in passing the order of dismissal made effective from the date of suspension—Petitioner not entitled to any retiral benefits—Petition dismissed.*

*Held*, that the criminal trial commenced before the alleged date of superannuation and that the petitioner had been arrested and ultimately it culminated into the conviction, which has been upheld by the Hon'ble High Court and so also by the Hon'ble Supreme Court. Since it is provided under the rules that if a person is found to have been convicted upon the basis of moral turpitude, he has to be dismissed from service. Thus, the Government has, therefore, correctly passed the order with effect from the date when he had been arrested as the order of suspension is perfectly legal and is also sustainable under law. Therefore, the order of dismissal has been passed correctly and is sustainable under law.

(Para 14)

*Further held*, that the question of superannuation does not arise as the petitioner has been dismissed on the ground of having been convicted and the conviction having been upheld by the apex Court. The question of giving retrospective effect would arise only if the person has to be allowed to superannuate. In the present case, the relationship of employee and employer came to an end when the order of dismissal had been passed which was dependent upon the conviction order passed by the Court and the same has been upheld by the apex Court.

(Para 19)

R.K. Malik, Advocate, for the petitioner.

Rajbir Sehrawat, DAG Haryana, for the State.

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JUDGMENT

**J.S. NARANG, J.**

(1) The petitioner was appointed as JBT Teacher on 29th December, 1960 on *ad hoc* basis. He was subsequently regularised through Subordinate Services Selection Board on 12th September, 1961. He was promoted subsequently as Head Teacher. It is on 30th November, 1995, he allegedly attained superannuation upon acquiring the age of 58 years.

(2) The petitioner was suspended on 17th July, 1993 due to involvement in a criminal case. He was convicted under Section 304 Part-II read with section 323/326 of IPC,—vide judgment dated 25th October, 1997, passed by the Additional Sessions Judge, Faridabad, and had been awarded sentence to undergo rigorous imprisonment for seven years under Section 304 Part-II of IPC and for a period of six months under section 323 IPC and four years rigorous imprisonment under section 326 of IPC. The aforesaid order was challenged by way of an appeal before this Court which was partly accepted and the sentence was reduced from seven years to five years, *vide* judgment dated 15th September, 1998.

(3) It is during the pendency of the proceedings before the trial Court and pendency of the appeal before this Court, the petitioner had submitted pension papers to the Government through the Competent Authority. However, the papers were rejected by the Government. The justice demand notice dated 24th August, 1999, was served upon the Government for releasing the retiral benefits/pension of the petitioner. It is on 29th December, 1999, the petitioner was dismissed from service with effect from 23rd May, 1993 by an order passed by the District Primary Education Officer, copy Annexure P-1. The aforesaid order was challenged by the petitioner,—vide C.W.P. No. 14348 of 1999. The petition was allowed,—vide judgment dated 15th May, 2002. On the ground that the impugned order had not been passed by the competent authority as the same could only be passed by the Director who can impose a penalty be it minor or major. However, the question regarding the impugned order having been made effective retrospectively has been left unanswered. Subsequently, the matter was taken up once all over again and an order dated 8th October, 2002, has been passed by the Director Primary Education Haryana,—vide which the services of the petitioner have been terminated with effect from 23rd May, 1993. It is this order which has been impugned in the present petition.

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(4) Notice of motion had been issued,—vide order dated 18th October, 2002. The Government has contested the claim of the petitioner and that the stand is that the petitioner had been arrested on 23rd May, 1993 and that the order of suspension was passed on 17th July, 1993. The petitioner had been convicted and that the appeal against the judgment of the trial Court had also been dismissed except that the sentence had been reduced from seven years to five years. The petitioner has been dismissed from service with effect from 23rd May, 1993 i.e. the date of his arrest and it has been specifically mentioned that he will not be entitled to any retiral benefits and that the benefit of re-employment in Government service throughout India shall also be not available. So far as the earlier order is concerned, which had been quashed,—vide judgment dated 15th May, 2002, passed by this Court in C.W.P. No. 14348 of 1999, it has been specifically observed that his entitlement to all retiral benefits shall be subject to any further order, which the competent authority is allowed to pass as per the provisions of law, further an observation had been made that the said authority would decide the matter expeditiously and preferably within three months from the date of receipt of the copy of the order. The excerpt of the operative part of the judgment reads as under :—

“In view of the reasoning given above, order Annexure P-2 is quashed, as the same was passed by an authority not competent to pass that order. As the impugned order stands quashed and before passing the same petitioner had already attained the age of superannuation on 30th November, 1995 he is held entitled to all retiral benefits. However, receipt of such benefits shall be subject to any further order which the competent authority is allowed to pass in the present case as per the law. It is expected that the authority will decide the matter expeditiously and the needful will preferably be done within three months from the date of receipt of a copy of this order.

The parties are left to bear their own costs.

(Sd). . . .

15th May, 2002

Jasbir Singh Judge”

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(5) It is in pursuant thereto that the order of dismissal has been passed by the competent authority,—vide order dated 8th October, 2002, which has been made subject matter of challenge in the present petition.

(6) Learned counsel for the petitioner has argued that the petitioner had not been given any notice/personal hearing before passing the impugned order as such, the same is violative of principles of natural justice which have been enunciated from time to time by this Court and so also by the apex Court.

(7) It has been further argued that the impugned order suffers from the infirmity that the dismissal has been made effective retrospectively, which is not sustainable as no rule has been provided to pass such kind or an order. It is also argued that if a person is serving the sentence, he shall remain under suspension and that no order of reinstatement could be passed even if the competent authority desired to do so. Thus, the question of giving retrospective effect to an order of dismissal is not sustainable. It has been further argued that upon acquiring the age of superannuation the relationship of employee and employer comes to an end, therefore, passing the order of dismissal subsequent thereto with retrospective effect is neither justifiable nor sustainable under law.

(8) It has been further argued that upon passing the order of suspension, the contract of service would be suspended and that the contract of service temporarily ceases to subsist but for limited purpose. Thus, what is left thereafter, is only the statutory status by virtue of which he gets the subsistence allowance as allowable under the rules. If no order is passed upon or before the date of superannuation the employee shall be entitled to full salary and not the subsistence allowance. It is at this time the contract of service comes to an end and the relationship of employer and employee no longer remains in existence. Reliance has been placed upon a judgment of the apex Court rendered in i.e. **R. Jeevaratam versus the State of Madras (1)**. Emphasis has been made to paras 3 and 4 which reads as under :—

“(3) Counsel for the appellant next contended that the order of dismissal dated 17th October, 1950 having been passed with retrospective effect is illegal and

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(1) AIR 1966 S.C. 951

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inoperative. Counsel for the respondent submitted (1) the order of dismissal with retrospective effect as from the date of the suspension is valid in its entirety, and (2) in any event, the order is valid and effective as from 17th October, 1950. The High Court accepted the first contention, and declined to express any opinion on the second contention. In our opinion, the second contention of the respondent is sound, and in this view of the matter we decline to express any opinion on the first contention. Council for the appellant conceded that if the respondent's second contention is accepted, the appeal must fail.

- (4) The order dated 17th October, 1950 directed that the appellant be dismissed from service with effect from the date of his suspension, that is to say, from 20th May, 1949. In substance, this order directed that (1) the appellant be dismissed, and (2) the dismissal do operate retrospectively as from 20th May, 1949. The two parts of the composite order are separable. The first part of the order operates as a dismissal of the appellant as from 17th October, 1950. The invalidity of the second part of the order, assuming this part to be invalid, does not affect the first part of the order. The order of dismissal as from 17th October, 1950 is valid and effective. The appellant has been lawfully dismissed, and he is not entitled to claim that he is still in service."

(9) Further reliance has been placed upon a judgment of this Court in re: **Punjab State Electricity Board, Patiala versus Presiding Officer, Labour Court, Bathinda and another** (2). Further reliance has been made upon a judgment of the apex Court in re: **Ralvantaray Ratilal Patel versus The State of Maharashtra**, (3).

(10) The learned counsel has further argued that likewise the order of suspension could not be read as order of dismissal in view of the criminal appeal filed by the petitioner having been dismissed though the sentence stood reduced from seven years to five years.

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(2) 1992 (3) RSJ 706

(3) 1968 S.L.R. 593

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Resultantly, the petitioner would be entitled to full salary up to the date of superannuation as he shall continue to be under suspension but beyond the date of superannuation, the petitioner would not remain under suspension. Though not admitted, but the subsequent result would be that a cut in the pension could be imposed but no order of dismissal from service would be passed. In support of the above, reliance has been placed upon a judgment of the apex Court rendered in, **Khemi Ram versus State of Punjab (4)**. Further reliance has been placed upon a Full Bench judgment of this Court rendered in re: **J.K Dhir versus State of Punjab and others (5)**.

(11) On the other hand, learned Deputy Advocate General, Haryana, has argued that the petitioner had been suspended after he had been arrested and that he has been convicted on the grounds of moral turpitude and that his conviction has also been upheld by the Hon'ble Supreme Court of India. Admittedly, the petitioner had been suspended much prior to the date of superannuation i.e. 17th July, 1993, after the date of his arrest. It has been argued that the petitioner did not cease to be in service automatically on the alleged date of retirement. It is the settled law that nothing is available automatically, thus, an employee upon attaining the age of superannuation or even if acquittal is granted by the Court, the order of retirement has to be passed in a given situation. In the case at hand also, upon conviction it was not automatic that the employee would stand dismissed from service with effect from the date of order of suspension. The petitioner had been given the total liberty to await the decision of the trial Court and thereafter the decision of the High Court upon his appeal filed accordingly. In both the Courts, the conviction of the petitioner has been ordered and upheld respectively and that too on the premises of moral turpitude. It would be embarrassing if the petitioner is allowed to continue in service to discharge his public duties, which would tantamount to miscarriage of justice.

(12) The order of dismissal has been passed in pursuant to the rules wherein it has been prescribed that if a person is convicted on account of moral turpitude, he would be dismissed from service accordingly. If the trial takes its own time being dependent upon the

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(4) 1976 (2) S.L.R. 239

(5) AIR 1988 P&H 1

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facts and circumstances of each case and that if during this period the alleged date of superannuation reaches, it cannot be implied that the employee would retire accordingly. The order of suspension merely does not imply that the employee has ceased to be in service but the order of suspension would mean that he is not entitled to work anywhere and it is under these premises the suspension allowance is grantable in accordance with the rules. This Court has opined and laid down the dicta in **J.K. Dhir's case** (*supra*). A specific observation has been made that if a person is charged/ suspended prior to the date of superannuation, the inquiry can be continued and the requisite/ relevant order of punishment i.e. order of dismissal can be passed. In the case at hand, the petitioner had been arrested on 23rd May, 1993 and he had been suspended accordingly with effect from that date. The trial was concluded and that the order of conviction was passed,— vide judgment dated 25th October, 1997. The said judgment was challenged by way of an appeal and the sentence had been suspended as the petitioner had been granted bail. The appeal was partly allowed only in regard to the reduction of sentence from seven years to five years and that the judgment dated 15th September, 1998, passed by this Court has been upheld by the apex Court. The intervening alleged circumstances of reaching the age of superannuation would not affect the rigour of law, in a way the order of dismissal could not have been passed as the same was dependent upon the decision of the trial Court, which was admittedly rendered on 25th October, 1997, i.e. beyond the alleged date of superannuation i.e. 30th November, 1995. In fact, the date of superannuation shall have no nexus with the order of dismissal, which has been correctly passed on the basis of the order of conviction passed by the trial Court against the petitioner.

(13) The argument that the relationship of employer and employee came to an end on the date of superannuation is of no consequence, as the status vis-a-vis service of the petitioner was governed on different premises i.e. the order of suspension had been passed which effectively meant that for all practical purposes the petitioner shall not be deemed to be in service and that shall not be entitled to take up any other job and it is because of the extreme rigour of the rule the suspension allowance has been granted under the rules. It is the settled law that suspension is no punishment yet the delinquent official is required to perform his duties subject to discretion

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of the employer, meaning thereby that to allow him the subsistence allowance, he shall continue to be in service but limitations are dependent upon the resultant effect of any proceeding which has already commenced, be it a chargesheet issued to the delinquent official before the alleged date of superannuation of the delinquent official is facing criminal trial. In both the situations, status of the employee would be governed by the result pronounced by the Competent Authority.

(14) In the present case, the criminal trial commenced before the alleged date of superannuation and that the petitioner had been arrested and ultimately it culminated into the conviction, which has been upheld by the Hon'ble High Court and so also by the Hon'ble Supreme Court. Since it is provided under the rules that if a person is found to have been convicted upon the basis of moral turpitude, he has to be dismissed from service. Thus, the Government has, therefore, correctly passed the order with effect from the date when he had been arrested as the order or suspension is perfectly legal and is also sustainable under law. Therefore, the order of dismissal has been passed correctly and is sustainable under law.

(15) It has been further argued that the judicial pronouncements relied upon by the counsel for the petitioner are of no help as the criminal trial had begun much earlier and it is at that time the order of suspension had been passed. The order of dismissal having been passed retrospectively is sustainable under law. The question of considering the date of superannuation would arise only if the petitioner had been acquitted and that the order of retirement was required to be passed. In the present case, the petitioner has incurred dismissal upon having convicted and the conviction having been upheld by the Hon'ble Supreme Court of India, it is absolutely incorrect that the petitioner should be taken to be in service till the date of superannuation and would be further in service till the date of passing of the order of dismissal. The conclusion so averred is in complete derogation of the jurisprudence of service. Since the petitioner had been dismissed the question of claiming any salary upto the alleged date of superannuation would not arise. Thus, the order of dismissal passed by the Competent Authority in pursuant to the observation of this Court made in C.W.P. No. 14348 of 1999, is perfectly valid and sustainable under law.



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(16) After hearing learned counsel for the parties and perusal of the respective pleadings and the reference made to various judicial pronouncements of the apex Court and so also of this Court, we are of the view that the petition merits dismissal.

(17) The order of dismissal has been impugned by the petitioner upon various grounds but none of them is sustainable under law. The petitioner has been dismissed as he has been convicted by the competent authority and that the said conviction has been upheld by the apex Court, the question of granting any opportunity of being heard in such a situation did not arise.

(18) It is a matter of fact that the petitioner had been placed under suspension on 17th July, 1993 when he was found involved in a criminal case and ultimately he was convicted by the trial Court under Section 304 Part-II and 326/323 IPC,—*vide* judgment dated 25th October, 1997. It cannot be accepted that he continued to be in service and superannuated on 30th November, 1995 as no order of retirement had ever been passed by any authority. Ultimately, the conviction was upheld by this Court but the sentence was reduced from seven years to five years against which the appeal had been dismissed by the apex Court. Thereafter, the order dated 8th October, 2000, had been passed by the competent authority in pursuant to the observations made by this Court in C.W.P. No. 14348 of 1999, decided on 15th May, 2002. Primarily, the petitioner had been placed under suspension after he had been arrested and was facing the trial, the order of dismissal could have been passed on the date when he had been convicted by the trial Court but considering his right of appeal the passing of such order had been deferred and ultimately has been passed finally after the appeal had been dismissed by the apex Court. The plea of superannuation is not sustainable because nothing is available automatically and that upon attaining the age of superannuation some order is required to be passed if a person has been subjected to any inquiry or is facing criminal trial. In this regard, reference may be made to the dicta of the apex Court rendered in re: **S. Partap Singh versus State of Punjab (6)** and in re: **Khemi Ram versus The State of Punjab (supra)**, the relevant para 8 reads as under :—

“As regards the third point about the Punjab Government’s authority to cancel the leave which had been granted

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to the appellant preparatory to retirement, it will be enough to say that counsel for the appellant has not found it possible to refer to any rule under which the State Government could be said to be precluded from cancelling the leave. All that he has argued is that as the appellant automatically retired from service with effect from 4th August, 1958, on completing the age of superannuation, it was not permissible for the State Government to cancel his leave. The argument runs counter to rule 3.26 (d) of the Punjab Rules provides that a government servant under suspension on a charge of misconduct shall not be permitted to retire on reaching the age of superannuation but should be retained in service until the inquiry into the charge is concluded and a final order is passed thereon. That rule has already been interpreted by this Court in **S. Partap Singh versus The State of Punjab** (1964)4 SCR 733. The appellant therefore had no absolute right to retire from service, or to claim that he was entitled to retire automatically on reaching the age of superannuation when, as has been shown, he had been suspended already and a charge-sheet had been served on him.”

(19) Further the argument that a person after having been convicted and serving the sentence would continue to remain under suspension and that no order of reinstatement could be passed even if the competent authority desires to do so. We are afraid this argument is wholly fallacious and not sustainable under law. Such a question would arise only if the person is required to be reinstated and is allowed to superannuate. In the present case, the question of superannuation does not arise as the petitioner has been dismissed on the ground of having been convicted and the conviction having been upheld by the apex Court. The question of giving retrospective effect would arise only if the person has to be allowed to superannuate. In the present case, the relationship of employee and the employer came to an end when the order of dismissal had been passed which was dependent upon the conviction order passed by the Court and the same has been upheld by the apex Court.

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(20) The argument that upon passing the order of suspension, the contract of service would go in abeyance and in fact primarily ceases to subsist but remains in force for limited purpose i.e. the statutory status by virtue of which he gets the subsistence allowance as allowable under the rules and that if no final order is passed before the date of superannuation, the employee shall be entitled to full salary and not the subsistence allowance. We do not find this argument of any substance. The petitioner suffered suspension as per rule 7.6 as incorporated by Government of Haryana,—*vide* notification No. 6/1(1)/80-IFR(1), dated 8th July, 1980, which reads as under :—

- “7.6 (1) A Government servant against whom a criminal charge is pending may, at the discretion of the competent authority be placed under suspension by the issue of a specific order to this effect during the periods when he is not actually detained in custody or imprisoned (e.g. while released on bail), if the charge made against him is connected with his position as a Government servant or is likely to embarrass him in the discharge of his duties as such or involves moral turpitude. However, as soon as a criminal charge is framed by a Court against a Government servant in a case involving moral turpitude, suspension should follow automatically.
- (2) A Government servant against whom a proceeding for arrest for debt is pending should be placed under suspension by the issue of specific order to this effect during the period when he is not actually detained in custody or imprisoned (e.g. while released on bail) if the proceeding taken against him is connected with his position as a Government servant or is likely to embarrass him in the discharge of his duties as such.
- (3) In regard to pay and allowances in the cases referred to in sub rules (1) and (2) the provisions of rule 7.5 shall apply.”

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(21) Since he had been convicted on account of moral turpitude the suspension was automatic, however, the order of suspension had been passed. As per instructions of the Haryana Government, if a person is convicted of offences involving moral turpitude, should neither be taken nor retained in Government service. In that regard, reference may be made to the instructions which reads as under :—

- (1) Rehabilitation of Ex-convicts released from Jails; question of making them eligible for appointment under Government.

(No. C & Hr. No. 6857/5-GSI-72/2756 dated 2nd February, 1973 as modified,—*vide* C.S. Hr. No. 1449-5GSI-75/6324, dated 17th/26th March, 1975).

I am directed to refer to the subject noted above and to say that the All India Seminar on correctional Services held in New Delhi in March, 1969, considered the problem of rehabilitation of ex-convicts and emphasized the need for their employment under Government on release from Jails. Consequently, the Government of India suggested to all State Governments that they should examine the possibility of taking steps whereby ex-convicts would not suffer from any disability in that regard and should be able to obtain employment on their merits after release from Jails.

(2) The State Government have considered this matter accordingly and have taken the following decisions :—

(i) xxx . xxx xx xx

(ii) xxx xxx xx xx

(iii) Ex-convicts convicted of offences involving moral turpitude should neither be taken nor retained in Government Service. The following tests should

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ordinarily be applied in judging whether a certain offence involving moral turpitude or not :

- (a) Whether the act leading to a conviction was such as could shake the moral conscience of society in general.
- (b) Whether the motive which led to the act was a base one.
- (c) Whether on account of the action having been committed the perpetrator could be considered to be of deprived character of a person who was to be looked down upon the society.

Decision in each case will, however, depend upon 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 offences which are not included in it but which in certain situations and circumstances may involve moral turpitude.”

(22) As we have observed earlier that the question of superannuation by the petitioner did not arise as he had incurred suspension in pursuant to the aforestated rule. It is also the settled law, as noticed above, that nothing comes in automatically and in the present case if the petitioner had been acquitted the order of superannuation could not have been passed by the competent authority but in view the conviction, the order of superannuation could not and was not required to be passed and that the only order which could be suffered by the petitioner, is the order of dismissal, which has been correctly passed by the competent authority.

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(23) The citations as noticed above which have been relied upon by the learned counsel for the petitioner are not at all applicable to the facts of the present case. In none of the cases the question was involved that the impugned order had been passed after the alleged date of superannuation and that in the present case there was no question of superannuation by the petitioner and if the dicta as referred to by the learned counsel for the petitioner is applied, he shall have to be continued in service beyond the date of superannuation as the order had been passed on October 8, 2002. Can a person be continued in service beyond the alleged date of superannuation? In a case where the question of superannuation has not been accepted by us, the applicability of the order on the date when it is passed is not at all sustainable. The rule is crystal clear that a person if suffers conviction would stand dismissed from service and in that regard also an order is required to be passed and which has been passed. The Hon'ble Supreme Court has observed in B.R. Patel's case (*supra*) that when the delinquent official is placed under suspension in the wake of criminal prosecution and when he earns acquittal, the order of suspension would not come to an end automatically because such order shall have to be revoked by the competent authority. Thus, upon such revocation the delinquent official may superannuate or otherwise as the case may be. In the case at hand, the conviction has been upheld, therefore, the order of dismissal was the necessary consequence and it has been correctly made effective from the date of suspension because under no provision he could be continued upto the date of superannuation because such circumstance would not arise in the case of the present petitioner.

(24) So far as the suspension allowance is concerned the same is grantable in accordance with the rules and if a person suffers indictment, the claim would be sustainable as per the rules only.

(25) In view of the above, we find no merit in the petition and the same is dismissed with no order as to costs.