plaint the suit could not be considered to be one of partial pre-emption and it was not necessary or incumbent upon the plaintiff to specifically mention the *katcha* house among the property sought to be pre-empted. In support of this argument he relies upon the fact that in the sale deed no separate value of the house is stated and the house was allotted to the plaintiff's father by the same order under which he got the land in dispute. After going through the sale-deed I find myself unable to accept this contention. The land and the house are separately described in the sale-deed. The house is not situate in any part of the agricultural land but in the *abadi*. The mere fact that both the items of the property were allotted to the plaintiff's father by the same order does not warrant the assumption that they constitute one property and whoever takes the land takes the house along with it. The fact that the value of the land and the house is not separately specified in the sale-deed also does not prevent the rule of partial pre-emption being applied to the case. Quite often more than one items of property are sold by a single sale-deed without specifying their separate values. If in a case there are two distinct properties covered by a sale-deed and the two are situate in different localities and are of different types, it will be idle to contend that merely because separate value of each of them is not stated in the sale-deed the pre-emptor is at liberty to pre-empt one and exclude the other when his right of pre-emption extends to all. No authority on this point has been cited before me and I am of the opinion that even in such a case the suit must be considered to be one for partial pre-emption.

(15) As the suit must fail on the finding on issue No. 5, there is no occasion to remit the case back to the lower appellate Court. I, accordingly, accept the appeal, set aside the order of the learned Additional District Judge and affirm the judgment and decree of the trial Court. In the circumstances of the case I leave the parties to bear their own costs.

N.K.S.

CIVIL MISCELLANEOUS

Before Gurdev Singh and A. D. Koshal, JJ.

RAJINDER SINGH,—*Petitioner*

versus

THE PUNJAB STATE AND ANOTHER,—*Respondents*

Civil Writ No. 2514 of 1967

August 14, 1969

Constitution of India (1950)—*Article* 311(2)—*Proviso* (*a*)—*Punjab Civil Services* (*Punishment and Appeal*) *Rules* (1952)—*Rule* 7(2)—*Proviso*

(a)—Meaning and scope of—Conviction of a public servant on criminal charge—Such servant—Whether can be dismissed without show-cause notice or inquiry—Conviction—Whether must be for an offence involving moral turpitude—Order of dismissal—Matters to be taken into consideration before passing it—Stated—Such order—Whether has to be a speaking order.

Held, that the language of proviso (a) to Article 311(2) of the Constitution of India, and Rule 7 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, is clear and unambiguous, and if full effect is given to it, the conclusion is inescapable that if a member of a Civil Service of a State or Union or person holding a civil post under a State or Union of India is convicted on a criminal charge, for his conduct leading to such conviction he can be dismissed from service or some other suitable penalty imposed upon him by competent authority without any show-cause notice or enquiry. There is nothing in Article 311(2) or the Service Rules to support the contention that the conviction which entails the extreme penalty of dismissal without an enquiry must be for an offence involving moral turpitude. There is no warrant for importing such a restriction on the powers of the dismissing authority in view of the plain and unambiguous language of the relevant provisions. It is true that such a wide interpretation exposes a person holding a civil post to the risk of being dismissed from service without any enquiry or show-cause notice if he has the misfortune of being convicted even for a petty or technical offence, yet that is no ground for giving a restricted meaning to the relevant provisions when their language is clear and unambiguous. (Para 10)

Held, that neither the language of Article 311(2) of the Constitution, nor of Rule 7(2) of the Service Rules indicates that as soon as a public servant is convicted on a criminal charge, however minor it may be, he must suffer one of the punishments mentioned in Article 311(2). Since this provision mentions three different types of punishments, it is obvious that if action is sought to be taken against a Government servant consequent upon his conviction on a criminal charge the authorities have to apply their mind to the facts of the case and to examine the conduct of the public servant concerned leading to his conviction. It is true that his conviction need not be for an offence involving moral turpitude, but all the same there is nothing in Article 311(2) of the Constitution or the Service Rules to suggest that conviction for any criminal offence must necessarily result in dismissal and it is not open to the authorities not to inflict any other penalty, or to impose a lesser punishment which, in its opinion, may suffice to meet the ends of justice or to safeguard the interests of the Administration. It, therefore, follows as a corollary that before inflicting any of the three punishments mentioned in Article 311(2) of the Constitution, namely, dismissal, reduction in rank or removal, the competent authority has to apply its mind to the facts of the case to examine the conduct of the public servant concerned and to determine the nature and quantum of punishment which his conduct calls for. (Para 14)

Held, that an order which imposes punishment on a government servant must be a speaking order. The rules of justice also require that a

person on whom the punishment is imposed must be informed of the reasons for such imposition, especially when the order is open to appeal.

(Para 15)

Case referred by the Hon'ble Mr. Justice Gurdev Singh on 26th July, 1968, to a larger Bench for decision of an important question of law involved in the case. The case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice Gurdev Singh and the Hon'ble Mr. Justice A. D. Koshal on 14th August, 1969.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari, or any other appropriate writ, order or direction be issued quashing the orders passed by the respondents No. 1 and 2, dated 15th June, 1967 and 3rd November, 1964 (corrected,—vide corrigendum dated 25th March, 1965), respectively.

PURAN CHAND, ADVOCATE, for the petitioner.

K. L. JAGGA, ASSISTANT ADVOCATE-GENERAL, HARYANA, for the State of Haryana.

H. L. SIBAL, ADVOCATE-GENERAL, PUNJAB, for the State of Punjab.

JUDGMENT

GURDEV SINGH, J.—This petition under Articles 226 and 227 of the Constitution brought by Rajinder Singh, who was serving as teacher in the Government Middle School, Dialpura, challenging the order of his dismissal from service, originally came up before me sitting in Single Bench. As the fate of the petition turned on the interpretation of the proviso to Article 311(2) of the Constitution and rule 7 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952 (hereinafter called the service Rules), on which there was no direct authority of this Court or the Supreme Court, and the matter being of considerable importance and frequent occurrence, I referred the same for decision by a larger Bench.

(2) On 31st July, 1964, the petitioner Rajinder Singh, while employed as a teacher in the Government Middle School, Dialpura, was convicted by Magistrate, First Class, Rajpura, under section 332, of the Indian Penal Code and sentenced for assaulting a bus conductor with whom he is alleged to have exchanged hot words on the latter's refusal to carry the students studying in the petitioner's school and refusing to make available to the petitioner the complaint book. An appeal against this order was rejected, and the petitioner's conviction was upheld in revision (Criminal Revision

No. 1264/65) even by this Court on 26th July, 1965, though his sentence was reduced to imprisonment till the rising of the Court and Rs. 300 as fine. In the meanwhile, at the instance of the District Education Officer, Patiala, on the basis of this conviction under section 332 of the Indian Penal Code, the Director of Public Instruction, Punjab (respondent No. 2) dismissed the petitioner by his order, dated 3rd December, 1964, without serving upon him any show-cause notice. In this order, the petitioner's name was incorrectly entered as Joginder Singh, but subsequently by means of a corrigendum, which forms annexure 'B' to the petition, issued on 25th March, 1965, the necessary correction was made, and it was directed that instead of Joginder Singh the name of the petitioner Rajinder Singh be read in the original order. The petitioner preferred an appeal to the State Government, but the same was rejected, and he was informed of its result,—*vide* letter (annexure C), dated 17th October, 1967, addressed by the Secretary, Education Department, Government Punjab, to the petitioner's father. Copy of the Government's order, dated 15th June, 1967, which was enclosed with his letter reads thus:—

> "Reference your memorandum No. 11/81-64-ET1(5), dated the 17th May, 1967, on the above subject.
>
> 2. Government have considered the appeal of Shri Rajinder Singh, Ex-teacher, against his dismissal from service and rejected it.
>
> 3. Your office files Nos. 11/81-64-ET-11 and No. E-III/6(2)64 and the personal file of the Ex-official are returned. Their receipt may please be acknowledged."

(3) It is against this order of the Appellate Authority and the earlier order of his dismissal that the petitioner has invoked the jurisdiction of this Court under Articles 226 and 227 of the Constitution. He seeks writ of *certiorari* for quashing these orders as illegal, without jurisdiction and violative of Article 311(2) of the Constitution of India.

(4) The order of the petitioner's dismissal as communicated to him may here be reproduced. It reads :—

> "The Director, Public Instruction, Punjab, has ordered the dismissal from service in respect of Shri Joginder Singh

(Rajinder Singh) on account of conviction by the Court of Magistrate First Class, Rajpura."

(5) In challenging the validity of this order, the petitioner's learned counsel, Mr. Puran Chand, has urged:—

(1) That it is only where a public servant is convicted of an offence involving moral turpitude that his dismissal would be justified without an enquiry and show-cause notice;

(2) that the petitioner's conviction under section 332 of the Indian Penal Code did not involve any moral turpitude, and thus the proviso (a) to Article 311(2) does not apply to his case;

(3) that since under rule 4 of the Service Rules, various punishments listed therein can be inflicted only for good and sufficient reasons, the petitioner's dismissal simply because of his conviction under section 332 of the Indian Penal Code was not justified;

(4) that before extreme punishment of dismissal could be imposed upon the petitioner, he was entitled to be heard and to show why no action should be taken against him; and

(5) that the extreme punishment of dismissal was not called for or warranted by the facts of the case and before imposing the punishment, it was incumbent upon the authority concerned to consider the nature of the offence for which he was convicted, his conduct leading up to such conviction and the nature or quantum of punishment that would be appropriate.

(6) In defending the impugned orders of the petitioner's dismissal, the Director of Public Instruction, besides referring to the proviso to clause (2) of Article 311 of the Constitution, relied upon proviso (b) to sub-rule (2) of rule 7 of the Service Rules and maintained that once a Government employee is convicted by a criminal Court for any offence he becomes unfit to continue in service and the Government has the authority to dismiss him from service without any enquiry or show-cause notice.

(7) Rule 4 of Service Rules enumerates different penalties that can be imposed upon a Government employee "for good and sufficient

reasons". Rule 7 prescribes the enquiry that must precede the imposition of such penalties. Sub-rule (1) thereof provides:—

> "Without prejudice to the provisions of the Public Servants (Inquiries) Act, 1950, no order of dismissal, removal or reduction, shall be passed against a person to whom these rules are applicable unless he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him."

(8) Sub-rule (2) thereafter lays down the procedure for such an enquiry. Proviso (b) thereof, on which reliance is placed on behalf of the State, however, says—

> "The provisions of the foregoing sub-rule shall not apply where a person is dismissed or removed or reduced on the ground of conduct which has led to his conviction on a criminal charge; or where an authority empowered to dismiss or remove him, or reduce him in rank is satisfied that, for some reason to be recorded by him in writing, it is not reasonably practicable to give him an opportunity of showing cause against the action proposed to be taken against him, or where in the interest of the security of the State, it is considered not expedient to give to that person such an opportunity."

(9) This provision is similar to that found in the proviso to Article 311(2) of the Constitution, which so far as is relevant for the purpose of this case 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."

(10) The language of this proviso (a) to Article 311(2) and Rule 7 referred to above is clear and unambiguous, and if full effect is given to it, the conclusion is inescapable that if a member of a Civil Service of a State or Union or person holding a civil post under a State or Union of India is convicted on a criminal charge, for his conduct leading to such conviction can be dismissed from service or some other suitable penalty imposed upon him by competent authority without any show cause notice or enquiry. There is nothing

in Article 311(2) or the service Rules to support the contention that the conviction which entails the extreme penalty of dismissal without an enquiry must be for an offence involving moral turpitude, and we find no warrant for importing such a restriction on the powers of the dismissing authority, which is not warranted by the plain and unambiguous language of the relevant provisions. It is true that such a wide interpretation exposes a person holding a civil post to the risk of being dismissed from service without any enquiry or show-cause notice even if he has the misfortune of being convicted for a petty or technical offence, yet that is no ground for giving a restricted meaning to the relevant provisions when their language is clear and unambiguous, or for importing into them the words "involving moral turpitude" after the words "which has led to his conviction on a criminal charge."

(11) It may be pointed out here that neither in Article 311(2) of the Constitution nor in Rule 7, is it laid down that any person holding a civil post under the State or the Union of India or a member of a Civil Service of a State or Union who is convicted on a criminal charge shall be dismissed or that such a conviction *ipso facto* results in dismissal, removal or reduction in rank. On the other hand, what is provided therein is that if a person is to be dismissed or removed or reduced in rank on the ground of his conduct which led to his conviction on a criminal charge, then no enquiry or show cause notice is necessary. Thus, in taking action against a Government servant who is convicted of any offence, the authority concerned has to take into account not merely the fact of his conviction but also examine his conduct leading to his conviction and consider *inter alia* the nature and quantum of the penalty to be imposed. In dealing with this matter, the authorities are expected to act reasonably having due regard to the nature and gravity of the offence, the circumstances in which the offence was committed and the conduct of the person concerned leading up to his conviction. There is, however, nothing to debar such an authority from affording an opportunity to the person concerned to satisfy itself that his conduct resulting in his conviction rendered him unfit for being retained in service or to consider what punishment would suffice to meet the situation. The relevant provisions with which we are dealing, as they stand, do not make any distinction between crimes involving moral turpitude and other crimes. On reference to Constituent Assembly Debates, Volume 9, page 113, we find that while dealing with proviso (a) to Article 311(2) Dr. Ambedkar observed that it was open to the authority making regulations under Article 309 to provide that a person convicted of

an offence not involving moral turpitude shall not be dismissed from service, in which case the present proviso would not be applicable to convictions for offences not involving moral turpitude at all. The Government has ample authority to prevent abuse of the power vesting in the appointing authority under Article 311(2) by promulgating appropriate rules and regulations under Article 309 of the Constitution in respect of the various services, and we have no doubt that if the power of dismissal without show-cause notice or enquiry is abused or exercised capriciously or maliciously, the Government concerned would not hesitate to safeguard the interests of its employees and the administration by making the necessary provision in the rules governing the various services.

(12) In this view of the matter, it is not necessary for us to examine the contention that the conduct which resulted in the petitioner's conviction under section 332 of the Indian Penal Code did not involve any moral turpitude.

(13) This brings us to the consideration of the further contention raised on behalf of the petitioner, viz., that even though the show-cause notice and enquiry contemplated under Article 311(2) of the Constitution is not necessary, where one of the three major punishments specified therein is inflicted on a person in a civil service of the Government for his conduct resulting in his conviction on a criminal charge, before such an order can be passed it is incumbent upon the authorities to apply their mind to the facts of the case to determine whether his conduct leading to his conviction is such as to call for punishment; and to make up its mind as to the nature and quantum of the punishment that will be appropriate.

(14) This argument, in our opinion, has considerable force. As has been observed earlier neither the language of Article 311(2) of the Constitution, nor of Rule 7(2) of the Service Rules indicates that as soon as a public servant is convicted on a criminal charge, however minor it may be, he must suffer one of the punishments mentioned in Article 311(2). Since this provision mentions three different types of punishments, it is obvious that if action is sought to be taken against a Government servant consequent upon his conviction on a criminal charge the authorities have to apply their

mind to the facts of the case and to examine the conduct of the public servant concerned leading to his conviction. It is true that his conviction need not be for an offence involving moral turpitude, but all the same there is nothing in Article 311(2) of the Constitution or the Service Rules to suggest that conviction for any criminal offence must necessarily result in dismissal and it is not open to the authorities not to inflict any penalty, or to impose a lesser punishment which, in its opinion, may suffice to meet the ends of justice or to safeguard the interests of the administration. In this view of the matter it follows as a corollary that before inflicting any of the three punishments mentioned in Article 311(2) of the Constitution, namely, dismissal, reduction in rank or removal, the competent authority has to apply its mind to the facts of the case to examine the conduct of the public servant concerned and to determine the nature or quantum of punishment which his conduct calls for.

(15) Turning to the impugned order by which the petitioner has been dismissed from service, we find that there is nothing to indicate that the authority concerned has applied its mind to any of these matters before ordering the petitioner's dismissal. This order merely says that the petitioner was being dismissed because of his conviction. On the face of it, it is extremely vague. It does not even disclose the offence for which the petitioner was convicted nor the date of his conviction and the Court that had found him guilty. Apart from this it does not contain any indication that his conduct leading to his conviction has been scrutinised and it merited the extreme penalty of dismissal. *Bhagat Raja* v. *Union of India and another* (1), *Mohinder Singh* v. *The State of Punjab and others* (2), and the *Ambala Bus Syndicate* v. *The State of Punjab and others* (3), are authorities for the proposition that the order must be a speaking order. The rules of justice also require that a person on whom the punishment is imposed must be informed of the reasons for such imposition, especially when the order is open to appeal.

(16) The petitioner had preferred an appeal against the order of his dismissal. Even the appellate order suffers from serious lacuna. It merely states :

(1) A.I.R. 1967 S.C. 1606.
(2) 1968 Curr. L.J. 476.
(3) 1968 Cr. L.J. 211.

"Government has considered the appeal of Shri Rajinder Singh, Ex-Teacher, against his dismissal from service and rejected it."

(17) Apart from the fact that it is not a speaking order it is clearly in contravention of rule 11 of the Punjab Civil Service (Punishment and Appeal) Rules, 1952, which is in these words:—

"The appellate authority has to consider three things before passing a final order in appeal :—

(1) Whether the facts on which the order was passed were established ?

(2) Whether the facts established afford sufficient ground for taking action, and

(3) Whether the penalty imposed is excessive, adequate or inadequate.

In clause (c) of sub-rule (1) of this rule 11, it is specifically enjoined on the appellate authority to apply its mind to all these matters before disposing of the appeal. The appellate order that has been reproduced above nowhere indicates that the order of the dismissing authority was examined in the manner enjoined by rule 11(1). Taking it to be beyond controversy that the conviction of the petitioner for an offence under section 332, Indian Penal Code, did call for some departmental action, it had still to be considered whether the conduct of the petitioner resulting in his conviction called for the extreme penalty of dismissal from service and a lesser penalty could not suffice to meet the situation. Since the appellate authority had not applied its mind to the matters which rule 11 enjoins upon it to consider its order rejecting the appeal cannot be sustained being violative of rule 11.

(18) Even though no enquiry or show-cause notice is enjoined in such cases, the duty of the punishing authority and the appellate authority to apply their minds to the facts and other matters mentioned above was still there. This duty does not appear to have been discharged. Consequently none of the impugned orders can be sustained. We accordingly accept the petition and quash both these orders, leaving the parties to bear their own costs.

A. D. KOSHAL, J.—I agree.

R.N.M.