PETITIONER:
THE DEPUTY DIRECTOR OF COLLEGIATE EDUCATION

Vs.

RESPONDENT:
S. NAGOOR MEERA

DATE OF JUDGMENT24/02/1995

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
PARIPOORNAN, K.S.(J)

CITATION:
1995 AIR 1364 1995 SCC (3) 377
JT 1995 (3) 32 1995 SCALE (2)1

ACT:

HEADNOTE:

JUDGMENT:
B.P. JEEVAN REDDY, J.:
1. Leave granted. Heard counsel for the parties.
2. The respondent was working as Superintendent in the office of the Regional Deputy Director Collegiate Education, Madurai in 1986. Complaints of corruption were received against him. An enquiry was held into those complaints by the vigilance and Anti-Corruption Department which opined that the charge was true. Accordingly, the respondent was prosecuted before the Chief Judicial Magistrate, Madurai, who convicted the respondent under Section 420 of the Indian Penal Code and Section 5 of the Prevention of Corruption Act. The charge was that the respondent received a sum of Rs.10,000/- from one Vijay Kumar promising him. to secure a job for him. He,was sentenced to undergo rigorous
34
imprisonment for one year in addition to fine of Rs. 1,000/-. The respondent filed an appeal in the High Court against the conviction and sentence aforesaid and on 14.2.1991, the court suspended the sentence imposed on the respondent and released him on bail.
3. On October 27, 1993 the Deputy Director of collegiate Education issued a notice to the respondent calling upon him to show cause why he should not be dismissed from service in view of his conviction by the criminal court. The show cause notice expressly recites that inasmuch as the High Court has only suspended the sentence, his conviction is still in force. The notice also recites the nature of the offence for which the respondent was convicted.
4. Soonafter receiving the show cause notice, the respondent filed Original Application No. 6851 of 1993 before the Tamil Nadu Administrative Tribunal. His submission, which has been upheld by the Tribunal, is that inasmuch as the sentence imposed upon him by the criminal court has been suspended by the appellate court (High Court), no proceedings can be taken for terminating his

services under and with reference to clause (a) of the second proviso to Article 311(2) of the Constitution of India. The Tribunal has quashed the aforesaid show cause notice on the following reasoning :

> "Therefore, it is clear that once the sentence has been suspended admitting the appeal the criminal proceedings of the Lower Court which ended in conviction and sentence of the applicant is being continued in the appellate court and it can end only when the proceedings in the appellate court come to an end. Till then the applicant cannot be proceeded under the provisions of the T.N.C.S.(C.C.A) Rules as has been done in this case. Yet another flaw is that there has been inordinate delay of two years and eight months after the conviction and sentence was passed by the Lower Court in issuing the impugned show cause notice. This inordinate delay is unexplained. Therefore, the show cause notice to the applicant is not sustainable in law till the appellate court disposes of the Criminal Appeal."

5. The correctness of the said order is questioned by the Deputy Director of the Collegiate Education in this appeal.

6.Article 311(2) declares that no person, who is a member of the civil service of the Union or All-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed, removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. The second proviso, however, carves out three exceptions to the said rule. We arc concerned with the first exception mentioned under clause (a). Insofar as it is relevant, the second proviso reads as follows:

> "Provided further 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 charge."

7. This clause, it is relevant to notice, speaks of "conduct which has led his conviction on a criminal charge". It does not speak of sentence or punishment awarded. Merely because the sentence is suspended and/or the accused is released on bail, the conviction does not cease to be operative.

35

Section 389 of the Code of Criminal Procedure, 1973 empowers the appellate court to order that pending the appeal "the execution of the sentence or order appealed against be suspended and also if he is in confinement that he be released on bail or on his own bond." Section 389(1), it may be noted, speaks of suspending "the execution of the sentence or order", it does not expressly speak of suspension of conviction. Even so, it may be possible to say that in certain situations, the appellate court may also have the power to suspend the conviction - an aspect dealt with recently in Rama Narang v. Ramesh Narang (1995 (1) J.T. 515). At pages 524 and 525, the position under Section 389 is stated thus:

> "Section 389(1) empowers the Appellate Court to order that the execution of the sentence or ordcr appealed against be suspended pending the appeal. What can be suspended under this

provision is the execution of the sentence or the execution of the order. Does 'Order' in Section 389(1) empowers the Appellate Court to order that the execution of the sentence or order appealed against be suspended pending the appeal. What can be suspended under this provision is the execution of the sentence or the execution of the order. Does 'Order' in- Section 389(1) mean order of conviction or an order similar to the one under Sections 357 or 360 or the Code? Obviously, the order referred to in Section 389(1) must be an order capable in execution. An order of conviction by itself is not capable of execution under the Code. It is the order of sentence or an order awarding compensation or imposing fine or release on probation which are capable of execution and which if not suspended, would be required to be executed by the authorities..... hi certain situations the order of conviction can be executable, in the sense, it may incur a disqualification as in the instant case. In such a case the power

under Section 389(1) of the Code would be invoked. in such situations, the attention of the Appellate Court must be specifically invited to die consequence that is likely to fall to enable it to apply its mind to the issue since under Section 389(1) it is under an obligation to support its order 'for reasons to be recorded by it in writing'. If the attention of the Court is not invited to this specific consequence which is likely to fall upon conviction how can it be expected to assign reasons relevant thereto?..... If such, a precise request was made to the Court pointing out the consequences likely to fall on the continuance of the conviction order, the Court would have applied its mind to the specific question and if it thought that case was made out for grant of interim stay of the conviction order, with or without conditions attached thereto, it may have granted an order to that effect. " *

8. We need not, concerns ourselves any more with the power of the appellate court under the Code of Criminal Procedure for the reason that what is relevant for clause (a) of the second proviso to Article 311(2) is the "conduct which has led to his conviction on a criminal charge" and there can be no question of suspending the conduct. We are, therefore, of the opinion that taking proceedings for and passing orders of dismissal, removal or reduction in rank of a government servant who has been convicted by a criminal court is not barred merely because the sentence or order is suspended by the appellate court or on the ground that the said government servant-accused has been released on bail pending the appeal.

It was a case arising under Section 267 of the Companies Act, which provided a disqualification on the ground of conviction for an offence involving moral turpitude..

36

9. The Tribunal seems to be of the opinion that until the appeal against the conviction is disposed of, action under clause (a) of the second proviso to Article 311(2) is not

permissible. We see no basis or justification for the said view. The more appropriate course in all such cases is to take action under clause (a) of the second proviso to Article 311(2) once a government servant is convicted of a criminal charge and not to wait for the appeal or revision, as the case may be. If, however, the government servant-accused is acquitted on appeal or other proceeding, the order can always be revised and if the government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to had he continued in service. The, other course suggested, viz., to wait till the appeal, revision and other remedies are over, would not be advisable since it would mean continuing in service a person who has been convicted of a serious offence by a criminal court. It should be remembered that the action under clause (a) of the second proviso to Article 311(2) will be taken only where the conduct which has led to his conviction is such that it deserves any of the three major punishments mentioned in Article 311(2). As held by this court in Shankardass v. Union of India (1985 (2) S.C.R. 358):

> "Clause (a) of the second proviso to Article 311(2) of the Constitution confers on the government the power to dismiss a person from services "on the ground of conduct which has led to his conviction on a criminal charge." But that power like every other power has to be exercised fairly, justly and reasonably. Surely, the Constitution does not contemplate that a government servant who is convicted for parking his scooter in a no-parking area should be dismissed from service. He may perhaps not be entitled to be heard on the question of penalty since clause (a) of the second proviso to Article 311(2) makes the provisions of that article inapplicable when a penalty is to be imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act justly."

10. What is really relevant thus is the conduct of the government servant which has led to his conviction on a criminal charge. Now, in this case, the respondent has been found guilty of corruption by a criminal court. Until the said conviction is set aside by the appellate or other higher court, it may not be advisable to retain such person in service. As stated, above, if he succeeds in appeal or other proceedings, the matter can always be reviewed in such a manner that he suffers no prejudice

11. The Tribunal has given yet another reason for quashing the show cause notice, viz., that whereas the conviction of the criminal court was on 4.2.1991, the impugned show cause notice was issued only on 27.10.1993. The appellant has explained that though the respondent had come to know the conviction soonafter the judgment of the criminal court there was a doubt whether action can be taken against the respondent in view of the order of the High Court suspending the sentence. It is stated that after obtaining legal advice, the show cause notice was issued. In our, opinion, the delay, if it can be called one, in initiating the proceedings has been properly explained - and in any event, the delay is not such as to vitiate the action taken.

12. The appeal is accordingly allowed

37

and the order of the Tribunal is set aside.

13. Since the appellant himself has chosen to issue a show cause notice to the respondent before passing orders under the said clause, the respondent is given four weeks' from today to submit his explanation. The appellant is free to pass such orders thereafter as may be found appropriate in the circumstances.

14. No costs.