CASE NO.:
Appeal (civil) 2164 of 2007

PETITIONER:
Punjab Water Supply Sewerage Board & Anr

RESPONDENT:
Ram Sajivan & Anr

DATE OF JUDGMENT: 26/04/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 2164 /2007
(Arising out of S.L.P. (C) No. 22185 of 2005)
With
CIVIL APPEAL NO. 2165/2007 @ S.L.P.(C)No.22950 of 2005

S.B. Sinha, J.

Leave granted.

These two appeals by special leave involving common question of law and fact were taken up for hearing together and are being disposed of by a common judgment. Respondents herein were employed on work charge basis. One of the workman was transferred. Respondents were opposing the said order of transfer. They allegedly assaulted one of their senior officers as the said order of transfer despite protests was not cancelled. A First Information Report was lodged. Their services were terminated on 8.8.1994. They were found guilty in the criminal case and were convicted by the learned Trial Judge by an order dated 29.4.2000. They preferred an appeal thereagainst. However, an industrial dispute was raised questioning the said order of termination. The said dispute was referred to the Labour Court for adjudication by the State Government. By an Award, re-instatement of the respondents was directed by the said Court with continuity of service but without back wages. A Writ Petition preferred thereagainst by the appellant was dismissed by the High Court by an Order dated 22.11.2000, whereupon the respondent joined his services. In the meanwhile, an appeal preferred by the respondent was also dismissed by an Order dated 17.4.2001 by the appellate court. A show cause notice was issued as to why their services should not be terminated in view of the judgment of conviction having been upheld by the learned Additional District Judge. Respondents filed their show cause whereafter an order terminating their services on the charges of misconduct was passed on 6.8.2001. On a revisional application filed by the respondents, the High Court by a Judgment dated 24.8.2001 directed them to be released on probation.

A Writ Petition filed by the respondents was disposed of directing the petitioner to decide the representations made by them within two months. Pursuant to the said Order, a representation was filed which was rejected. A writ petition was again filed questioning the said order which by reason of the impugned judgment has been allowed by the High Court.

Mr. Vijay Kaushal, learned counsel appearing on behalf of the appellant raised short contention in support of this appeal viz. that High Court committed a manifest error in passing the impugned judgment, insofar as it failed to take into consideration that the respondents being guilty of a serious misconduct, could not have been directed to be re-instated in services only because they were let off on probation. Strong reliance in this behalf has been placed on Union of India and Others v Bakshi Ram [(1990) 2 SCC 426].

Mr. Nidhesh Gupta, learned counsel appearing on behalf of the respondent, on the other hand, submitted that this Court should not exercise its discretionary jurisdiction under Article 136 of the Constitution of India having regard to the passage of time and particularly in view of the fact that no disciplinary proceeding was initiated against the delinquent employees.

The learned counsel relying on the decision of this Court in The Divisional Personnel Officer, Southern Railway and Another v. T.R. Chellappan etc. [(1976) 3 SCC 190] urged that services of an employee cannot be terminated without initiating any departmental proceedings. The learned counsel argued that in any event the appellant having not questioned the Award of the Labour Court, was bound to give effect thereto.

This Court in various decisions has considered the application of the provisions of Probation of Offenders Act, 1958; the purpose whereof not marring the offender\022s normal life by removing him from the natural surrounding of his house.

See Arvind Mohan Sinha v. Amulya Kumar Biswas and Others [(1974) 4 SCC 222] and Hansa v. State of Punjab [(1977) 3 SCC 575].

We are, however, not called upon to determine a question as to whether the High Court was correct in its judgment giving benefit of the Probation of Offenders Act to the respondents. The question, however, remain as to what would be the consequences therefor.

It may be true that, in absence of any statutory rule operating in the field, the services of an employee cannot be terminated only because he was found guilty of commission of any offence irrespective of the fact whether the same involved any moral turpitude on his part, but it would be a different thing to say that an order made under the provisions of the probation of offenders Act, would by itself be sufficient to arrive at a conclusion that despite commission of a grave act of indiscipline, no disciplinary proceeding should be initiated.

In Bakshi Ram (supra), considering the fact of applicability of Section 3 of the Probation of Offenders Act and referring to the decision of this Court in Chellappan (supra), it was held;

> \02310. 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 Section 3 or 4 of the Act does not deal with the 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 [See Article 311(2)(b) of the Constitution and Tulsiram Patel case2].
> 11. 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. On this aspect, the High Courts speaks with one voice.

It was further observed;

> \02313. Section 12 is thus clear and it only directs that the offender shall not suffer disqualification, if any, attaching to a conviction of an offence under such law. Such law in the context is other law providing for disqualification on account of

conviction. For instance, if a law provides for disqualification of a person for being appointed in any office or for seeking election to any authority or body in view of his conviction, that disqualification by virtue of Section 12 stands removed. That in effect is the scope and effect of Section 12 of the Act. But that is not the same thing to state that the person who has been dismissed from service in view of his conviction is entitled to reinstatement upon getting the benefit of probation of good conduct. Apparently, such a view has no support by the terms of Section 12 and the order of the High Court cannot, therefore, be sustained.\024

In Chellappan (supra) whereupon Mr. Nidhesh Gupta placed strong reliance, proceeded on the basis that the term \023consider\024 and \023determine\024 would carry with it the principles of natural justice vis-‘-vis. application of Section 12.

\02313. It was, however, suggested that Rule 14(i) of the Rules of 1968 is the provision which contains the disqualification by dispensing with the departmental inquiries contemplated under Rules 9 to 13 of the said Rules. This cannot be the position, because as we have already said Rule 14(i) only incorporates the principle of proviso (a) to Article 311(2). If Section 12 of the Probation of Offenders Act completely wiped out the disqualification contained in Article 311(2) proviso (a) then it would have become ultra vires as it would have come into direct conflict with the provisions of the proviso (a) to Article 311(2). In our opinion, however, Section 12 of the Act refers to only such disqualifications as are expressly mentioned in other statutes regarding holding of offices or standing for elections and so on. This matter was considered by a number of High Courts and there is a consensus of judicial opinion on this point that Section 12 of the Act is not an automatic disqualification attached to the conviction itself.

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21. We now come to the third point that is involved in this case, namely, the extent and ambit of the last part of Rule 14 of the Rules of 1968. The concerned portion runs thus:

... the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit.

In this connection it was contended by the learned counsel for the appellants that this provision does not contemplate a full-dress or a fresh inquiry after hearing the accused but only requires the disciplinary authority to impose a suitable penalty once it is proved that the delinquent employee has been convicted on a criminal charge. The Rajasthan High Court in Civil Writ Petition No. 352 of 1971 concerning Civil Appeal No. 891 of 1975 has given a very wide connotation to the word consider as appearing in Rule 14 and has held that the word consider is wide enough to require the disciplinary authority to hold a detailed determination of the matter. We feel that we are not in a position to go to the extreme limit to which the Rajasthan High Court has gone. The word consider has been used in contradistinction to the word \023determine\024. The rule-making authority deliberately used the word \023consider\024 and not \023determine\024 because the word \023determine\024 has a much wider scope. The word \023consider\024 merely connotes that there should be active application of the mind by the disciplinary authority after considering the entire circumstances of the case in order to decide the nature and extent of the penalty to be imposed on the delinquent employee on his conviction on a criminal charge. This matter can be objectively determined only if the delinquent employee is heard and is given a chance to satisfy the authority regarding the final orders that may be passed by the said authority. In other words, the term \023consider\024 postulates consideration of all the aspects, the pros and cons of the matter after hearing the aggrieved person. Such an inquiry would be a summary inquiry to be held by the disciplinary authority after hearing the delinquent employee. It is not at all necessary for the disciplinary authority to order a fresh departmental inquiry which is dispensed with under Rule 14 of the Rules of 1968 which incorporates the principle contained in Article 311(2) proviso (a). This provision confers power on the disciplinary authority to decide whether in the facts and circumstances of a particular case what penalty, if at all, should be imposed on the delinquent employee. It is obvious that in considering this matter the disciplinary authority will have to take 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. It may be that the conviction of an accused may be for a trivial offence as in the case of the respondent T.R. Chellappan in Civil Appeal No. 1664 of 1974 where a stern warning or a fine would have been sufficient to meet the exigencies of service. It is possible that the delinquent employee may be found guilty of some technical offence, for instance, violation of the transport rules or the rules under the Motor Vehicles Act and so on, where no major penalty may be attracted. It is difficult to lay down any hard and fast rules as to the factors which the disciplinary authority would have to consider, but I have mentioned some of these factors by way of instances which are merely illustrative and not exhaustive. In other words, the position is that 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. This is a very salutary provision which has been enshrined in these Rules and one of the purposes for conferring this power is that in cases where the disciplinary authority is satisfied that the delinquent employee is a youthful offender who is not convicted of any serious offence and shows poignant penitence or real repentance he may be dealt with as lightly as possible. This appears to us to be the scope and ambit of this provision. We must, however, hasten to add that we should not be understood as laying down that the last part of Rule 14 of the Rules of 1968 contains a licence to employees convicted of serious offences to insist on reinstatement. The statutory provision referred to above merely imports a rule of natural justice in enjoining that before taking final action in the matter the delinquent employee should be heard and the circumstances of the case may be objectively considered. This is in keeping with the sense of justice and fairplay. 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.\024

We may further notice that interpretation of the proviso (b) appended to Article 311(2) of the Constitution of India, vis-‘-vis, the aforementioned terms \023consider\024 and \023determine\024, came up for consideration before this Court in Union of India and Another v. Tulsiram Patel etc. [(1985) 3 SCC 398], wherein Chellappan (supra) was expressly overruled stating;

> \023115. The decision in Challappan case is, therefore, not correct with respect to the interpretation placed by it upon Rule 14 of the Railway Servants Rules and particularly upon the word consider occurring in the last part of that rule and in interpreting Rule 14 by itself and not in conjunction with the second proviso to Article 311(2). Before parting with Challappan case, we may, also point out that that case never held the field. The judgment in that case was delivered on September 15, 1975, and it was reported in (1976) 1 SCR at pages 783 ff*. Hardly was that case reported then in the next group of appeals in which the same question was raised, namely, the three civil appeals mentioned earlier, an order of reference to a larger Bench was made on November 18, 1976. The correctness of Challappan case was, therefore, doubted from the very beginning.\024

The services of the respondent were terminated which have been set aside by the Labour Court pursuant whereto, they have been re-instated in service.

It is, however, one thing to say that prior to passing of the order of termination, a disciplinary proceeding should have been initiated, but it is another thing to say as has been stated by the High Court that only because the respondents were let off on probation, the same should not affect his service career at all.

Before embarking on the said issue, we may notice a decision of this Court relied upon by this Court in Aitha Chander Rao v. State of Andhra Pradesh [1981 (Supp) SCC 17], wherein it was observed;

> \023As the appellant has been released on probation, this may not affect his service career in view of Section 12 of the Probation of Offenders Act.... \024

The said decision does not lay down any law. No reason has been assigned in support thereof. This Court therein evidently exercised its jurisdiction under Article 142 of the Constitution of India.

In fact in Harichand v Director of School Education [(1998) 2 SCC 383], Aitha Chander Rao (supra) was held to be not a binding precedent on the point holding ;

> \0236. The order in the case of the said Rao was delivered on an appeal against conviction. The conviction was sustained but, having regard to the peculiar circumstances of the case, the said Rao was released on probation and it was added that this may not affect his service career in view of Section 12 of the Probation of Offenders Act. We do not find in the order in Rao case1 any discussion of the provision of Section 12 or of the meaning of the words disqualification, if any attaching to a conviction of an offence under such law therein. The order cannot, therefore, be regarded as a binding precedent upon the point.
> 7. In our view, Section 12 of the Probation of Offenders Act would apply only in respect of a disqualification that goes with a conviction under the law which provides for the offence and its punishment. That is the plain meaning of the words disqualification, if any, attaching to a conviction of an offence under such law therein. Where the law that provides for an offence and its punishment also stipulates a disqualification, a person convicted of the offence but released on probation does not, by reason of Section 12, suffer the disqualification. It cannot be held that, by reason of Section 12, a conviction for an offence should not be taken into account for the purposes of dismissal of the person convicted from government service.\024

When the order of termination passed by the appellant on the ground of misconduct was set aside by the Labour Court, the only course open to it was to initiate a regular departmental proceedings. Once they had terminated the services of the respondent, during pendency of the criminal case which as noticed hereinbefore was set aside resulting in their re-instatement in services, which although did not preclude the appellant from taking further action against the respondents, the same was required to be done only in terms of the extant rules i.e. by initiation of a regular departmental proceedings.

Submission of Mr. Gupta, that owing to passage of time, this Court would refrain itself from permitting the appellant to initiate a full fledged departmental proceeding at this stage, does not appeal to us. There are cases and cases. Factors taking into consideration for issuing such a direction would be different depending upon the factual matrix involved in each case. Indiscipline at the work place has been considered by this Court seriously particularly when the misconduct alleged is physical assault of a higher authority. The nature of assault, the role played by the concerned workman and the question as to whether with the passage of time any proceeding should be initiated or not, in our opinion plays an important role and as such does not merit laying down a general law in this behalf.

In Muriadih Colliery of Bharat Coking Coal Ltd. v. Bihar Colliery Kamgar Union Through Workmen [(2005) 3 SCC 331], a Division Bench noticing an earlier judgment of this Court in Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh and Another [(2004) 8 SCC 200] opined;

\02317. ..... The courts below by condoning an act of physical violence have undermined the discipline in the organization, hence, in the above factual backdrop, it can never be said that the Industrial Tribunal could have exercised its authority under Section 11-A of the Act to interfere with the punishment of dismissal. Substituting the order of dismissal in such a case, withholding of one increment in our opinions wholly disproportionate to the gravity of misconduct and is unsupportable.

18. Herein it is worthwhile to recall the finding of the learned Single Judge who has rightly held that the assault on the senior officials by the workmen in discharging of their duties is a misconduct and in such a situation officials who are managing the affairs will be demoralised.\024

In Hombe Gowda Educational Trust and Another v. State of Karnataka and Others [(2006) 1 SCC 430], the said decisions were followed stating;

\02330. This Court has come a long way from its earlier viewpoints. The recent trend in the decisions of this Court seek to strike a balance between the earlier approach to the industrial relation wherein only the interest of the workmen was sought to be protected with the avowed object of fast industrial growth of the country. In several decisions of this Court it has been noticed how discipline at the workplace/industrial undertakings received a setback. In view of the change in economic policy of the country, it may not now be proper to allow the employees to break the discipline with impunity. Our country is governed by rule of law. All actions, therefore, must be taken in accordance with law. Law declared by this Court in terms of Article 141 of the Constitution, as noticed in the decisions noticed supra, categorically demonstrates that the Tribunal would not normally interfere with the quantum of punishment imposed by the employers unless an appropriate case is made out therefor. The Tribunal being inferior to this Court was bound to follow the decisions of this Court which are applicable to the facts of the present case in question. The Tribunal can neither ignore the ratio laid down by this Court nor refuse to follow the same.\024

See also Harjit Singh & Anr. v The State of Punjab &

Anr. [2007 (3) SCALE 553].

A question as to whether a long delay by itself would be a sufficient ground for not directing initiation of a departmental proceeding came up for consideration before this Court in P.D. Agrawal v. State Bank of India & Ors. [2006 (5) SCALE 54], wherein the doctrine of prejudice was considered stating that if there exists a satisfactory explanation for delay, same may not be a bar in directing initiation of a fresh proceedings. We, however, are not oblivious that in a different situation, this Court in M.V. Bijlani v. Union of India [(2006) 5 SCC 88] took the factor in regard to delay in initiating a departmental proceedings as one of the relevant factors amongst others to determine the question as to whether a misconduct has been proved or not.

The instant case is not one where we can ignore the gravity of the offence. It is also not a case where the respondents have pleaded prejudice or brought sufficient materials on records so as to enable this Court to arrive at a finding that no evidence would be available. If departmental proceeding is directed to be initiated then Respondent would not be in a position to adduce any evidence in support of defence, because of passage of time.

We, therefore are of the opinion that the interest of justice would be met if liberty is granted to the appellant herein to initiate a disciplinary

proceedings against the respondent whereafter the appellants may pass appropriate order in accordance with law. The impugned judgment is set aside.

These appeals are allowed to the aforementioned extent.

However, there shall be no order as to costs.