

Union Of India And Ors vs Bakshi Ram on 1 March, 1990

Equivalent citations: 1990 AIR 987, 1990 SCR (1) 760, AIR 1990 SUPREME COURT 987, 1990 (2) SCC 426, 1990 LAB. I. C. 806, 1990 ALL CJ 640, 1990 APLJ(CRI) 290, 1990 (1) JT 339, 1990 (2) BLJR 1191, (1990) 1 CURLJ(CCR) 566, (1992) 1 ANDH LT 537, 1990 SCC (L&S) 288, (1991) SC CR R 52, (1990) 60 FACLR 571, (1990) 1 LABLJ 498, (1990) 2 ANDHWR 1, (1992) 1 ANDH LT 641, (1990) 2 LAB LN 228, (1990) 2 PAT LJR 9, (1990) 1 SCJ 588, (1990) 2 SERVLR 65, (1990) 2 ANDH LT 17, (1990) 1 APLJ 82, (1990) 1 ALL WC 574, (1990) 1 CURCC 533, (1990) 1 CURLR 544

Author: K.J. Shetty

Bench: K.J. Shetty, R.M. Sahai

PETITIONER:
UNION OF INDIA AND ORS.

Vs.

RESPONDENT:
BAKSHI RAM

DATE OF JUDGMENT 01/03/1990

BENCH:
SHETTY, K.J. (J)
BENCH:
SHETTY, K.J. (J)
SAHAI, R.M. (J)

CITATION:
1990 AIR 987 1990 SCR (1) 760
1990 SCC (2) 426 JT 1990 (1) 339
1990 SCALE (1) 321

ACT:

Probation of Offenders Act, 1958: Section 12--Scope of--Release on probation after conviction--Does not obliterate the stigma of conviction--"Shall not suffer disqualification, if any, attaching to a conviction of an offence under such law"--Refer to disqualification by some law other than the Probation of Offenders Act.

Central Reserve Police Force Act, 1949: Section 10(n)--Constable--Acting prejudicial to good order and discipline--Conviction--Release on probation--Dismissal from

service--Held not entitled to reinstatement--Penalty of 'dismissal' altered into 'removal from service'.

HEADNOTE:

The respondent, a constable, convicted under section 10(n) of the Central Reserve Police Force Act, 1949 but released on probation under section 4 of the Probation of Offenders Act, 1958, was dismissed from service. He challenged his dismissal before the High Court which ordered his reinstatement holding that there was no disqualification for him to continue in service, for section 12 of the Probation of Offenders Act, 1958 has the effect of removing the disqualification attaching to his conviction. Hence this appeal by the Union of India.

Allowing the appeal and setting aside the order of the High Court, this Court.

HELD: 1. Section 12 of the Probation of Offenders Act, 1958 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 the other law providing for disqualification on account of conviction e.g. 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. 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. Section 12 does not preclude the department from taking action for misconduct leading to the offence or to his conviction thereon

761

as per law. It was not intended to exonerate the person from departmental punishment. [766B-C; 765E]

R. Kumaraswami Aiyer v. The Commissioner, Municipal Council Tiruvannamalai and Anr., [1957] Cr. LJ 255; Embaru (P) v. Chairman Madras Port Trust, [1963] 1 LLJ 49 Mad; A. Satyanarayana Murthy v. Zonal Manager L.I.C., AIR 1969 A.P. 371; Prern Kumar v. Union of India & Ors., [1971] Lab. & Ind. Cases 823; Om Prakash v. The Director Postal Services & Ors., [1971] 1 SLR 648 and Director of Postal Services & Anr. v. Daya Nand, [1972] SLR 325, approved.

The Divl. Personnel Officer Southern Railway & Anr. v. T.R. Challappan, [1975] 2 SLR 587, followed.

2. 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. Therefore the question of respondent's reinstatement into service does not arise. However, the penalty of dismissal from service is altered into removal from service. [765C-D, F; 766E]

Tulsi Ram Patel v. Union of India, [1985] Suppl. 2 SCR 131 and Trikha Ram v. V.K. Seth & Anr., [1987] Suppl. SCC 39, followed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1312 of 1990.

From the Judgment and Order dated 6.7. 1988 of the Rajasthan High Court in D.B. Civil W.P. No. 71/77. S. Hegde, Additional Solicitor General, A. Subba Rao for C.V.S. Rao for the Appellants.

S.C. Birla for the Respondent.

The Judgment of the Court was delivered by K. JAGANNATHA SHETTY, J. Special leave granted. Bakshi Ram respondent was a constable in the Central Reserve Police Force at Devli in Rajasthan. On 17th March 1971 at about 8.45 p.m. he along with another constable forced entry into the room of Garib Das the constable of the CRP Group Centre band platoon. Garib Das was then not present in the room. His wife Savitri Devi who was inside tried to prevent their entry, but in vain. Both the constables caught hold of her and misbehaved with her. The respondent was tried for an offence under Section 10(1) of the Central Reserve Police Force Act, 1949. Section 10 of the Act sets out less heinous offences and Section 10(1) refers to any act or omission which, though not specified in the Act, is prejudicial to good order and discipline. On the evidence adduced in the case he was found guilty of the charge and by judgment dated 23rd March 1971 he was sentenced to four months R.I. by the Magistrate 1st Class and Commandant Group Centre, CRPF, Deoli (Rajasthan). He was lodged in the Civil Jail, Jaipur to undergo the sentence.

In view of his conviction and sentence, the Department by way of disciplinary action dismissed him from service. This action was taken when his appeal against the conviction and sentence was pending before the Sessions Judge. The learned Judge by judgment dated 22 September 1971 upheld the conviction but released him under the Probation of Offenders Act, 1958 ("the Act"). Apparently he was released under Section 4 of the Act upon furnishing bonds to keep peace and be of good behaviour for a period of six months. The respondent complied with those conditions. After expiry of the period of good conduct, he moved the High Court with Writ Petition under Article 226 of the Constitution challenging his dismissal from service. The High Court relying upon Section 12 of the Act has set aside the dismissal and directed that he should be reinstated into service with all consequential benefits. The High Court has expressed the view that the sole reason for dismissal of the respondent was his conviction under Section 10(1) of the Central Reserve Police Force Act but

in view of Section 12 of the Probation of Offenders Act, 1968, there was no disqualification for him to continue in service. This is how the High Court observed:

"The clear language of Section 12 of the Probation of Offenders Act, 1958 which provides that a person dealt with under the provisions of Section 3 or Section 4 of that Act shall not suffer disqualification, if any, attaching to a conviction under any law, notwithstanding anything contained in any other law. This provision has the effect of removing disqualification attaching to the petitioners' conviction under Section 10(n) of the C.R.P.F. Act. Section 12 of the Probation of Offenders Act dealing specifically with this situation clearly provides that the provisions therein is 'notwithstanding anything contained in any other law.' Hence, effect has to be given to the same."

The judgment of the High Court has been challenged in this appeal.

Since the result of the appeal turns on the scope and meaning of Section 12 of the Probation of Offenders Act, it is necessary to set out the Section. Section 12 is in these terms:

"12. Removal of disqualification attaching to conviction-- Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of Section 3 or Section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law, Provided that nothing in this section shall apply to a person who, after his release under Section 4, is subsequently sentenced for the original offence."

Section 3 of the Probation of Offenders Act, 1958 provides power to the Court to release certain offenders after admonition. Section 4 provides power to the Court to release certain offenders on probation of good conduct. Under the disposition made by the Court under Section 4 the sentence is suspended during the period of probation and the offender is released on his entering into a bond to keep peace and be of good behaviour. Section 9 provides for procedure in case of offender failing to observe conditions of bond. The Court, if satisfied, that the offender has failed to observe any of the conditions of bond for keeping good behaviour could sentence him for the original offence or where the failure is for the first time, then, without prejudice to the continuance in force of the bond, the Court may impose upon him a penalty not exceeding fifty rupees.

It will be clear from these provisions that the release of the offender on probation does not obliterate the stigma of conviction. Dealing with the scope of Sections 3, 4 and 9 of the Probation of Offenders Act, Fazal Ali, J., in *The Divisional Personnel Officer, Southern Railway and Anr. etc. v. T.R. Challappan etc.*, [1975] 2 SLR 587 at 596 speaking for the Court observed:

"These provisions would clearly show that an order of release on probation comes into existence only after the accused is found guilty and is convicted of the offence. Thus the conviction of the accused or the finding of the Court that he is guilty cannot be washed out at all because that is the sine qua non for the order or release on

probation of the offender. The order of release on probation is merely in substitution of the sentence to be imposed by the Court. This has been made permissible by the Statute with a humanist point of view in order to reform youthful offenders and to prevent them from becoming hardened criminals. The provisions of Section 9(3) of the Act extracted above would clearly show that the control of the offender is retained by the criminal court and where it is satisfied that the conditions of the bond have been broken by the offender who has been released on probation, the Court can sentence the offender for the original offence. This clearly shows that the factum of guilt on the criminal charge is not swept away merely by passing the order releasing the offender on probation. Under sections 3, 4, or 6 of the Act, the stigma continues and the finding of the misconduct resulting in conviction must be treated to be a conclusive proof. In these circumstances, therefore, we are unable to accept the argument of the respondents that the order of the Magistrate releasing the offender on probation obliterates the stigma of conviction."

As to the scope of Section 12, learned Judge went on (at

596):

"It was suggested that Section 12 of the Act completely obliterates the effect of any conviction and wipes out the disqualification, attached to a conviction of an offence under such law. This argument, in our opinion, is based on a gross misreading of the provisions of Section 12 of the Act, the words "attaching to a conviction of an offence under such law" refer to two contingencies: (i) that there must be a disqualification resulting from a conviction and

(ii) that such disqualification must be provided by some law other than the Probation of Offenders Act. The Penal Code does not contain any such disqualification. Therefore, it cannot be said that section 12 of the Act contemplates an automatic disqualification attaching to a conviction and obliteration of the criminal misconduct of the accused. It is also manifest the disqualification is essentially differ-

ent in its connotation from the word 'misconduct'." 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 case: [1985] Supp. 2 SCR 131 at 282). 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 speak with one voice. The Madras High Court in *R. Kumaraswami Aiyer v. The Commissioner, Municipal Council Tiruvannamalai and Anr.*, [1957] CrL. L.J. 225 Vol. 58 and *Embaru (P) v. Chairman Madras Port Trust*, [1963] 1 LLJ 59 Mad., the Andhra Pradesh High Court in *A. Satyanarayana Murthy v. Zonal Manager, L.I.C.*, AIR 1969 AP 371, the Madhya Pradesh High Court in *Prem Kumar v. Union of India and Ors.*, [1971] Lab & Ind. cases 823, the Punjab & Haryana High Court in *Om Prakash v. The Director Postal Services (Post and Telegraphs Deptt.) Punjab Circle, Ambala and Ors.*, [1971] 1 SLR 643. The Delhi High Court in *Director of Postal Services and Anr. v. Daya Nand*, [1972] SLR 325 have expressed the same view. This view of the High Courts in the aforesaid cases has been approved by this Court in *T.R. Challappan's case* [1975] 2 SLR 587.

In *Trikha Ram v. V.K. Seth and Anr.*, [1987] Supp. SCC 39 this Court after referring to section 12 has altered the punishment of dismissal of the petitioner therein into "removal from service", so that it may help him to secure future employment in other establishment. 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.

In the result the appeal is allowed. The impugned order of the High Court is set aside. However, we alter the penalty of dismissal from service into 'removal from service' as it was done in *Trikha Ram's case*.

In the circumstances of the case, we make no order as to costs.

T. N. A.
Allowed.

Appeal allowed.