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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision:- 15.10.2019

+ W.P.(C) 10100/2017 & CM No.41286/2017

SANTOSH KUMAR

..... Petitioner

Through Mr.Anug Aggarwal with Mr.Kumar
Utkarsh, Advs.

versus

DELHI JAL BOARD

..... Respondent

Through Mr.Rameezuddin Raja, Adv for
Ms.Sangeeta Bharti, ASC.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present writ petition under Articles 226 and 227 of the Constitution of India filed by the workman assails the award dated 25.08.2017 passed by the learned Labour Court-XVII, Karkardooma Courts, Delhi in LIR No.515/2017, whereunder the petitioner's claim for reinstatement in service has been rejected.

2. The petitioner, who was working as an Assistant Pump Driver in the respondent/Delhi Jal Board was involved in an incident leading to registration of a FIR No.51/2010 against him under Section 363, 366, 368 and 376 of the Indian Penal Code, 1860 (IPC) at Police Station Kotwali Dehat, Bulandsahar, U.P. The petitioner came to be arrested on 22.09.2010 and consequently he was on 09.02.2011 placed under deemed suspension w.e.f. the date of his arrest, which suspension continued from time to time.

3. After trial, the petitioner was convicted on 05.12.2011 under Sections 363, 366, 368 and 376 IPC by the Court of the Additional

District and Sessions Judge, Bulandsahar, U.P and sentenced to life imprisonment. The petitioner thereafter preferred an appeal before the Hon'ble High Court of Judicature at Allahabad wherein, vide order dated 18.02.2013, he has been granted bail and stay of the fine imposed on him.

4. In the light of his conviction the respondent, after issuing him a show cause notice, imposed the penalty of removal from service on the petitioner on 02.08.2013 and consequently relieved him on 20.06.2014.

5. Aggrieved by his termination, the petitioner raised an industrial dispute which came to be rejected after the labour Court found that the disciplinary authority had, after considering the relevant factors, rightly come to the conclusion that the petitioner's further retention in service was undesirable.

6. The present petition has been filed assailing the aforesaid award passed by the Labour Court. Learned counsel for the petitioner submits that even though the petitioner's appeal is still pending adjudication before the High Court, once his sentence stands suspended and he has been released on bail, the respondent is duty bound to take him back in service as the effect of the said suspension, would tantamount to the order of conviction and sentence being treated as *non est*. He, therefore, prays that the impugned award be set aside as the same has been passed without properly appreciating the effect of his sentence being suspended by the High Court.

7. Mr.Rameezuddin Raja, who appears on advance notice on behalf of the respondent, while supporting the impugned order

submits that in view of the settled position that mere suspension of sentence does not imply that the order of conviction has been stayed or that the employer should ignore the fact and effect of such conviction. He, therefore, prays that the writ petition be dismissed.

8. I have considered the submissions of the learned counsel for the parties and with their assistance perused the record.

9. In the light of the admitted position that it is only the petitioner's sentence which had been stayed by the High Court and that there is no stay of the petitioner's conviction under Section 363, 366, 368, 376 IPC, I find absolutely no merit in the petitioners' contention. It is the settled legal position that mere suspension of sentence or grant of bail to the accused in criminal proceedings, cannot imply that the conviction ceases to operate. The only effect of such suspension, during the pendency of an appeal, is that the accused is protected from incarceration, and the same does not in any manner affect the conviction order.

10. In this regard, reference may be made to the decision in ***Union of India & Ors. v. Ramesh Kumar*** AIR 1997 SC 3531, wherein the Supreme Court held as under:-

“6. Rules 15. 2 and 15.3 as occurring in Chapter VII of the Vigilance Manual are extracted below:

Chapter VII of Vigilance Manual (para 15.2 & 15.3)

15.2...accused public servant.

15.3. If the Disciplinary Authority comes to the conclusion that the offence for which the public servant has been convicted was such as to retention in the public service prima facie undesirable, it can impose upon him under Rule 19(1) of CCS (CCA) Rules, 1965, the penalty of dismissal or removal or

compulsory retirement from service as may be considered appropriate, with reference to the gravity of offence, without holding any enquiry or giving him a show-cause notice as provided in proviso to Article 311(2) of the Constitution.

F.R. 54(1)... make a specific order:

*(a) Regarding the pay and allowance to be paid to the Govt. servant for the period of his absence from duty including the period of suspension proceeding his dismissal, removal or compulsory retirement; as the case may be; and
(b) Whether or not the said period shall be treated as period spent on duty.”*

11. In the light of the aforesaid, it is evident that even though the petitioner's sentence has been suspended during the pendency of his appeal, the conviction order against him continues to operate. The respondent, therefore, was justified in coming to the conclusion that further retention of the petitioner in service was undesirable. Needless to state that in case the petitioner is successful in his pending challenge to the order of conviction before the High court, it will be open for him to approach the respondent with a request to reconsider his dismissal from service.

12. For the aforesaid reasons, this Court finds absolutely no infirmity in the impugned award warranting exercise of its writ jurisdiction under Article 226/227 of the Constitution of India.

13. At this stage, it is noticed that the present writ petition, which is wholly meritless, could not be taken up for preliminary hearing for the last two years mainly on account of non-availability of the learned counsel for the petitioner. The writ petition along with pending application is dismissed with costs of Rs.10,000/- payable to the Delhi

High Court Staff Welfare Fund within four weeks.

REKHA PALLI, J

OCTOBER 15, 2019

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