Neutral Citation No. - 2023:AHC-LKO:59434 **A.F.R.**

Reserved on 25.04.2023

Delivered on 18.09.2023

Case :- WRIT - A No. - 4422 of 2015

Petitioner :- Vishwanath Vishwakarma
Respondent :- State Of U.P. Through Prin. Secy. Deptt. Of Revenue Lko. And O
Counsel for Petitioner :- Arvind Kumar Vishwakarma, Ramesh Kumar Srivastava
Counsel for Respondent :- C.S.C.,Savitra Vardhan Singh

Hon'ble Neeraj Tiwari,J.

1. Heard learned counsel for the petitioner and Sri Savitra Vardhan Singh, learned Additional Chief Standing Counsel for the State-respondents.

2. Present petition has been filed seeking the following relief:

I. Issue a writ or direction in the nature of certiorary commanding the opposite parties to quashing the Impugned rejection order dated 30.08.2014 and appellate order dated 13.05.2015 except decision with regard to amount of provident fund.

II. Issue a writ or direction in the nature of mandamus commanding the opposite parties to treat the petitioner as retire from service subsequently to pay the retiral dues namely as pension, amount of gratuity, amount of leave encashment, amount of group insurance, arrear of pension and other dues.

III. Issue a writ or direction in the nature of mandamus commanding the opposite parties to pay the interest towards the release of amount of provident fund and to pay the arrear of salary for the period of suspension.

3. Since, pleadings have been exchanged between the parties, therefore, with the consent of the parties, the petition is being decided at the admission stage itself.

4. Brief facts of the case are that, petitioner was appointed as Lekhpal w.e.f. 08.03.1975 in District-Sultanpur. He was given his first promotional pay scale in the year 1994 and second in the year 2000. The petitioner was working as Lekhpal at Tehsil Sadar, District Sultanpur. Unfortunately an accident took place on 11.07.1992, upon which FIR dated 11.07.1992 has been lodged at Police Station Kurwar, District-Sultanpur against 16 persons including petitioner, which was registered as case crime no. 198 of 1992, under Section-148, 302, 149 and 324. Ultimately, the charge sheet was submitted and case crime was converted into session trial No. 124 of 1994. After completion of trial, petitioner was convicted for life imprisonment under Section-302 and 149 vide judgment and order dated 24.08.2009. Petitioner was taken under custody on 22.08.2009. Against the judgment and order dated 24.08.2009, petitioner has filed a criminal appeal, which was registered as criminal appeal no. 1987 of 2009. Petitioner was released on bail by the High Court on 10.01.2017. Petitioner has attained the age of superannuation on 31.08.2014. Order of dismissal from service was passed on 30.08.2014 only on the ground of conviction and the same was served upon the petitioner on 02.09.2014. Apart from dismissal from service, petitioner was also denied the post retiral benefits.

5. Against the order dated 30.8.2014, petitioner has preferred departmental appeal dated 17.10.2014 before the District Magistrate, Amethi. During the pendency of the appeal, he has also challenged the order dated 30.08.2014 before this Court by filing S.S. No. 42 of 2015, which disposed of vide order dated 20.02.2015 directing the appellate authority to decide the appeal of the petitioner within three months. Said appeal of the petitioner was decided vide appellate order dated 13.05.2015, issuing the direction for payment of GPF amount to petitioner only and for remaining post retiral benefits, it is held in the appellate order that decision shall be taken after final disposal of criminal appeal no. 1987 of 2009 filed by the petitioner.

6. Petitioner has challenged both the orders, i.e. order dated 30.08.2014 and 13.05.2015 in present petition. So far as first order is concerned, learned counsel for the petitioner firmly submitted that in light of Article 311(2)(a) of Constitution of India, mere conviction cannot be a ground for removal of an employee from service, but conduct of the employee has also to be seen while passing the order of dismissal. He next submitted that after conviction, petitioner was issued charge sheet on 17.04.2014 having only one charge that he has never informed about the conviction and incarceration thereafter, which he duly replied vide reply dated 20.06.2014 with the averment that he has given due information. He next submitted that from perusal of the impugned order dated 30.08.2014, it is apparently clear that, neither any fact submitted in reply has been considered, nor there is any application of mind about the conduct of the petitioner as required under Article 311(2)(a) of Constitution of India. Though the order is having two paragraphs about some facts, but it is only one line about the dismissal of the petitioner in light of judgment and order of conviction dated 24.08.2009. He firmly submitted that even in case of conviction, it is required on the part of the disciplinary authority to apply its mind and consider the conduct of the petitioner, which is absolutely missing in the present case. Therefore, order dated 30.08.2014 is bad and liable to be set aside.

7. In support of his contention, learned counsel for the petitioner has placed reliance upon the judgment of Apex Court in the matter of ***Union of India and another Vs. Tulsiram Patel: AIR 1985 SCC 1416*** as well as of this Court in ***Shyam Narain Shukla Vs. State of U.P., 1988 6 LCD 530, Ratan Singh Vs. State of U.P. and Others: (2013) 11 ADJ 352, Udai Pratap Singh Vs. State of U.P. 2014 (32) LCD 779, Shambhu Nath Yadav Vs. State of U.P.: 2016(4) ADJ 276, Rajesh Dwivedi Vs. State if U.P. 2018(36) LCD 1047, Ram Kishan Vs. State of U.P. (2020) 1 ADJ 862, Murari Lal Rathore Vs. State of U.P.: 2021(6) ALJ 622.***

8. He has also assailed appellate order dated 13.05.2015 on the ground that pension and post retiral benefits are not bounty, but a property under Article 300(A) of the Constitution of India, therefore, the same cannot be taken away without any provision of law. In support of his contention, he placed reliance upon the judgment of Apex Court in the matter of ***State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava & Anr.: AIR 2013 Suprreme Court 3383.***

9. Learned Additional Chief Standing Counsel has vehemently opposed the submission of learned counsel for the petitioner and submitted that once the petitioner is convicted, it is always open for the disciplinary authority to dismiss the petitioner from service in light of Article 311(2)(a) of Constitution of India. In support of his contention, he placed reliance on the judgment of Apex Court in ***Civil Appeal No. 1804 of 2020: of Life Insurance Corporation of India Vs. Mukesh Poonamchand Shah.***

10. I have considered the rival submissions advanced by learned counsel for the parties, perused Article 311(2)(a) of Constitution of India as well as judgments relied upon.

11. The issue before the Court is that as to whether in case of conviction, service of petitioner may be terminated straightway without providing any opportunity to him in light of Article 311(2)(a) of Constitution of India or not?

12. As Article 311 of Constitution of India is relevant for the present case, the same is being quoted hereinbelow:

> ***"Article 311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.—(1)*** *No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.*
>
> *(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:*

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

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 criminal charge; or

(b) Where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or"

(c) Where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."

13. From the perusal of Article 311(2)(a) of Constitution of India, it appears that in case a person is dismissed from the service on the ground of conduct, which has led to conviction on a criminal charge, a fledged inquiry is not required.

14. This issue was before the Apex Court for consideration in the matter of ***Tulsiram Patel (Supra),*** relevant paragraph of the said judgment is quoted hereinbelow:

"*The second proviso will apply only where the conduct of a government servant is such as he deserves the punishment of dismissal, removal or reduction in rank. If the conduct is such as to deserve a punishment different from those mentioned above, the second proviso cannot come into play at all, because* Article 311 (2) *is itself confined only to these three penalties. Therefore, before denying a government servant his constitutional right to an inquiry, the first consideration would be whether the conduct of the concerned government servant is such as justifies the penalty of dismissal, removal or reduction in rank. Once that conclusion is*

reached and the condition specified in the relevant clause of the second proviso is satisfied, that proviso becomes applicable and the government servant is not entitled to an inquiry."

15. Again this issue came for consideration before this Court in the matter of ***Shyam Narain Shukla(Supra).*** This Court after considering the matter has held as under:

"In view of the above decision of the Supreme Court, it has to be held that whenever a Government servant is convicted of an offence, he cannot be dismissed from service merely on the ground of conviction but the appropriate authority has to consider the conduct of such employee leading to his conviction and then to decide what punishment is to be inflicted upon him. In the matter of consideration of conduct as also the quantum of punishment the employee has not to be joined and the decision has to be taken by the appropriate authority independently of the employee who, as laid down by the Supreme Court, is not to be given an opportunity of hearing at that stage.""

16. This Court has considered the very same issue in the matter of ***Ratan Singh(Supra)*** also. This Court after consideration has taken the very same view. Relevant paragraph of the said judgment is quoted hereinbelow:

" In view of the finding in favour of petitioner on second issue, as above, that, the impugned order of dismissal has not been passed by competent authority after considering "conduct led to conviction" but only in a mechanical way on the basis of mere conviction, the writ petition deserves to be allowed. The writ petition is accordingly allowed. Impugned orders dated 28.4.2011, 28.1.2012 and 11.9.2012 are hereby set aside. The petitioner shall be entitled to all consequential benefits. However, this order shall not preclude the respondents from passing a fresh order in accordance with law. "

17. This issue was again before this Court for consideration in the matter of ***Udai Pratap Singh(Supra)***. This Court after considering the judgements of ***Tulsiram Patel(Supra) and Shyam Narain Shukla(Supra)*** has taken the very same view. Relevant paragraphs of the said judgment are being quoted hereinbelow:

"13. *In view of the above law laid down by the Apex Court and by this Court before passing the dismissal order the competent authority ought to have considered "Conduct led to conviction" and should not pass the order mechanically on the basis of mere conviction.*

14. In the present case, no such exercise has been done. The conduct of the petitioner, which led to conviction has not been examined and the petitioner has been dismissed mechanically only on the ground that he has been convicted by the criminal Court. Perusal of the order of this Court passed in Criminal Appeal No. 1017 of 1981, by which the petitioner has been acquitted reveals that the petitioner has been acquitted on merit
on consideration of the evidences on record. Admittedly, no departmental enquiry has been made and no reason has been given for not conducting the disciplinary proceeding. In this view of the matter, the termination order is not sustainable.

15. The impugned order is also not sustainable as it has been passed in violation of principle of natural justice without giving any opportunity to the petitioner. The petitioner has now been retired. He can only be reinstated notionally and entitled for other post retiral benefits."

18. Division Bench of this Court has also considered this issue in the matter of ***Sadanand Mishra Vs. State of U.P.: 1993 LCD 70*** and has taken the very same view. Relevant paragraph of the said judgment is being quoted hereinbelow:

"on conviction of an employee of a criminal charge, the order of punishment cannot be passed unless the conduct which has led to his conviction, is also considered. It was further held that the scrutiny or exercise of conduct of an employee leading to his conviction is to be done ex parte and an opportunity of hearing is not to be provided for this purpose to the employee concerned"

19. Again this issue came up before this Court in the matter of ***Shambhu Nath Yadav(Supra)*** in which petitioner was convicted

under Section 498A and 304B IPC and this Court after considering many judgments occupying the field has held as under:

> "*In the present case, respondents have failed to consider the conduct of the petitioner which has led to his conviction before imposing punishment of dismissal by means of impugned order. The impugned order ex-facie does show that disciplinary authority has not applied its mind at all to the conduct led to conviction and quantum of punishment but proceeding ahead to impose punishment as an automatic and natural consequence of conviction, and it cannot be said to be a valid exercise of power under Rule 8(2)(a) of 1991 Rules and therefore, the orders impugned in the writ petition are unsustainable. "*

20. In the matter of ***Rajesh Dwivedi(Supra),*** issue before the Court was same as in the present controversy and the petitioner in said case was convicted under Sections 147, 148 and 302 IPC. The Court after considering many judgments has taken the very same view. Relevant paragraphs of the said judgment are quoted hereinbelow:

> *"10. In view of the settled proposition of law, as discussed above, a government employee cannot be dismissed, removed or reduced in rank merely on the ground that he has been convicted by a Court of law. Thus, conviction alone is not enough to punish a government employee, but it is conduct of the employee concerned, which had led to is conviction on the basis of which, the government employee can be punished. Hence, t is necessary for disciplinary authorities to consider the conduct of convict government servant, which had led to his conviction. In the absence of the same, the order of the punishment would be bad. Further the consideration by the disciplinary authority is required to be recorded in writing.*
>
> *11. The learned Standing Counsel has argued that proviso-2 to the Article 311 of the Constitution of India provides that where a person is dismissed on the ground of conduct, which has led to his conviction on a criminal charge or where the appointing authority is satisfied that it is not reasonably practicable to hold such an*

enquiry, there is no requirement of the observance of the principles of natural justice. He has further argued that this provision is akin to Rule-7 of the U.P. Government Servant (Discipline & Appeal) Rules 1999 which also provides that where any major penalty is imposed on a person on the ground of conduct which has led to his conviction on a criminal charge or where the disciplinary authority is satisfied, that for the reason to be recorded in writing, it is not reasonably practicable to hold an enquiry as per the Rules the order becomes final. He has also argued that an employee who has been in Jail for more than 48 hours, his services are terminated in accordance with the rules.

12. The argument of the learned Standing Counsel is patently illegal since Article 311 of the Constitution of India and also Rule-7 of the U.P. Government Servant (Discipline & Appeal) Rules, 1999 clearly provide that the authority passing the order of the major punishment, on the ground of conviction of the employee on a criminal charge, will have to record his satisfaction in writing that he is satisfied, after consideration of the conduct of the employee which has led to conviction on the ground of criminal charge, that he deserves major penalty. Further argument of the learned Standing Counsel that mere imprisonment exceeding 48 hours, an employee becomes liable for termination of his services as per the Rules is absurd. As per Rule-4(3) of the U.P. Government Servant (Discipline & Appeal) 1999, such a Government deemed to be placed under suspension w.e.f., the date of his detention.

13. Therefore, it is clear from the above decisions and the relevant provisions of law that it is incumbent upon the authorities to consider the conduct of the employee which has led to his conviction in the criminal charge before imposing any punishment. In the present case, the impugned order passed by the respondent No. 2 only states that since the petitioner has been convicted in the criminal case, he should be dismissed from service from the date of the order of conviction. The respondent No. 2 was required to examine the conduct of the petitioner which led to his conviction before imposing the major punishment upon him. The order suffers

from non application of mind and shows arbitrary exercise of discretion vested in the respondent No. 2 by law."

21. Again a similar issue came up before this Court in the matter of ***Ram Kishan(Supra),*** in which an employee was convicted under Section 302 and 134 I.P.C. and this Court after considering many judgments has taken the very same view. Relevant paragraphs of the said judgment are being quoted hereinbelow:

"12. *In Shankar Das v. Union of India, MANU/SC/0369/1985 :1985 (2) SCR 358, Hon'ble Supreme Court while referring to power under Clause (a) of second proviso of Article 311(2) of the Constitution of India, has observed as under:-*

"Be that power like every other power has to be exercised fairly, justly andreasonably.""

13. Proviso (a) to Article 311 of the Constitution of India, is an exception to clause (2) of Article 311, which is applicable 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. In case of Divisional Personnel Officer, Southern Railway Vs. T.R. Chellappan, MANU/SC/0488/1975 : 1976 (3) SCC 190 (para-21), Hon'ble Supreme Court considered Article 311(2), Proviso (a) and held that this provision confers power upon the disciplinary authority to decide whether in the facts of a particular case, what penalty, if at all, should be imposed on the delinquent employee, after taking 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. 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. 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. In Sushil Kumar Singhal vs. Regional Manager, Punjab National Bank, MANU/SC/0578/2010 : 2010 (8) SCC 573 (Paras-24 and 25), Hon'ble Supreme Court explained the meaning of the words

'moral turpitude' to mean anything contrary to honesty, modesty or good morals.

14. Thus, in view of the law laid down by Hon'ble Supreme Court in the cases of Tulsiram Patel (supra), T.R. Chellapan (supra) and Shankar Das (supra), and two Division Bench judgments of this court in Shyam Narain Shukla (supra) and Sadanand Mishra (supra), it can safely be concluded that while removing the petitioner from service, the respondents were bound to consider the conduct of the petitioner, which has led to his conviction in the session trial. This was the condition precedent for the competent authority to acquire jurisdiction to impose punishment of removal from service. However, the impugned order is unfortunately silent and does not show consideration of conduct of the petitioner which has led to his conviction in the S.T. No. 178 of 2005. It was necessary for the respondents, while passing the impugned order, to consider the conduct of the petitioner leading to his conviction and then to decide what punishment is to be inflicted upon him. This has not been done by the respondent No. 2 while removing the petitioner from service. Therefore, the impugned order cannot be sustained and is hereby quashed.

22. Again one more similar issue was before this Court in the matter of ***Murari Lal Rathore(Supra)*** in which conviction was made under Section 302, 120 B and 149 IPC and petitioner was dismissed from the service on the very same ground. This Court after considering in detail has taken the very same view. Relevant paragraphs of the said judgment are being quoted hereinbelow:

"10. *The order of dismissal merely records that petitioner has been convicted to imprisonment of life in S.T. No. 455 of 208 and is incarcerated in jail therefore in view of the Government Order dated 12.10.1979, the petitioner is being dismissed from service from the date of his incarceration in jail i.e. 31.10.2015.*

14. The authoritative pronouncement of law by Supreme Court in Tulsi Ram Patel (supra) is consistently followed and it is by now well settled that mere conviction in a criminal case would not lead to automatic dismissal from service of the government servant. Since clause (a) to the second proviso to Article 311(2) of the Constitution of India as also first proviso to rule-7(xii) of the Rules of 1991 are exception to the normal rule of holding inquiry against the government servant and even opportunity of hearing is not required to be given to him, therefore, the disciplinary authority

has to scrupulously examine the conduct of the government servant which led to his conviction before exercising such jurisdiction. The nature of guilt established as also the possible defence available to the government servant are aspects which requires consideration at the level of the disciplinary authority. In the event these aspects are omitted from consideration, the order of dismissal itself would be rendered without jurisdiction.

18. Since the conduct of the petitioner leading to his conviction has not been examined by the disciplinary authority within the laid down parameter as such the order of dismissal, as affirmed in appeal and revision cannot be sustained. Orders impugned dated 1.12.2016, 21.12.2016 and 18.3.2016 accordingly are liable to be quashed."

23. Now, I am coming to the issue involved in the present case.

24. From the perusal of the impugned order dated 30.08.2014, it is apparently clear that it has been passed only on the ground of conviction without having any discussion or application of mind over the conduct of the petitioner, which is mandatory requirement in light interpretation of Article 311(2)(a) of Constitution of India by the Apex Court as well as by this Court. Now this issue is no *res integra.* Apex Court from the judgement of ***Tulsiram Patel(Supra)*** to many other judgments has considered this issue repeatedly and has held that even after conviction of an employee, while passing the removal or dismissal order, there must have been consideration of conduct of the employee and without that, any order of dismissal is bad.

25. In the present case, there is no consideration of the conduct of the petitioner, therefore, impugned dismissal order dated 30.08.2014 is bad and liable to be set aside.

26. He has also challenged appellate order dated 13.05.2015, by which he was denied other post retiral benefits except GPF. The Apex Court has taken a firm view in the matter of ***State of Jharkhand(Supra)*** that under Article 300(A) of Constitution of India, pension and other post retiral benefits are not bounty, but a

property and cannot be taken away without provision of law. Once, the first impugned order dated 30.08.2014 is not sustainable, order of Appellate Authority dated 13.05.2015 is also having no force in light of observation made earlier and is liable to be set aside.

27. Learned chief standing counsel has placed reliance upon the judgment of the Apex Court in the matter of ***Life Insurance Corporation of India(Supra).*** In the said judgment, the issue was as to whether, in case, arising out of same accident, where an employee has been convicted on a criminal charge and in case of conviction, termination order may be passed or not. It was argued by the learned counsel for the private respondents that such punishment amounts to double jeopardy and the Apex Court after considering many judgments said that it cannot be said to be double jeopardy and under such circumstances, even after punishment, on conviction order or dismissal, removal may be passed passed, therefore, this case is not relevant to decide the present controversy.

28. Under such facts and circumstances of the case, law laid down by the Apex Court as well as this Court from time to time, orders dated 30.08.2014 and 13.05.2015 are hereby set aside.

29. Now, the next issue before the Court is about the relief which may be granted to petitioner after quashing the impugned orders for the payment of post retiral dues. In usual course, it is required to remand the matter for passing fresh orders. So far as present case is concerned, as on date, petitioner would be aged about 70 years in light of the fact that he was superannuated from the service on 30.08.2014, whereas, impugned order of dismissal has been passed on 30.08.2014 and the same was served upon him on 02.09.2014.

30. In the matter of ***Murari Lal Rathore(Supra)*** the Court after considering this issue has also held as under:

> *"19. Ordinarily, when such orders are quashed a liberty ought to be granted to the disciplinary authority to pass a fresh order while considering relevant factors i.e. conduct of the employee, gravity of*

charges and the materials available against him etc. This course, however, would not be desirable or even permissible in the facts of the present case since the petitioner has attained the age of superannuation on 31.12.2018 and the contract of employment has come to an end.

24. A conspectus of above observations made by the Supreme Court would clearly reveal that unless there exists an enabling provision either in the applicable service rules or any other provision of law it would not be open for the disciplinary authority to pass an order in respect of contract of service after the employee has attained the age of superannuation.

25. This Court in Bhagirathi Singh Vs. State of U.P. and others, MANU/UP/3076/2018 : 2018 (8) ADJ 538 has also observed as under in Para-18:-

> *"18. It is settled legal position that the employer and employee relationship is dependant only upon the contract of employment. The moment, the contract comes to end as the person is retired from service on attaining certain age under the rules, the relationship comes to an end. In the event of employer of employee relationship coming to an end, the rules have to specifically provide for continuation of proceedings in the first instance and that too with the sanction of higher authorities in the second instance because it will be seen as exceptional circumstance where disciplinary authority would record that for reasons genuine and convincing the disciplinary proceedings could not be concluded and, therefore, it is required that the proceedings be continued even after retirement, but there is no such provision under the rules governing the disciplinary proceedings. In this context, learned counsel for the respondent could not point out any rule, circular or executive instructions even, which may provide for continuance of disciplinary proceedings even after the retirement of the petitioner or any other employee of the corporation. Then again, the question will be that how a punishment is to be imposed as the punishment is awarded only against an employee unless and until employer and employee relationship exists, the order of punishment upon a retired employee cannot be imposed except otherwise provided under the rules. Even in matters of recovery, it is not open for the department to deduct any amount from retiral dues in absence of any rules giving any such authorization.*

26. From the above discussions, it is apparent that since the petitioner has attained the age of superannuation and no provision in law is shown which permits the disciplinary authority to examine the conduct of an employee, now, so as to pass an order of

punishment, there would be no purpose in remitting back the matter to the disciplinary authority for a fresh consideration of petitioner's conduct leading to his conviction. Such a course would be legally impermissible.

27. The relief to be granted to the petitioner in such circumstances will have to be determined by this Court in view of what has been observed in para-127 of the Constitution Bench judgment in Tulsiram Patel (supra). The Court will have the jurisdiction to pass necessary order in respect of the penalty, which in its opinion would be just and proper in the circumstances of the case.

28. In the facts of the present case the petitioner has been dismissed from service on 18.3.2016 and has attained the age of superannuation on 31.12.2018. He has admittedly not worked during this period. The proceedings against the petitioner, consequent upon his conviction in an offence under Section 307 I.P.C. cannot be said to be without jurisdiction or arbitrary, on facts. The order of dismissal has been found wanting on account of non-consideration of petitioner's conduct leading to his conviction and has been set aside, for such reasons. The petitioner would be entitled to all service and retiral benefits including continuity excluding salary between 18.3.2016 to 31.12.2018 by applying the principles of 'no work no pay'. It is however reiterated that the period between 18.3.2016 to 31.12.2018 shall be counted for payment of retiral benefits."

31. Therefore, in light of facts of this case and legal proposition set by the Courts, respondents are directed to pay the post retiral dues to petitioner including pension and other dues permissible under the law within three months from the date of production of certified copy of this order.

32. Accordingly Writ Petition is allowed.

33. No order as to costs.

Order Date :- 18.09.2023
ADY