

J. JAISHANKAR
v.
THE GOVERNMENT OF INDIA AND ANR.

AUGUST 14, 1996

[K. RAMASWAMY AND S.B. MAJMUDAR, JJ.]

Industrial Disputes Act, 1940 : Section 10.

Employee—Conviction under Section 509 IPC—Imposition of fine of Rs. 200—Conviction and sentence attaining finality—Reference under section 10 of Industrial Disputes Act sought by employee—Single Judge of High Court directing Central Government to make reference for adjudication whether employee's dismissal was valid—Division Bench modifying the order of dismissal to one of discharge with payment of gratuity—Appeal—Held conviction under section 509 IPC involves moral turpitude—When a Government servant is dismissed from service on conviction by a criminal Court involving moral turpitude, it automatically leads to removal from service, without further enquiry—A worker cannot be put at a higher pedestal than as the Government servant—In view of conviction of the petitioner for offence involving moral turpitude the order of dismissal was rightly passed—Single Judge erred in directing a Reference to the Industrial Tribunal—The order of Division Bench passed on the basis of the concession made by the learned counsel for the respondents modifying the order of dismissal to one of discharge from service without consequential retiral benefits but with payment of gratuity was in accordance with law.

Pawan Kumar v. State of Haryana, (1996) 4 SCALE 480, held inapplicable.

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C) No. 15036 of 1996.

From the Judgment and Order dated 4.3.96 of the Andhra Pradesh High Court in W.A. No. 111 of 1996.

L. Nageswara Rao, R.S. Krishnan and P.P. Singh for the Petitioner.

The following Order of the Court was delivered :

A This special leave petition arises from the judgment and order of Division Bench of the Andhra Pradesh High Court made on March 4, 1996 in W.A. No. 111/96. The admitted position is that petitioner was convicted for an offence under Section 509, IPC and sentenced to pay a fine of Rs. 200. The conviction and sentence had become final. Subsequently, the petitioner sought for a reference under Section 10 of the Industrial Disputes Act, 1947 (for short, the "Act") for adjudication of his dismissal from service. The Central Government had refused to refer the dispute. Consequently, he filed the writ petition in the High Court. The learned single Judge by judgment dated September 19, 1995 allowed the writ petition and directed the Central Government to make a reference to the Industrial Tribunal for adjudication whether his dismissal from service was in accordance with law. On appeal, the Division Bench modified the order of the learned single Judge and on the basis of the concession made by the counsel appearing for the respondent, the order of dismissal from service was converted into discharge from service without retiral benefits. However, the Division Bench directed the respondent to pay him the gratuity which is payable in accordance with the rules. Calling that order in question, this SLP has been filed.

E Shri L. Nageswara Rao, learned counsel for the petitioner, has contended that under Rule 10(1)(b)(i) of the Act, no employee of a banking company who is or at any time has been convicted by a criminal court of an offence involving moral turpitude, shall be appointed. He placed reliance on paragraphs 14 and 15 of the judgment of this Court in *Pawan Kumar v. State of Haryana*, (1996) 4 SCALE 480 at 484 and contended that when an offence leading to conviction and sentence of a fine upto Rs. 2000 was involved, the necessary recommendation came to be made to the Parliament to step in and amend the law so as to remove the embargo for appointment in future period. Therefore, in the light of the above judgment and the law laid down by this Court, the view taken by the High Court is not correct in law. We find no force in the contention.

G In view of the admitted position that the conviction of the petitioner for an offence under Section 509, IPC had attained finality, it undoubtedly involves moral turpitude as it is impermissible for such an employee to continue in service. When a Government servant is dismissed from service on conviction by a criminal Court involving moral turpitude, it automatically leads to removal from service, without further enquiry. Can a worker H be put at a higher pedestal than as the government servant? The obvious

answer is 'No'. In view of the conviction for moral turpitude of the petitioner and due to conviction for an offence under Section 509 IPC, the order of dismissal was rightly passed. The recommendation made by this Court was made after noticing the trivial offences like traffic offences, municipal offences and other petty offences under the IPC which do not involve moral turpitude. This Court recommended to the Parliament to step in and make necessary alteration in law so that consequence of the conviction and sentence would suitably be modulated and mitigated in the light of the judgment. That ratio is clearly inapplicable to the facts of this case. As a fact, on the basis of the concession made by the learned counsel for the respondents, the Division Bench of the High Court modified the order of dismissal to one of discharge from service without consequential retrial benefits but with payment of gratuity in accordance with law. The learned single Judge was obviously in error in directing reference to the Industrial Tribunal. We do not, therefore, find any illegality warranting interference.

The special leave petition is accordingly dismissed.

T.N.A.

Petition dismissed.