ਦਫਤਰ ਡਾਇਰੈਕਟਰ ਜਨਰਲ ਸਕੂਲ ਸਿੱਖਿਆ ਪੰਜਾਬ
ਐਸ.ਸੀ.ਓ.ਨੰ: 104-106 ਦੂਜੀ ਮੰਜਿਲ, ਸੈਕਟਰ-34 ਏ,ਚੰਡੀਗੜ੍ਹ

ਵ ਲ

ਸਮੂਹ ਮੰਡਲ ਸਿੱਖਿਆ ਅਫਸਰ
ਸਮੂਹ ਜ਼ਿਲ੍ਹਾ ਸਿੱਖਿਆ ਅਫਸਰ(ਸੈ.ਸਿ)
ਸਮੂਹ ਜ਼ਿਲ੍ਹਾ ਸਿੱਖਿਆ ਅਫਸਰ(ਐ.ਸਿ)

ਮੀਮੋ ਨੰ: ਕੋਆਰਡੀਨੇਸ਼ਨ/2012/ 85673
ਮਿਤੀ,ਚੰਡੀਗੜ੍ਹ: 14.9.2012

ਵਿਸ਼ਾ: ਵੱਖ ਵੱਖ ਅਦਾਲਤਾਂ ਵਲੋਂ ਸਿੱਖਿਆ ਵਿਭਾਗ ਦੇ ਸਜ਼ਾ ਯਾਫਤਾ ਕਰਮਚਾਰੀਆਂ ਨੂੰ ਨੌਕਰੀ ਤੋਂ ਡਿਸਮਿਸ ਕਰਨ ਬਾਰੇ ।

1.0 ਪੰਜਾਬ ਸਰਕਾਰ ਵਲੋਂ ਆਪਣੇ ਪੱਤਰ 3/23/98-1ਪੀਪੀ2/10394 ਮਿਤੀ 5 ਅਗਸਤ 1998 ਰਾਹੀਂ ਮਾਨਯੋਗ ਸੁਪਰੀਮ ਕੋਰਟ ਵਲੋਂ ਸਿਵਲ ਅਪੀਲ ਨੰ: 2992/1995 Deputy director of Collegiate Education(Administration (Madras) Appellant Vs S. Nagoor Meera ਰਾਹੀਂ ਜਾਰੀ ਕੀਤੇ ਹੁਕਮਾਂ ਦੀ ਰੌਸ਼ਨੀ ਵਿੱਚ ਸਪਸ਼ਟ ਹਦਾਇਤਾਂ ਜਾਰੀ ਕੀਤੀਆਂ ਗਈਆਂ ਸਨ ਕਿ ਵੱਖ ਵੱਖ ਅਦਾਲਤਾਂ ਵਲੋਂ ਸਜ਼ਾ ਯਾਫਤਾ ਸਰਕਾਰੀ ਮੁਲਾਜ਼ਮਾਂ ਨੂੰ ਤੁਰੰਤ ਨੌਕਰੀ ਤੋਂ ਡਿਸਮਿਸ ਕੀਤਾ ਜਾਵੇ । ਇਸ ਸਬੰਧੀ ਪੰਜਾਬ ਸਰਕਾਰ ਦੀਆਂ ਹਦਾਇਤਾਂ ਦੀ ਕਾਪੀ ਨਾਲ ਨੱਥੀ ਕੀਤੀ ਜਾਂਦੀ ਹੈ । ਸਮੇਂ ਸਮੇਂ ਤੇ ਸਰਕਾਰ ਵੱਲੋਂ ਇਹਨਾਂ ਹਦਾਇਤਾਂ ਨੂੰ ਇੰਨ-ਬਿੰਨ ਲਾਗੂ ਕਰਨ ਹਿੱਤ ਪੱਤਰ ਜਾਰੀ ਕੀਤੇ ਜਾਂਦੇ ਰਹੇ ਹਨ।

2.0 ਪਰ ਇਸ ਦਫਤਰ ਦੇ ਧਿਆਨ ਵਿੱਚ ਆਇਆ ਹੈ ਕਿ ਅਜੇ ਵੀ ਸਿੱਖਿਆ ਵਿਭਾਗ ਦੇ ਕਈ ਮੁਲਾਜ਼ਮ ਜਿਹਨਾਂ ਨੂੰ ਵੱਖ ਵੱਖ ਅਦਾਲਤਾਂ ਵੱਲੋਂ ਸਜ਼ਾ ਹੋ ਚੁੱਕੀ ਹੈ ਉਹ ਵਿਭਾਗ ਵਿੱਚ ਅਜੇ ਵੀ ਨੌਕਰੀ ਕਰ ਰਹੇ ਹਨ।

3.0 ਇਥੇ ਇਹ ਵੀ ਸਪਸ਼ਟ ਕੀਤਾ ਜਾਂਦਾ ਹੈ ਕਿ ਸਰਕਾਰ ਦੀਆਂ ਹਦਾਇਤਾਂ ਅਨੁਸਾਰ ਮਾਨਯੋਗ ਅਦਾਲਤ ਵਲੋਂ ਸਜ਼ਾ ਹੋਣ ਉਪਰੰਤ ਜੇਕਰ ਮੁਲਾਜਮ ਦੀ ਸਜਾ ਉਪਰਲੀ ਅਦਾਲਤ ਵੱਲੋਂ ਸਸਪੈਂਡ ਕਰ ਦਿੱਤੀ ਜਾਂਦੀ ਹੈ ਜਾਂ ਉਸ ਦੀ conviction ਸਟੇਅ ਕਰ ਦਿੱਤੀ ਜਾਂਦੀ ਹੈ ਤਾਂ ਵੀ ਉਸ ਮੁਲਾਜ਼ਮ ਨੂੰ ਨੌਕਰੀ ਤੋਂ ਕੱਢਿਆ ਜਾਣਾ ਹੈ। ਪਰ ਜੇਕਰ ਕਿਸੇ ਮੁਲਾਜ਼ਮ ਨੂੰ ਉਪਰਲੀ ਐਪੀਲੇਟ ਅਦਾਲਤ ਵਲੋਂ ਬਾਅਦ ਵਿੱਚ ਬਰੀ ਕਰ ਦਿੱਤਾ ਜਾਂਦਾ ਹੈ ਤਾਂ ਉਹ ਮੁਲਾਜ਼ਮ ਦੁਬਾਰਾ ਤੋਂ ਸਰਕਾਰੀ ਨੌਕਰੀ ਵਿੱਚ ਆਉਣ ਦਾ ਹੱਕਦਾਰ ਹੋ ਜਾਂਦਾ ਹੈ । ਜਦੋਂ ਤੱਕ ਸਜ਼ਾ ਯਾਫਤਾ ਮੁਲਾਜ਼ਮ ਉਪਰਲੀ ਅਦਾਲਤ ਵਲੋਂ ਪੂਰਨ ਤੌਰ ਤੇ ਬਰੀ ਨਹੀਂ ਕੀਤਾ ਜਾਂਦਾ ਤਾਂ ਉਹ ਸਰਕਾਰੀ ਨੌਕਰੀ ਵਿੱਚ ਰਹਿਣ ਦਾ ਹੱਕਦਾਰ ਨਹੀਂ ਹੈ ।

4.0 ਸਜ਼ਾ ਯਾਫਤਾ ਮੁਲਾਜ਼ਮ ਨੂੰ ਸਰਕਾਰ ਦੀ ਹਦਾਇਤਾਂ ਅਨੁਸਾਰ ਬਿਨਾਂ ਕੋਈ ਨੋਟਿਸ ਦਿੱਤੇ ਜਾਂ ਬਗੈਰ ਉਸ ਦੀ ਕੋਈ ਨਿੱਜੀ ਸੁਣਵਾਈ ਕੀਤੇ ਨੌਕਰੀ ਤੋਂ ਕੱਢਿਆ ਜਾਣਾ ਹੈ ।

5.0 ਉਕਤ ਹਦਾਇਤਾਂ ਦੀ ਪਾਲਣਾ ਯਕੀਨੀ ਬਣਾਈ ਜਾਵੇ ਅਤੇ ਇਸ ਸਬੰਧੀ ਆਪ ਜੀ ਨੂੰ ਹਦਾਇਤ ਕੀਤੀ ਜਾਦੀ ਹੈ ਕਿ ਜੇਕਰ ਆਪ ਦੇ ਅਧੀਨ ਖੇਤਰ ਵਿੱਚ ਕੋਈ ਸਜ਼ਾ ਯਾਫਤਾ ਮੁਲਾਜ਼ਮ ਸਰਕਾਰੀ ਵਿਭਾਗ ਦੀ ਨੌਕਰੀ ਵਿੱਚ ਕੰਮ ਕਰ ਰਿਹਾ ਹੈ ਇਸ ਬਾਰੇ ਤੁਰੰਤ ਸੂਚਨਾਂ ਇਸ ਦਫਤਰ ਨੂੰ ਦਿੱਤੀ ਜਾਵੇ ।

ਕੇ. ਐੱਸ.ਪੰਨੂੰ,ਆਈ.ਏ.ਐੱਸ
ਡਾਇਰੈਕਟਰ ਜਨਰਲ ਸਕੂਲ ਸਿੱਖਿਆ

No.3/23/98-IPPII/10394
Government of Punjab
Department of Personnel and Administrative Reforms
(Personnel Policies Branch-II)

Dated, Chandigarh , the 5th August 1998

To

All the Heads of the Departments
Commission of Divisions
Deputy Commissioners and
Sub-Divisional Magistrates in the
State of Punjab.

Subject: Action to be taken in cases where Government employees are convicted on a criminal charge-civil Appeal No. 2992/1995-Supreme Court of India-Deputy Director of Collegiate Education (Administration (Madras) Appellant Vs. S.Nagoor Meera, Respondent.

Sir/Madam,

I am directed to refer to the subject noted above and to say that in the case cited, the Tamil Nadu High court suspended the sentence imposed upon the respondent and released him on bail. The Appellant i.e the Deputy Director of Collegiate Education issued a notice to the Respondent Calling upon him to show-cause why should he not be dismissed from service in view of his conviction by the Criminal court. The Show Cause Notice expressly recited that in as much as the High court has only suspended the sentence, the conviction of the respondent was still in force. After receiving the Show Cause Notice, the respondent filed Original Application No. 6851 of 1993 before the Tamil Nadu Administrative Tribunal. The submission of the respondent was upheld by the Tribunal, that in as much as the sentence imposed upon him by the Criminal Court has been suspended by the Appellate Court (High Court) no proceedings could be taken for terminating the service of the respondent under and with reference to clause (a) of the second proviso to Article 311(2) of the constitution of India. The Tribunal quashed the Show-Cause Notice on the following reasoning:-

> "Therefore, it is clear that once the sentence has been suspended admitting the appeal, the criminal proceedings of the lower Court which ended in conviction and sentence of the applicant is being continued in the appellate Court and it can end only when the proceedings in the appellate court come to en end. Till then the applicant cannot be proceeded under the provision of the TNCS(CCA) Rules as has been done in this case. Yet another flaw is that there has been inordinate delay of two years and eight months after the conviction and sentence was passed by the lower court in issuing the impugned show cause notice. This inordinate delay is unexplained. Therefore, the show cause notice to the applicant is not sustainable in law till the appellate Court disposes of the Criminal appeal".

2.0 The correctness of the said order of the Tribunal was questioned by the Deputy Director of Collegiate Education in the Appeal. The learned Hon'ble Judges (B.P. Jeevan Reddy and K.S. Paripoornan) of the Supreme Court of India in the Appeal cited observed as under:-

> "8. We need not, however, concern ourselves any more with the power of the appellate court under the code of Criminal Procedure for the reason that what is relevant for clause (a) of the second proviso to Article 311(2) is the "conduct which has led to his conviction on a criminal charge" and there can be no question of suspending the conduct. We are, therefore, of the opinion that taking proceedings for and passing orders of dismissal, removal or reduction in rank of a government servant who has been convicted by a criminal Court is not barred merely because the sentence or order is suspended by the appellate court or on the ground that the said government servant-accused has been released on bail pending the appeal.

9. The Tribunal seems to be of the opinion that until the appeal the conviction is disposed of, action under clause (a) of the second proviso to Article 311(2) is not permissible. We see no basis or justification for the said view. The more appropriate course in all such cases is to take action under clause (a) of the second proviso to Article 311(2) once a government servant is convicted of a criminal charge and not to wait for the appeal or revision as the case may be. If, however, the government servant-accused is acquitted on appeal or other proceedings, the order can always be revised and if the government servant is reinstated, he will be entitled to all the benefits to which he would have been entitiled to all the benefits to which he would have been entitiled to had he continued in service. The other course suggested, viz, to wait till the appeal, revision and other remedies are over, would not be advisable since it would mean continuing in service a person who has been convicted of a serious offence by a criminal court. It should be remembered that the action under clause (a) of the second proviso to Article 311(2) will be taken only where the conduct which has led to his conviction is such that it deserves any of the three major punishments mentioned in Article 311(2). As held by this court in Shankar Dass vs. Union of India. (1985)2SCC 358.

> "Clause (a) of the second proviso to Article 311(2) of the constitution confers on the Government the power to dismiss a person from service on the ground of conduct which has led to his conviction on a criminal charge. But, that power like every other power has to be exercised fairly, justly and reasonably. Surely, the Constitution does not contemplate that a government servant who is convicted for parking his scooter in a no parking area should be dismissed from service. He may, perhaps, not be entitled to be heard on the question of penalty since clause (a) of the second proviso to Article 311(2) makes the provisions of that article inapplicable when a penalty is to be imposed on a government servant on the ground of conduct which has led to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act justly".

10. What is really relevant thus is the conduct of the government servant which has led to his conviction on a criminal charge. Now, in this case, the respondent has been found guilty of corruption by a criminal court. Untill the said conviction is set aside by the appellate or other higher Court, it may not be advisable to retain such person in service. As stated above, if he succeeds in appeal or other proceedings, the matter can always be reviewed in such a manner that he suffers no prejudice.

11. The Tribunal has given yet another reason for quashing the show cause notice, viz. that whereas the conviction of the criminal court was on 4.2.1991 the impugned show cause notice, was issued only on 27.10.93. The appellant has explained that through the respondent (sic appellant) has come to know the conviction soon after the judgement of the criminal court, there was a doubt whether action can be taken against the respondent in view of the order of the High Court suspending the sentence. It is stated that after obtaining legal advice, the show cause notice was issued. In our opinion, the delay, if it can be called one, in initiating the proceedings has been properly explained and in any event, the delay is not such as to vitiate the action taken.

12. The appeal is accordingly allowed and the order of the Tribunal is set aside".

3. You are, therefore, requested to take action in similar cases in the light of the above judgement of the Supreme Court of India and these instructions may please be brought to the notice of all concerned for meticulous compliance.

4. The receipt of this letter may please be acknowledged.

Yours faithfully
Sd/-(Megh Raj)
Joint Secretary Personnel