

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5142 OF 2009

Baljinder Pal Kaur

... Appellant

Versus

State of Punjab and others

... Respondents

J U D G M E N T

Prafulla C. Pant, J.

This appeal is directed against judgment and order dated 18.7.2008, passed by the High Court of Punjab and Haryana, Chandigarh, whereby said Court has dismissed the Civil Writ Petition No. 12307 of 2008, filed by the appellant, and declined to interfere with the order of her dismissal from service.

2. We have heard learned counsel for the parties and perused the papers on record.

3. Brief facts of the case are that appellant Baljinder Pal Kaur was Assistant Sub Inspector with Punjab Police. She was dismissed from service vide order dated 18.5.2005, after departmental enquiry was held and she was found guilty of charge that she took Rs.8.00 lacs from one Gurjit Singh son of Bahadur Singh of District Ludhiana, and got him sent illegally to United States of America, with her husband Sukhdev Singh @ Sukha and three others.

4. From the papers on record, it reveals that apart from initiation of departmental enquiry, a First Information Report No. 81 was registered against the appellant on 16.12.2003 with Vigilance Bureau, Ludhiana, in respect of offences punishable under Sections 406, 420 and 120B of Indian Penal Code (IPC) and under Section 13(i)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. After investigation charge sheet was filed against her in the court. Meanwhile, in the departmental enquiry, statements of witnesses of the department, and that of defence produced on behalf of the appellant, were recorded by the Enquiry Officer, who

submitted his report dated 8.9.2004 (Annexure P-2) with the finding that the appellant was guilty of the charge. An opportunity of hearing was granted to the appellant also before awarding the punishment of dismissal. The departmental appeal was dismissed on 15.12.2005 (Annexure P-4), as mentioned above, whereafter the appellant availed remedy of filing revision before Inspector General of Police, Jalandhar, and the same was dismissed by said authority on 8.5.2006 (Annexure P-5). Thereafter, a mercy petition was filed by the appellant before the Director General of Police, without any success.

5. On the other hand, the criminal trial proceeded before the Judge, Special Court, Ludhiana, in which the appellant was ultimately acquitted vide order dated 23.2.2007.

6. It is argued before us on behalf of the appellant that after acquittal of the appellant by the trial court, the High Court has erred in law in not allowing the writ petition seeking quashing of dismissal of the appellant from service. Reliance is placed by learned counsel for the appellant on the decisions of this Court in **Capt. M. Paul Anthony v. Bharat Gold**

Mines Ltd. and another¹, G.M. Tank v. State of Gujarat and others², and Jasbir Singh v. Punjab & Sind Bank and others³.

7. In paragraph 22 of **Capt. M. Paul Anthony** (supra), this Court has culled out following principles: -

“(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be

¹

(1999) 3 SCC 679

² (2006) 5 SCC 446

³ (2007) 1 SCC 566

given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest.”

8. The law laid down in **Capt. M. Paul Anthony** (supra) is followed in rest of the cases referred to above, i.e. **G.M. Tank** (supra) and **Jasbir Singh** (supra). But in view of the facts and circumstances of the present case before us, we are of the opinion that the above mentioned cases are of little help to the appellant.

9. What is relevant in the present case which distinguishes the case of the appellant from the above mentioned cases is Rule 16.3 of Punjab Police Rules, which reads as under: -

“16.3 Action following on a judicial acquittal: -

(1) When a Police Officer has been tried and acquitted by a criminal court he shall not be punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal case, whether actually led or not, unless: -

- (a) the criminal charge has failed on technical grounds; or
 - (b) in the opinion of the court or of the Superintendent of Police, the prosecution witnesses have been won over; or
 - (c) the Court has held in its judgment that an offence was actually committed and that suspicion rests upon the police officer concerned; or
 - (d) the evidence cited in the criminal case discloses facts unconnected with the charge before the court which justify departmental proceedings on a different charge; or
 - (e) additional evidence admissible under rule 16.25(1) in departmental proceedings is available.”
- (2)

10. Rule quoted above provides that when a police officer has been tried and acquitted by a criminal court, he shall not be punished departmentally on the same charge subject to certain conditions. In the present case, as is evident from Rule 16.3, requirement of not punishing the officer departmentally is not absolute, and it hinges on either of the five conditions mentioned above [(a) to (e)]. From the copy of the order of acquittal passed by the Judge, Special Court,

Ludhiana (Annexure P-6), it is evident that the prosecution witnesses have turned hostile, and they appear to have been won over.

11. In ***Commissioner of Police, New Delhi and another v. Mehar Singh***⁴, this Court, in paragraph 24, has observed as under: -

“**24.**While the standard of proof in a criminal case is the proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities. Quite often criminal cases end in acquittal because witnesses turn hostile. Such acquittals are not acquittals on merit.”

12. In ***Deputy Inspector General of Police and another v. S. Samuthiram***⁵, this Court, in paragraph 26, has held as under: -

“**26.** As we have already indicated, in the absence of any provision in the service rules for reinstatement, if an employee is honourably acquitted by a criminal court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the

⁴ (2013) 7 SCC 685

⁵ (2013) 1 SCC 598

prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile, etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say that in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so.”

13. In ***Union of India and another v. Bihari Lal Sidhana***⁶, this Court has observed that it is true that the respondent was acquitted by the criminal court but acquittal does not automatically gave him the right to be reinstated into the service.

14. In view of the above discussion, we do not find any illegality in the order passed by the High Court declining to interfere with the order of dismissal from service on the basis of evidence recorded in the departmental enquiry.

⁶ (1997) 4 SCC 385

15. Therefore, the appeal fails and the same is dismissed. No order as to costs.

.....J.
[Dipak Misra]

New Delhi;
September 8, 2015.

.....J.
[Prafulla C. Pant]

ITEM NO.1B

COURT NO.5

SECTION IV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 5142/2009

BALJINDER PAL KAUR

Appellant(s)

VERSUS

STATE OF PUNJAB & ORS.

Respondent(s)

Date : 08/09/2015 This appeal was called on for judgment today.

For Appellant(s) Mr. Sibbo Sankar Mishra, AOR

For Respondent(s) Mr. Sanchar Anand, AAG
Mr. Apoorv Singhal, Adv.
Mr. Kuldip Singh, AOR

Hon'ble Mr. Justice Prafulla C. Pant pronounced the judgment of the Bench consisting of Hon'ble Mr. Justice Dipak Misra and His Lordship.

The appeal is dismissed in terms of the signed reportable judgment.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master

(Signed reportable judgment is placed on the file)