

A THE STATE OF PUNJAB & ORS.

v.

PREM SARUP

(Civil Appeal No. 5812 of 2008)

SEPTEMBER 18, 2008

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[S.B. SINHA AND CYRIAC JOSEPH, JJ]

Service Law:

Punjab Police Rules, 1934:

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r. 16.3(1)(b) – Disciplinary proceedings – Constable in Punjab Police – Conviction by trial court u/s 70 IPC but acquittal by appellate court holding that prosecution witnesses did not support its case and were declared hostile – Disciplinary proceedings initiated against Constable – Punishment of forfeiture of salary for two years – Suit by Constable seeking to set aside disciplinary proceedings – Decreed by appellate court – Decree affirmed by High Court in second appeal – Plea of Department that principal prosecution witnesses having been won over, criminal charge could not be proved and, therefore, disciplinary proceedings under r.16.3(1)(b) could not be set aside – HELD: Department has not been able to show that the witnesses who turned hostile before the criminal court have been examined in departmental proceedings, and no material is brought on record to prove that – No case has been made out for interference with impugned judgment – Even otherwise, the charges against the respondent had not been proved – Furthermore, the occurrence took place in the year 1974 and the Constable was acquitted in the year 1979, and thus, at this distant point of time, no interference with the impugned judgment is warranted, particularly, when the Department has not placed any foundational fact in support of its plea that Clause (b) of sub-section (1) of s.16.3 of the Rules would be attracted in the case.

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Union of India and Ors. vs. Naman Singh Shekhawat 2008 (5) SCR 137 = (2008) 4 SCC 1; and *Commissioner of Police, New Delhi vs. Narender Singh* 2006 (3) SCR 872 = (2006) 4 SCC 265 – referred to.

Case Law Reference

2008 (5) SCR 137	referred to	para 12
2006 (3) SCR 872	referred to	para 13

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 5812 of 2008

From the final Judgment and Order dated 22.11.2005 of the High Court of Punjab and Haryana at Chandigarh in RSA No. 1581 of 1988

Ajay Pal and Sanjay Jain for the Appellants.

Subramonium Prasad, Varuna Bhandari Gugnani and Rameshwar Prasad Goyal for the Respondent.

The following Order of the Court was delivered

Leave granted.

1. This appeal is directed against the judgment and order dated 22.11.2005 passed by a learned Single Judge of the Punjab and Haryana High Court in Regular Second Appeal No.1581/1988 whereby and whereunder the appeal preferred by the appellants herein from a judgment and decree dated 5.1.1988 passed by the Additional District Judge, Patiala reversing the judgment and decree dated 29.10.1985, for declaration that the order of the Senior Superintendent of Police dated 1.7.1981 endorsing and reviving that order as also that of the disciplinary authority thereby punishing the respondent herein by imposing a punishment of forfeiture of service on the respondent for a period of two years and the order of the D.I.G., the appellate authority as also the Inspector General of Police, Revisional authority were illegal.

A 2. The basic fact of the matter is not in dispute.

B 3. Respondent was a police constable. For commission of the alleged offence under Section 170 of the Indian Penal Code in the year 1974, he was prosecuted in the year 1979. He was convicted. However, a criminal appeal was preferred by him. By a judgment and order dated 8.1.1979, the learned Additional Sessions Judge, Patiala allowed the said appeal, holding:

C "The learned P.P. has frankly conceded that he is unable to support the judgment of the learned Magistrate. Both P.W.1 Bant Singh and P.W.2 Prem Singh did not support the prosecution version at trial and consequently they were declared hostile. The learned Magistrate recorded conviction of the appellants on the basis of evidence given by Shri Jaswant Singh and Investigating Officer Shri Mohinder Singh. But their alleged guilt. The charge under Section 170 IPC that the appellant Sucha Singh pretended to hold office of DTO Ropar and did traffic checking partly could not be established in the absence of evidence of PW Prem Singh and PW Bant Singh. There witnesses stated that they did not know anything in this respect. That being so, the conviction of the appellant under Section 170 IPC could not be recorded."

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F 4. A disciplinary proceeding, however, was initiated against respondent on the same allegations wherein a punishment of forfeiture of salary was imposed upon him.

G 5. He filed Suit in the Court of Sub-Judge, IInd Class, Patiala in the year 1982 contending that as the respondent was acquitted after giving benefit of doubt and, thus, his acquittal was not on merit, the order of punishment in the disciplinary proceeding should also be set aside.

H 6. The said suit was dismissed by a judgment and decree dated 29.10.1985. Respondent herein preferred an appeal, thereagainst, which was allowed by the learned District Judge,

Patiala by a judgment and decree dated 5.1.1988. As noticed hereinbefore, the Second Appeal preferred by the appellants has been dismissed by the High Court by reason of the impugned judgment. A

7. The only contention which has been raised before us is that as the perusal of the judgment dated 8.1.79 passed by the learned Additional Sessions Judge, Patiala in Criminal Appeal No. 125 of 1979 would show that the principal prosecution witnesses were won over, the criminal charges could not be proved and, thus, the matter comes within the purview of Rule 16.3 of the Police Rules, 1934 which reads as under: B C

“16.3. Action following on judicial acquittal:

(1) When a police officer has been tried and acquitted by 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: D

a) the criminal charges has failed on technical ground; or
b) In the opinion of the Court or of the Superintendent of Police, the prosecution witnesses have been won over, or E

c) the court has held in its judgment that an offence was actually committed and that suspicion rests upon the police officer concerned, or F

d) the evidence cited in the criminal case discloses facts unconnected with the charge before the Court which justify departmental proceedings on a different charges; G

e) Additional evidence admissible under Rule 16.25 (1) in departmental proceedings is available..”

8. The report of the Inquiry Officer is not before us. The order imposing penalty by the disciplinary authority has also not been produced. We have noticed hereinbefore that the only plea H

A taken by appellant in the aforementioned suit filed by the respondent was that he was acquitted by grant of benefit of doubt.

Even in the Memo of Second Appeal, it was contended as under:

B " 4. That the learned Lower Appellate Court has failed to appreciate that acquittal of the respondent/plaintiff was not on merits, rather he was acquitted of the charge by giving the benefit of doubt and the authority relied upon by the learned Lower Appellate Court cannot be invoked in
C the present proposition as under Rule 16.3(1) enquiry proceedings can be initiated on the same charges if the acquittal is not on merits and the same exception is attracted in the present case."

D 9. Application of Clause (b) of Sub-rule (1) of Rule 16.3 of the Police Rules, 1934, thus, had only been the bone of contention of the appellants in the said civil suit.

10. We, therefore, are of the opinion that no case has been made out to interfere with the impugned judgment.

E 11. There cannot be any doubt, whatsoever, that in a given situation, it is open to the employer to initiate a departmental proceeding despite the fact that the delinquent officers on similar charges have been acquitted.

F { See: Commissioner of Police, New Delhi Vs. Narender Singh (2006) 4 SCC 265]

G 12. Our attention, however, has been drawn by Mr. S. Prasad, learned counsel appearing on behalf of the respondent to a recent decision of this Court in Union of India and Ors. Vs. Naman Singh Shekhawat -(2008) 4 SCC 1 wherein this Court, inter alia, on the premise that the inquiry officer was biased upheld the judgment of the High Court and set aside the order of the disciplinary authority imposing punishment.

H 13. We, however, do not agree with the contention of Mr. Prasad, learned counsel that this Court has taken a view differ-

ent from the one taken in Commissioner of Police, New Delhi A
Vs. Narender

Singh - (2006) 4 SCC 265 as therein also this Court cat-
egorically stated the law to be as under:

→ "12. It is not in dispute that the standard of proof required B
in recording a finding of conviction in a criminal case and
in a departmental proceeding are distinct and different.
Wheres in a criminal case, it is essential to prove a charge
beyond all reasonable doubt, in a departmental proceeding
preponderance of probability would serve the purpose(See C
Kamaldevi Agarwal Vs. State of W.B.- (2002) 1 SCC 555).

13. It is now well settled by reason of a catena of decisions
of this Court that if an employee has been acquitted of a
criminal charge, the same by itself would not be a ground D
not to initiate a departmental proceeding against him or to
drop the same in the event an order of acquittal is passed."

14. In view of the fact that the appellants before us have
not been able to show that those witnesses who turned hostile
before the criminal Court have been examined in the depart- E
mental proceedings and, furthermore, as no material is brought
on record to prove that; even otherwise, the charges against
the respondent had not been proved, we are of the opinion that
no case has been made out for our interference with the im-
pugned judgment. Furthermore, as noticed, hereinbefore the F
occurrence took place in the year 1974 and the respondent was
acquitted in the year 1979 and, thus, at this distant point of time,
no interference with the impugned judgment is warranted, par-
ticularly, in view of the fact that the appellants have not placed
before us any foundational fact in support of its plea that Clause G
(b) of Sub-section(1) of Section 16.3 of the Police Rules, 1934
would be attracted in this case.

15. For the reasons stated above, the appeal is dismissed.
No costs.

R.P.

Appeal dismissed. H