

A

BALJINDER PAL KAUR

v.

STATE OF PUNJAB AND OTHERS

(Civil Appeal No.5142 of 2009)

B

SEPTEMBER 08, 2015

[DIPAK MISRA AND PRAFULLA C. PANT, JJ.]

C

Punjab Police Rules: Rule 16.3 – Dismissal from service – Allegation that appellant-Assistant Sub Inspector made arrangement for illegally sending few persons to USA – Disciplinary enquiry held and appellant found guilty and dismissed from service – Criminal case also filed against the appellant in which she was ultimately acquitted by Special Court – High Court refused to quash the order of dismissal of appellant from service – On appeal, held: The order of acquittal by Special Court was that the prosecution witnesses turned hostile and they appeared to have been won over – rule 16.3(b) 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 unless in the opinion of court, the prosecution witnesses have been won over – There was, thus, no illegality in the order of the High Court declining to interfere with the order of the dismissal of service.

D

E

F

Dismissing the appeal, the Court

G

H

HELD: 1. Rule 16.3 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 enumerated in clause (a) to (e). The condition in Clause (b) is that in the opinion of

the court or of the Superintendent of Police, the prosecution witnesses have been won over. From the copy of the order of acquittal passed by the Special Court, it is evident that the prosecution witnesses have turned hostile, and they appeared to have been won over. There is no 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. [Paras 9, 10 and 14] [321-E-F; 322-C; 323-G]

Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and another 1999 (2) SCR 257: (1999) 3 SCC 679; *G.M. Tank v. State of Gujarat and others* 2006 (2) Suppl. SCR 253: (2006) 5 SCC 446; *Jasbir Singh v. Punjab & Sind Bank and others* 2006 (8) Suppl. SCR 62: (2007) 1 SCC 566 – held inapplicable.

Commissioner of Police, New Delhi and another v. Mehar Singh 2013 (13) SCR 432: (2013) 7 SCC 685; *Deputy Inspector General of Police and another v. S. Samuthiram* 2012 (11) SCR 174: (2013) 1 SCC 598; *Union of India and another v. Bihari Lal Sidhana* 1997 (3) SCR 364: (1997) 4 SCC 385 – relied on.

Case Law Reference

1999 (2) SCR 257 held inapplicable. Paras 6, 8

2006 (2) Suppl. SCR 253 held inapplicable. Paras 6, 8

2006 (8) Suppl. SCR 62 held inapplicable. Paras 6, 8

2013 (13) SCR 432 relied on. Para 11

2012 (11) SCR 174 relied on. Para 12

A **1997 (3) SCR 364** **relied on.** **Para 13**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5142 of 2009.

B From the Judgment and Order dated 18.07.2008 of the High Court of Punjab and Haryana, Chandigarh in C.W. P. No. 12307 of 2008.

Sibo Sankar Mishra for the Appellant.

C Sanchar Anand, AAG, Apoorv Singhal, Kuldeep Singh for the Respondents.

The Judgment of the Court was delivered by

D **PRAFULLA C. PANT, J.** 1. 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.

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

F 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.

G 4. From the papers on record, it reveals that apart from initiation of departmental enquiry, a First Information Report H 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**.

¹ (1999) 3 SCC 679

² (2006) 5 SCC 446

³ (2007) 1 SCC 566

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

- B *“(i) Departmental proceedings and proceedings in a
criminal case can proceed simultaneously as there is
no bar in their being conducted simultaneously,
though separately.*
- C *“(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.*
- D *“(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.*
- E *“(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 given to the fact
that the departmental proceedings cannot be unduly
delayed.*
- F *“(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*
- G
- H

administration may get rid of him at the earliest. A

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. B

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: - C

"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: - D

(a) the criminal charge has failed on technical grounds; or E

(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 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 charge; or G

(e) additional evidence admissible under rule H

A 16.25(1) in departmental proceedings is available.”

(2)

B 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.

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

E “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.....”

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

G “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

H ⁴ (2013) 7 SCC 685

⁵ (2013) 1 SCC 598

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 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

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

Devika Gujral

Appeal dismissed.