

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Civil Writ Petition No. 5818 of 2014(O&M)

Date of Decision: October 12 , 2015.

Rajesh Kumar

..... PETITIONER (s)

Versus

State of Punjab and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Munish Bhardwaj, Advocate
for the petitioner.

Mrs. Monica Chhibber Sharma, DAG, Punjab
for respondents No.1 and 2.

Mr. Anil Sharma, Advocate
for respondent No.3.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Petitioner seeks quashing of charge-sheet dated 03.11.2008, Annexure P1 as well as order dated 10.02.2014, Annexure P6 passed by respondent No.3 – Municipal Corporation, Jalandhar vide which departmental inquiry has been directed to be conducted against the petitioner after a lapse of eleven years on the same grounds on which he has been acquitted in criminal proceedings.

Brief facts of the case are that, petitioner Rajesh Kumar was

working as a Bill Distributor in Municipal Corporation, Jalandhar, when he was suspended by the then Commissioner vide order dated 27.11.2003 for remaining absent from duty and embezzlement. He was reinstated in service pursuant to order dated 01.01.2004. Allegation against him as per charge-sheet dated 03.11.2008, Annexure P1 is that despite having collected an amount of ₹11,940/-, he did not deposit the same in the account of Municipal Corporation. It is not disputed that amount of ₹11,940/- was deposited by the petitioner on 23.02.2005. It is to be noted that on the same allegations, FIR No.361 dated 06.12.2005 was registered against the petitioner. He was acquitted by the learned trial court on 20.11.2010, Annexure P2. It has been specifically held by the trial court that:-

“..... Merely on the basis of oral evidence that accused has not deposited money for some days and has made temporary embezzlement cannot be believed. There must be some entrustment of any work and thereafter there must be entrustment of money. Prosecution has miserably failed to prove that there was any entrustment or accused has ever received money from the consumers. So it cannot be said in any way that he has embezzled any of the amount. It is the account books which can prove that amount is deficient which he has deposited. So whole of the prosecution case is highly doubtful. Hence, I hereby acquit the accused by giving him benefit of doubt from the charges framed against him.”

Appeal preferred by the State against the abovesaid judgment was also dismissed by the appellate court on 04.01.2013, Annexure P3 while specifically observing that prosecution has miserably failed to prove any

entrustment to the petitioner or embezzlement by the petitioner and the prosecution has failed to prove its case against the accused beyond reasonable doubt. Undisputed position is that no appeal or revision was preferred by the State against the said verdict which has since attained finality.

In the interregnum, no action was taken against the petitioner on the basis of charge-sheet dated 03.11.2008, which itself was issued after about five years from the date of alleged occurrence. After dismissal of the said appeal in criminal case on 04.01.2013, petitioner asked for restoration of his full salary as well as release of arrears of pay and increments. On no action being taken by the respondents, CWP No.26502 of 2013 was preferred by him before this Court which was disposed of on 04.12.2013, Annexure P5, with a direction to the respondents to consider the claim of petitioner by passing a speaking order. Pursuant to order dated 04.12.2013, impugned order dated 10.02.2014, Annexure P6, has been passed. Commissioner, Municipal Corporation, Jalandhar directed that departmental inquiry initiated in 2008, should be completed within one month while delay on the part of the office was duly noted in the said order. It is observed that the officers and employees who appeared at various times before the courts have not given their statements on the basis of facts and neither was the case dealt with in a responsible manner. Aggrieved from the abovesaid order, present writ petition has been preferred.

Learned counsel for the petitioner submits that initiation of departmental action after the passing of nearly eleven years on exactly the same allegations on which he has been exonerated in the criminal proceedings, is illegal, unjustified and unconstitutional. Furthermore, petitioner has not

embezzled a single penny of the respondent-Corporation as he was working as a mere Bill Distributor. Prosecution has failed to prove its case against the petitioner regarding collection of any amount from any consumer. However to be on the safer side, petitioner deposited ₹11,940/- way back in the year 2005 itself. In this situation, he prays for quashing of charge-sheet dated 03.11.2008 and order dated 10.02.2014 with a direction to the respondents to release full salary of the petitioner as well as release of pay and increments.

Learned counsel for respondents while defending the impugned order and charge-sheet submit that though there is a delay in concluding the departmental proceedings against the petitioner, no benefit can accrue therefrom to the petitioner. Department was well within its rights to take departmental action against the petitioner despite his acquittal in criminal proceedings. Departmental proceedings are distinct from criminal proceedings. Show cause notice has been issued to the erring officials against whom necessary action would be taken. It is however submitted that full pay is being released to the petitioner and not half the salary as averred.

I have heard learned counsel for the parties and gone through the file.

It is apparent that departmental action is sought to be taken on exactly the same allegations on which criminal proceedings were initiated. There is no doubt that mere acquittal in the criminal case by itself is not a bar to departmental proceedings against an employee but the peculiar facts of this case do not justify the stand of the respondents.

Perusal of the judgment dated 20.11.2010 by the learned trial court as well as judgment dated 04.01.2013 by the learned appellate court reveals that

prosecution had indeed failed to prove its case against the petitioner beyond reasonable doubt. The then Commissioner of the Municipal Corporation, Jalandhar is one of the witnesses in this case. It is specifically held that there is nothing on record to prove that the petitioner was ever deputed for collection of cash of water supply bills or that any consumer/customer had handed over the said amount. One such alleged consumer, PW1/A Smt. Rajni Bala never supported the prosecution version. She denied having paid ₹600/- to the petitioner or ever taking a receipt from him. Contention that deposit of ₹11,940/- itself shows the guilt of the petitioner, is not tenable in the facts and circumstances of the case.

There is no explanation for the inaction on the part of the respondents for such long years. Alleged show-cause notices issued to the erring employees have not been placed on record neither any details are forthcoming. Counsel for the respondents is unable to point out whether any show cause notice was issued to the then Commissioner who was a witness in the criminal case. There is no evidence to show that such show-cause notice if any, has been taken to its logical end. Petitioner was reinstated on 01.01.2004 itself and has been working without any complaints against him. No loss has been caused to the department. In these circumstances, there is no justifiable reasons to proceed against the petitioner at this stage on exactly the same grounds on which he stands acquitted by the courts.

Present writ petition is, thus, allowed. Charge-sheet dated 03.11.2008 and order dated 10.02.2014 are set aside.

However, respondents shall be at liberty to take a conscious

decision on the treatment of the suspension period of the petitioner in accordance with law.

In case full salary of the petitioner is not being released as per the statement made in Court today, it be released with immediate effect. Petitioner shall be entitled to consequential benefits as well.

October 12 , 2015.
'om'

(LISA GILL)
JUDGE