

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

RSA No.482 of 2013 (O&M)

Date of Decision: 13.07.2015

Randhir Singh

.....Appellant

Versus

State of Haryana & others

.....Respondents

CORAM:- HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Shashi Kant Gupta, Advocate,
for the appellant.

Mr. Samarveer Singh, DAG Haryana.

RITU BAHRI, J.

CM No.1302-C of 2013

For the reasons stated in the application, same is allowed and delay of 20 days in filing the present second appeal is condoned.

RSA No.482 of 2013

Plaintiff-appellant has preferred the present second appeal against the judgments of concurrent findings of facts dated 17.10.2011 and 28.09.2012 passed by the Civil Judge (Senior Division), Rewari and the Additional District Judge, Rewari respectively, whereby his suit for declaration and mandatory injunction has been dismissed.

Brief facts necessary for disposal of the present second appeal are that Randhir Singh-plaintiff (appellant herein) filed a suit stating therein

that he was wrongly involved in a false case i.e. FIR No.18 dated 16.04.2007, under Sections 7, 13, 49 and 88 of the Prevention of Corruption Act, registered at Police Station S.V.B., Gurgaon, whereupon he was placed under suspension vide order No.3490-94 dated 23.4.2007 passed by the Superintendent of Police, Rewari-defendant No.3. Apart from the aforesaid FIR, a separate departmental enquiry was also initiated by DSP (HQ), Rewari, who without affording any opportunity of hearing to the appellant-plaintiff, held him guilty, which lead to imposition of penalty of stoppage of four future annual increments with temporary effect. Besides this, his suspension period from 23.4.2007 to 01.12.2008 was also treated as 'not spent on duty' for all intents and purposes, vide order dated 30.12.2008 passed by defendant No.3. Against this order, appellant-plaintiff preferred an appeal before defendant No.2 which was dismissed vide order dated 01.06.2009. In the criminal proceedings, the plaintiff was acquitted by the Court of Special Judge, Rewari, vide judgment dated 03.11.2008, which was passed before passing of the impugned order by defendant No.3. As per plaintiff-appellant, the defendants have wrongly awarded punishment upon the plaintiff-appellant after his acquittal in the criminal case.

Upon notice, defendants-respondents filed their joint written statement taking preliminary objections with regard to maintainability of the suit, locus standi and concealment of material facts. On merits, it was stated that the plaintiff was caught red handed by the police. After registration of criminal case, he was placed under suspension vide order dated 24.04.2007 and regular department enquiry was initiated against him, wherein he was held guilty. Thereafter, the Superintendent of Police, Rewari, vide order dated 30.12.2008, imposed the impugned punishment of stoppage of four

annual increments with temporary effect and the period of suspension was ordered to be treated as period 'not spent on duty for all intents and purposes'. Aggrieved by the said order, plaintiff-appellant preferred an appeal before the Inspector General of Police, Faridabad Range, which was also rejected in terms of order dated 01.06.2009.

Replication was filed wherein the entire contents of the plaint were reiterated and those of the written statement were denied. Pleadings of the parties gave rise to the framing of following issues vide order dated 25.02.2010:-

1. *Whether the plaintiff is entitled to get all the benefits and to get restored his four annual increments with interest?OPP.*
2. *Whether the order passed vide endst.No.2143-48/ST dated 30.12.2008 and order of appeal dated 01.06.2009 passed by defendant no.2 are illegal, null and void and liable to be set aside?OPP.*
3. *Whether the plaintiff is entitled for the injunction as prayed for?OPP.*
4. *Whether the plaintiff has no cause of action to file the present suit?OPD.*
5. *Whether the suit of the plaintiff is not maintainable?OPD.*
6. *Relief.*

Both the Courts below have decided against the plaintiff-defendant.

The main challenge to the impugned orders was based on the fact that the departmental enquiry and criminal proceedings were initiated on the same cause of action and once the plaintiff-appellant was acquitted of the criminal charges, he had a right to be reinstated in service. No departmental action should have been taken against him and no punishment

was warranted. His suspension period should have been treated as 'period spent on duty.' Reference was made to the judgment delivered in Gurmit Singh Vs. State of Punjab and others, 2011 (1) RSJ 447, G.M. Tank Vs. State of Gujrat and another, 2006 (3) RSJ 554, Shashi Kumar Vs. Uttri Haryana Bijli Vitran Nigam and another, 2005 (1) RSJ 718.

The trial Court proceeded to examine the evidence of the defendants. Anil Kumar, EHC (DW-1) had tendered his affidavit, Ex.DW1/A, and stated that plaintiff was posted at PP Bharawas when one Sajna Devi wife of Sukhbir Singh, resident of Kharkari got registered a case FIR No.40 dated 10.04.2007, under Sections 323, 325, 34 IPC, at Police Station Rampura against Bhagmal. The plaintiff was investigating the said case and he demanded Rs.3000/- from Bhagmal-accused in lieu of discharging the ladies, whereas no lady was entangled in that case. Accused-Bhagmal approached to SVB at Gurgaon, whereupon a raiding party was organized and the plaintiff was caught red handed with cash of Rs.1000/-. Thereafter, FIR No.18 dated 16.04.2007, under Sections 7, 13, 49, 88 of Prevention of Corruption Act was registered. Before the criminal Court, the Investigating Officer and other departmental witnesses were examined. Vide judgment dated 03.11.2008 (Ex.PX), the plaintiff-appellant was acquitted in the criminal case. Further, the lower appellate Court, after going through the judgment (Ex.PX), came to a conclusion that Bhagmal-complainant had supported the case of prosecution. The other witnesses, who were members of the raiding party, had also supported the prosecution version. However, the Special Judge, Rewari, had acquitted the accused (appellant) in view of several contradictions between the statements of prosecution witnesses. Therefore, he was acquitted by giving him benefit of

doubt. It was not a case of clean acquittal, whereby the complainant had turned hostile or the prosecution witnesses had not supported the case of prosecution.

The plaintiff was placed under suspension vide order dated 23.04.2007 and a regular departmental enquiry was ordered against him vide order dated 18.05.2007 (Ex.DW1). Thereafter, he was charge-sheeted by the Enquiry Officer on 16.08.2008 (Ex.DW/3). The enquiry report was given on 18.12.2008 (Ex.DW/4). Thereafter, a show cause notice, Ex.DW/5, was given to him by the Superintendent of Police, Rewari vide order dated 19.12.2008 proposing to impose penalty of dismissal from service. Consequently, vide order dated 30.12.2008 (Ex.DW/6) by taking lenient view into the matter, penalty of stoppage of four future annual increments with temporary effect was imposed upon him. His suspension period from 23.04.2007 to 01.12.2008 was treated as 'not spent on duty for all intents and purposes.'

As per judgment (Ex.PX), the acquittal of the plaintiff-appellant was not on account of the fact that all the material witnesses had not supported the prosecution version. Rather, he was acquitted by extending him the benefit of doubt. In the departmental proceedings on the same set of allegations, there is no requirement of a strict standard of proof. The object of both the proceedings was separate. The difference between object of criminal proceedings and departmental enquiry has been considered by the Full Bench of the Hon'ble Supreme Court in **NOIDA Entrepreneurs Assn. Vs. NOIDA & Ors.,** 2007 (10) SCC 385, wherein it was held that criminal prosecution is launched for an offence for violation of a duty the offender owes to the society, or for breach of which law has

provided that the offender shall make satisfaction to the public. Crime is an act of commission in violation of law or of omission of public duty. The department enquiry is to maintain discipline in the service and efficiency of public service. There was no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. After making reference to the judgment delivered in **Union of India and Anr. Vs. Bihari Lal Sidhana**, 1997 (3) SCT 318, the Hon'ble Supreme Court has observed that acquittal in the criminal case would not automatically give right to an employee to be reinstated into the service. The competent authority could take decision, whether the delinquent government servant could be taken into service or disciplinary action should be taken under the Service Laws. In a case of temporary employee, the competent authority could invoke the power and terminate his service. Reinstatement would give him an opportunity to indulge with impunity in misappropriation of public money. The Hon'ble Supreme Court set aside the order passed by the State Government staying the departmental proceedings. The Hon'ble Supreme Court in **West Bokaro Colliery Vs. Ram Pravesh Singh**, 2008 (3) SCC 729, has held that there was no bar against the domestic enquiry even after the acquittal in a criminal case.

Further, the Hon'ble Supreme Court in **Commissioner of Police Vs. Narender**, 2006 (4) SCC 265, held that the standard of proof required in recording a finding of conviction in a criminal case and in a departmental proceedings are distinct and different. In departmental proceedings, preponderance of probability would serve the purpose.

In the facts of the present case, the plaintiff-appellant cannot

seek benefit of reinstatement on the basis of judgment of acquittal (Ex.PX). A perusal of the judgment (Ex.PX) passed by the Special Judge, Rewari, shows that Bhagmal-complainant had supported the case of prosecution. The other witnesses, who were members of the raiding party, had also supported the prosecution version. This evidence was sufficient in the departmental proceedings and enquiry to punish the plaintiff-appellant. The punishing authority has taken a lenient view and imposed the penalty of stoppage of four increments with temporary effect. The punishment imposed is not so harsh and the evidence was sufficient to prove the charges in the departmental enquiry.

In the light of the above discussion, after going through the impugned judgments, no illegality, much less perversity, has been found therein warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

13.07.2015
ajp

(RITU BAHRI)
JUDGE