

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

Regular Second Appeal No.6484 of 2014 (O&M)
Date of decision: 17.08.2015

Vijender Singh

... Appellant

versus

The State of Haryana and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. M.S. Kathuria, Advocate,
for Mr. Rakesh Nehra, Advocate,
for the appellant.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ?No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. (Oral)

CM No.15437-C of 2014

For the reasons stated in the application, delay in filing
the appeal is condoned.

Application stands disposed of.

Regular Second Appeal No.6484 of 2014

1. The plaintiff is a police constable and he brought a suit
challenging the order of dismissal from service. The dismissal
followed the outcome of a departmental enquiry on proof of charge
of failure to give immediate information about a heinous

commission of crime of rape against woman in the immediate proximity of the plaintiff. The incident was said to have taken place at the Raj Bhawan on the intervening night of 20/21 February, 2008. The plaintiff is reported to have accompanied the rape victim to a house at Mohali without registering any complaint and he was arrested on his return to his duty for dereliction of duty. It would appear that the plaintiff was also independently charged of criminal offence. The plaintiff was prosecuted for a gang rape and it would appear that the criminal case also ended in conviction against the plaintiff. At the departmental enquiry, several witnesses were examined and according to the plaintiff, the rape victim did not support the case of gang rape and the result of departmental enquiry finding him guilty was therefore not tenable. He had therefore resorted to an action by means of a civil suit that the dismissal from service was not competent.

2. I must first observe that the suit itself was not competent. It is admitted even by the counsel that there was a provision for an appeal against the decision taken in departmental proceedings. The plaintiff had an effective alternative remedy to canvass for the correctness of the finding and the suit was itself not tenable. I am not prepared to go as far as to state that any suit to challenge an order of dismissal cannot be maintained, for, it all depends on the facts and circumstances of each case. If the rules

prescribed a particular procedure, a suit could have been instituted to point out to a defect in the enquiry which vitiated its ultimate findings. I have no case brought before me on any fundamental breach of the statutory rules that the civil court could have found fault with through the suit brought by the plaintiff. With no substantive breach of the statutory regulations having been brought out, the civil court's jurisdiction will be restricted to only examining the vires of the act and not treat itself as an appellate authority against the decision rendered by a departmental authority. I find no error in the order of the trial Court which is affirmed at the appellate Court.

3. The learned counsel makes an argument that against the order of conviction rendered by the trial court that there is a criminal appeal pending before this court and the outcome of the appeal, if it is favourable to the appellant, should be taken note of at an appropriate time for a reconsideration of the decision regarding the dismissal. I decline to provide for such liberty for the plaintiff, for, it is well laid down proposition of law that departmental proceedings and criminal proceedings operate in two different fields and they have two different legal parameters applied for rendering the respective decisions. There is no area of congruity in a situation where the dismissal of service was not on account of conviction in a criminal case. Admittedly, the dismissal followed the result of an

enquiry duly constituted and so long as the enquiry has not shown to be vitiated, the ultimate decision that it took, cannot be made to depend on the decision that a criminal court may take or any modification that is possible at the appellate court.

4. There is nothing substantial for consideration in favour of the plaintiff-appellant. Second appeal is dismissed as devoid of merits.

(K.KANNAN)
JUDGE

17.08.2015
sanjeev