In the High Court of Punjab and Haryana at Chandigarh

Civil Writ Petition No. 16828 of 2011
Date of Decision: 25.2.2016.

Pawan Kumar Singhal ....Petitioner

Versus

Punjab National Bank and others ....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. M.K.Sood, Advocate
for the petitioner.

Mr. Saurav Verma, Advocate
for the respondents.

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SABINA, J.

Petitioner has filed this petition under Article 226 of the Constitution of India seeking a writ in the nature of certiorari for quashing the charge sheet dated 27.8.2011 (Annexure P-7)

Case of the petitioner, in brief, is that he was appointed as a Clerk-cum-Cashier with New Bank of India at branch Office Jind on 12.12.1978. On 20.11.1990, petitioner was placed under suspension on the alleged charges of misappropriation. Respondent No. 3 filed a complaint before the police and FIR No. 502 dated 21.11.1990 under Section 408, 420, 467, 471, 120-B, 201 of the Indian Penal Code, 1860 was registered at Police Station City Jind. After amalgamation of the banks, New Bank of India was taken over by Punjab National Bank. The respondent-bank issued letter dated 8.9.1993 Annexure P-2 informing the petitioner that he would continue to remain under suspension till the completion of departmental proceedings. Petitioner filed CWP No. 12729 of 1991 in this Court seeking payment of subsistence allowance and the said petition was allowed vide order dated 19.8.1991 Petitioner filed CWP No. 7811 of 1995 in this Court seeking revocation of suspension order. The respondent bank took the preliminary objection that the writ petition was not maintainable and petitioner should approach the Industrial Tribunal. Petitioner withdrew the writ petition and raised an industrial dispute. The Tribunal concluded the proceedings and had reserved the order on 4.5.2011. Petitioner was acquitted in the criminal trial vide judgment dated 7.3.2009 (Annexure P-4). Appeals filed by the bank as well as the State of Haryana were dismissed by the Additional Sessions Judge, Jind vide order dated 28.7.2011 (Annexure P-5). Petitioner approached respondent No. 3 to reinstate him in service. However, charge sheet dated 27.8.2011 (Annexure P-7) had been issued. Hence, the present petition by the petitioner.

Learned counsel for the petitioner has submitted that the charge sheet Annexure P-7 was liable to be quashed as it had been issued after 20 years. Moreover, petitioner had been acquitted by the criminal Court. The charges in the criminal proceedings as well as in the departmental proceedings were the same. In support of his arguments, learned counsel has placed reliance on '***Gurpal Singh versus High Court of Judicature for Rajasthan 2013(2) RSJ 313***', wherein it was held as under:-

> *"39. The acquittal of the petitioner having been affirmed by the High Court of Delhi, in our opinion, it was necessary for the High Court of Rajasthan to take a*

decision: (a) whether to revoke the order of suspension and permit the petitioner to perform judicial functions; (b) whether to hold a departmental enquiry with regard to the receipt of money allegedly received by him from the deceased; (c) as to how the period of suspension was to be treated; (d) whether the petitioner was entitled to full salary, part salary or no salary at all for the period of suspension.

40. It appears to us that given the findings recorded by the trial court, subsequently reiterated by the High Court of Delhi, the decision to continue the petitioner under suspension, thereafter, was rather harsh. It is true that the suspension of the petitioner was continued as the High Court had decided to hold a departmental enquiry against the petitioner on the charges that he had wrongly extracted certain money from the deceased. But it is a matter of record that both the trial court as well as the High Court had found the entire story with regard to the alleged receipt of money to be false. The enquiry was founded on the same facts and the same evidence which have had been examined by the trial court as well as the High Court. In such circumstances, it was necessary for the High Court to examine the findings of the trial court as well as the High Court in detail before taking a decision to initiate departmental proceedings against the petitioner, founded on the same set of facts and the evidence. It is apparent from the record that no such examination of the *judgment was undertaken by the High Court. Even after taking a decision to initiate departmental proceeding against the petitioner, it was no longer imperative to continue the petitioner under suspension. The petitioner was no longer charged with any criminal offence as both the trial court as well as the High Court had literally concluded that the charges against the petitioner had been concocted. The petitioner had been subjected to continued suspension since 22nd December, 1985. During the period of departmental proceedings, even if the petitioner was not to be assigned any judicial work, the High Court could have conveniently given him suitable posting on the administrative side. In our opinion, from the time of dismissal of the appeal by the Delhi High Court, the continued suspension of the petitioner was wholly unjustified."*

Learned counsel for the respondents, on the other hand, has opposed the petition and has submitted that petitioner was not placed under suspension on account of registration of criminal case against him. Rather, petitioner was placed under suspension vide order dated 20.11.1990. Thereafter, FIR was registered against the petitioner on 21.11.1990. Merely because the petitioner had been acquitted in the criminal proceedings, was no ground to reinstate the petitioner. Departmental proceedings initiated against the petitioner were liable to continue. In the criminal proceedings, petitioner was acquitted, *inter alia*, on the ground that the investigating agency had failed to collect relevant evidence during investigation. Learned counsel has further submitted that normally discretion under Article 226 of the Constitution of India should not be exercised for quashing the charge sheet. In support of his arguments, learned counsel has placed reliance on '***Deputy Inspector General of Police and another versus S. Samuthiram 2012(6) Recent Apex Judgments (R.A.J.) 395***', wherein it was held as under:-

> *"23. As we have already indicated, in the absence of any provision in the service rule for reinstatement, if an employee is honourably acquitted by a Criminal Court, no right is conferred on the employee to claim any benefit 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 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.

24. We have also come across cases where the service rules provide that on registration of a criminal case, an employee can be kept under suspension and on acquittal by the criminal court, he be reinstated. In such cases, the reinstatement is automatic. There may be cases where the service rules provide in spite of domestic enquiry, if the criminal court acquits an employee honourably, he could be reinstated. In other words, the issue whether an employee has to be reinstated in service or not depends upon the question whether the service rules contain any such provision for reinstatement and not as a matter of right. Such provisions are absent in the Tamil Nadu Service Rules."

Learned counsel for the respondents has next placed reliance on ***'Union of India versus Kunisetty Satyanarayana 2007(1) S.C.T. 452'***, wherein it was held as under:-

"13. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the

rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

14. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge sheet."

Facts in the present case are not in dispute. Petitioner was working as a Clerk-cum-Cashier with the respondents and was placed under suspension vide order dated 20.11.1990 (Annexure P-1). Thereafter on 21.11.1990, FIR was registered against the petitioner. Departmental proceedings were kept in abeyance till the finalization of criminal trial. Although, petitioner was acquitted in the criminal proceedings but the respondents were at liberty to continue with the departmental proceedings against the petitioner. Consequently, charge sheet dated 27.8.2011 (Annexure P-7) was served on the petitioner. A perusal of the charge sheet reveals that the allegations against the petitioner are that he had forged the signatures/thumb impressions of account holders and had withdrawn the amounts in question. Petitioner had also taken money from the account holders and had failed to deposit the same with the bank. Respondents are within their legal right to proceed with the departmental proceedings after the conclusion of criminal trial. Petitioner can take up all the pleas available to him in the departmental proceedings. In the facts and circumstances of the present case, no ground for quashing the charge sheet is made out. The judgment relied upon by the learned counsel for the petitioner fails to advance the case of the petitioner as it is based on different facts.

No ground for interference by this Court while exercising jurisdiction under Article 226 of the Constitution of India, is made out.

Dismissed.

(SABINA)
JUDGE

February 25, 2016
Gurpreet