

101

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

CWP-7816-2013

Date of decision-09.10.2018

Avtar Singh

....Petitioner

Vs.

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Harnek Singh, Advocate for the petitioner.

Ms. Monica Chhibber Sharma, Sr.DAG, Punjab.

JITENDRA CHAUHAN, J.

This writ petition under Articles 226/227 of the Constitution of India has been filed seeking quashing of impugned award dated 11.12.2012 (Annexure P-2) and order dated 08.03.2013 (Annexure P-3) passed by respondent Nos.2 and 3, respectively, whereby recovery of ₹83,250/- had been ordered to be effected from the salary of the petitioner in 20 instalments along with stoppage of one increment with cumulative effect.

Learned counsel for the petitioner submits that FIR dated 04.08.2005 was registered against the petitioner in view of the recovery of 5 k.g. of poppy husk from the bus driven by the petitioner. The prosecution failed to prove its case against the petitioner resulting into acquittal of the petitioner. On the basis of the departmental inquiry, orders dated 11.12.2012 and 08.03.2013, Annexures P-2 and P-3, respectively were passed whereby an amount of ₹83,250/- being 50% of the loss caused to the State exchequer,

on the ground of bus being detained by the police for 37 days, was ordered to be recovered from the salary of the petitioner in 20 instalments.

It is submitted that the petitioner was in custody and the recovery had been imposed upon the petitioner on the basis that the bus remained stranded at the Police Station for 37 days and therefore, fiscal loss of ₹1,66,500/- had been caused to the State exchequer. He further states that if the respondent-department had filed the application for release of the bus in question on superdari promptly, no loss would have been caused to the State exchequer and thus the State is responsible for the loss to the State exchequer.

On the other hand, learned State counsel submits that the acquittal of the petitioner in the criminal case has nothing to do with the departmental proceedings. The judgment passed by the criminal Court is not applicable in the departmental proceedings. She cites “***Sukhjit Singh Khaira Vs. State of Punjab***” 2005 (1) SCT 50 (P&H) (DB) and “***Ajit Kumar Nag Vs. G.M.(P.J) Indian Oil Corporation Lmt.***”, 2005 (4) SCT 341, to contend that acquittal by the criminal Court would not debar the employer from exercising power in accordance with the rules and regulations and force.

Heard.

It is to be noticed that the respondent-State is the registered owner of the bus and the application for superdari was belatedly made on 23.02.2006 as is made out from the Annexure 'A' and the same was allowed on 09.09.2005, therefore, loss happened due to the laxity of the State in not

filing the superdari application promptly. Therefore, the order dated 11.12.2012 (Annexure P-2) whereby the recovery had been ordered to be effected from the petitioner along with stoppage of one increment is not warranted in the matter. It is not proved that the alleged contraband was recovered from the conscious possession of the petitioner or he was in the knowledge of the contraband was being ferried in the bus.

The ratio of law laid down in Sukhjit Singh Khaira's case and Ajit Kumar Nag's case (supra), is not applicable to the facts of the present case. It is settled position of law that after acquittal in criminal proceedings on merits departmental proceedings cannot override findings of criminal Court if the charge and evidence in both the proceedings are same. Inquiry Officer cannot overwrite the depositions already recorded by the Court. In the present case, charges and evidence in both the proceedings are same. In ***“G.M. Tank vs. State of Gujarat and others, (2006) 5 SCC 446***, it was observed as under:-

“In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the criminal court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or

granted on the same set of facts, namely, raid conducted at the appellant's residence, recovery of articles therefrom.”

In the present case, services of the petitioner had been terminated only on the ground of registration of the FIR. The petitioner stands acquitted in the criminal case and once the finding of departmental proceedings goes, offshoot cannot stand and has to follow the suit. As regard the loss caused due to detention of bus, it is observed that as the petitioner was behind the bars, the duty fell upon the State being registered owner to get released the bus in question. The petitioner cannot be held liable for the same.

Thus, in view of the above, this writ petition is allowed. The impugned award dated 11.12.2012 (Annexure P-2) passed by respondent No.2 and order dated 08.03.2013 (Annexure P-3) passed by respondent No.3 whereby recovery of ₹83,250/- had been ordered to be effected from the salary of the petitioner in instalments and one increment with cumulative effect had been stopped, are hereby set aside.

Allowed.

(JITENDRA CHAUHAN)
JUDGE

09.10.2018

vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No