

115 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-5192-2018

Date of decision-02.05.2018

Jaswant Singh

...Petitioner

Vs.

Punjab State Power Coporation Ltd. and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. A.S.Manaise, Advocate for the petitioner.

JITENDRA CHAUHAN, J.

This writ petition under Articles 226/227 of the Constitution of India has been filed for issuance of a writ in the nature of certiorari for quashing of impugned order dated 03.03.2015 (Annexure P-4) whereby petitioner has been found guilty of misconduct and has been compulsorily retired from service.

The brief facts of the case are that the petitioner was appointed as Lower Division Clerk in Punjab State Electricity Board on 03.09.1986. On 08.05.2006, while the petitioner was working as Clerk-cum-Cashier, he was placed under suspension vide order dated 14.06.2006 (Annexure P-1). The petitioner was issued a charge sheet with the allegations of tampering with the record by cutting, overwriting and throwing ink on the service register with the *mala fide* intention to give undue benefit to the consumers. The reply to the charge-sheet (Annexure P-2) was filed. After the enquiry the charges were held to be proved against him. In the interregnum, an FIR No.32 dated 01.03.2008 under Sections 465, 468, 471, 409 and 120-B of

Indian Penal Code came to be registered at Police Station Dhariwal against the petitioner. Consequent upon enquiry report dated 28.10.2014 (Annexure P-3) filed by respondent No.3, the petitioner was held guilty and was awarded punishment of compulsorily retirement vide order dated 03.03.2015 (Annexure P-4). Vide order dated 23.03.2015, the petitioner was convicted in the above said FIR and was awarded three years rigorous imprisonment along with fine by learned JMIC, Gurdaspur. Aggrieved by the judgment of conviction, the petitioner preferred appeal before learned Sessions Court, Gurdaspur whereby vide judgment dated 09.01.2017 (Annexure P-5), he was acquitted of all the charges. Thereafter, the petitioner moved a representation dated 02.02.2017 (Annexure P-6) for reinstatement in service with all consequential benefits but no any action has been taken so far.

Learned counsel contends that the impugned order dated 03.03.2015 passed by respondent No.2 is illegal, perverse and arbitrary. The impugned enquiry report dated 28.10.2014 (Annexure P-3) indicts the petitioner on the basis of the statements of Amarjit Singh, Revenue Accountant and Er.Kasturi Lal, AAE who were also examined before the trial Court as PW-6 and PW- 5, respectively. Learned Appellate Court while passing the judgment of acquittal dated 09.01.2017, has discarded the testimonies of the above said witnesses. Therefore, the impugned inquiry report is also rendered inconsequent.

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

In “*Iqbal Singh Marwah and another Vs. Meenakshi*”

Marwah and another, 2005 (SCC), it was held as under:-

“Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal Courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein. While examining a similar contention in an appeal against an order directing filing of a complaint under Section 476 of old Code, the following observations made by a Constitution Bench in M.S. Sheriff vs. State of Madras AIR 1954 SC 397 give a complete answer to the problem posed :

"(15) As between the civil and the criminal proceedings we are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Courts of India on this point. No hard and fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal Courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one Court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of embarrassment.

(16) Another factor which weighs with us is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. The public interests demand that criminal justice should be swift and sure; that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Another reason is that it is undesirable to let things slide till memories have grown too dim to trust.

This, however, is not a hard and fast rule. Special considerations obtaining in any particular case might make some other course more expedient and just. For example, the civil case or the other criminal proceeding

may be so near its end as to make it inexpedient to stay it in order to give precedence to a prosecution ordered under S. 476. But in this case we are of the view that the civil suits should be stayed till the criminal proceedings have finished."

In *Ajay Kumar Singh Vs. The Flag Officer Commanding-In-Chief and others*, 2016 (4) R.C.R (Criminal) 114, it was held as under:-

It is fairly well settled that acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. [vide [Ajit Kumar Nag v. General Manager \(PJ\), Indian Oil Corporation Ltd., Haldia and Ors.](#) (2005) 7 SCC 764, [T.N.C.S. Corpn. Ltd. and Ors. v. K. Meerabai](#) (2006) 2 SCC 255]

22. *Acquittal in a criminal case does not entitle a person to automatic reinstatement. [In Union of India and Anr. v. Bihari Lal Sidhana](#) (1997) 4 SCC 385, it was held as under:-*

"5. It is true that the respondent was acquitted by the criminal court but acquittal does not automatically give him the right to be reinstated into the service. It would still be open to the competent authority to take decision whether the delinquent government servant can be taken into service or disciplinary action should be taken under the Central Civil Services (Classification, Control and Appeal) Rules or under the Temporary Service Rules. Admittedly, the respondent had been working as a temporary government servant before he was kept under suspension. The termination order indicated the factum that he, by then, was under suspension. It is only a way of describing him as being under suspension when the order came to be passed but that does not constitute any stigma. Mere acquittal of government employee does not automatically entitle the government servant to reinstatement. As stated earlier, it would be open to the appropriate competent authority to take a decision

whether the enquiry into the conduct is required to be done before directing reinstatement or appropriate action should be taken as per law, if otherwise, available. Since the respondent is only a temporary government servant, the power being available under Rule 5(1) of the Rules, it is always open to the competent authority to invoke the said power and terminate the services of the employee instead of conducting the enquiry or to continue in service a government servant accused of defalcation of public money. Reinstatement would be a charter for him to indulge with impunity in misappropriation of public money.”

In the instant case, the acquittal of the petitioner by the Criminal Court does not entitle the petitioner to wriggle out of the departmental proceedings recorded against him. In the departmental enquiry it is conclusively proved that the petitioner being custodian of the record, tampered it in connivance with consumer in order to extend undue benefit as reflected in the enquiry report (Annexure P-3). The department after affording due opportunity to the petitioner and appreciating the evidence brought before it, found the petitioner guilty of misconduct committed by him.

Thus, in view of the above, this Court is not inclined to interfere in the impugned order.

Consequently, the present writ petition sans merit, stands dismissed.

(JITENDRA CHAUHAN)
JUDGE

02.05.2018

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