

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP No. 6024 of 2005

Reserved on 24/06/2019

Delivered on 26/06/2019

Zila Sahkari Kendriya Bank, Maryadit, G.E. Road, Rajnandgaon,
Chhattisgarh, through the Manager.

--Petitioner

-Versus-

Tekram Nirmalkar, S/o. Shri Phoolsingh Nirmalkar, Occupation
Terminated Society Manager, R/o. Village & Post Pondi, Tahsil and
District Kabirdham (Kawardha), Chhattisgarh

---Respondent

For Petitioner	:	Mr. P.K.C. Tiwari, Sr. Advocate along with Mr. Shashi Bhushan, Advocate
For Respondent	:	Mr. R.S. Patel, Advocate

Hon'ble Shri Justice P. Sam Koshy

C.A.V. ORDER

1. The challenge in this writ petition is to the order dated 28.09.2005, passed by the Registrar, Cooperative Societies in Second Appeal No. 77(2)(One)/18/04, whereby the Registrar had set-aside the order of the Joint Registrar dated 13.07.2004 in First Appeal No. 67-R/2003 and also the order passed by the Deputy Registrar dated 22.02.2003 in Case No. 40/99-55(2).
2. The brief facts of the case is that the petitioner is a Cooperative Bank operating in the District Rajnandgaon. The respondent was working as a Manager in the said Cooperative Society. On account of certain charges of shortage in stock of food & fertilizers, the services of the respondent was suspended on 03.10.1992 contemplating a departmental enquiry. A departmental enquiry was

initiated by issuance of a charge-sheet, thereafter an inquiry report was submitted and based on the findings of the Inquiry officer, it was decided to terminate the services of the respondent and also to initiate recovery proceedings for the loss caused.

3. The respondent challenged the decision of termination of service by raising a dispute under Section 55(2) of the Cooperative Societies Act, 1960, which was registered as Case No. 40/99. After the pleadings and proceedings were complete, the Deputy Registrar vide his order dated 22.02.2003 dismissed the claim petition of the employee i.e. the respondent. The order of the Deputy Registrar was subsequently challenged in the First Appeal before the Joint Registrar, who too vide his order dated 13.07.2004 dismissed the First Appeal. The respondent thereafter preferred a Second Appeal before the Registrar, Cooperative Societies, who in turn allowed the Second Appeal by setting aside the two orders of the Deputy Registrar and the Joint Registrar and ordered for reinstatement in service without back wages, which is under challenge in the present writ petition.
4. The counsel appearing for the petitioner assailing the order submitted that the findings of the learned Registrar was bad in law for the reason that the Registrar has failed to appreciate the fact that the decision taken against the respondent was pursuant to a detailed departmental enquiry and the decision of the Criminal case as such would not have any bearing, unless it is held by the Registrar that the findings of the Inquiry officer as also the decision of the

Disciplinary Authority was contrary to the evidence brought before the Inquiry officer.

5. Counsel for the petitioner relied upon the judgments in the case of **“Commr. Of Police, Delhi v. Narender Singh” AIR 2006 SCW 1958**, **“C.P. Sharma v. Union of India & others” 2006(3) CGLJ 592** and **“Senior Supdt. Of Post Offices, Pathananthitta and others v. A. Gopalan” AIR 1999 SC 1514**. According to the petitioner, unless there is a specific finding that the order of termination is bad on account of either procedural lapse during the course of inquiry or the findings of the Inquiry officer being either perverse or contrary to the evidence or the punishment being disproportionate to the charges alleged against the employee, the order of the Deputy Registrar and Joint Registrar could not have been interfered. That merely because the respondent at a later stage has got an acquittal in the Criminal case for the same act, the order of termination could not have been interfered with, the impugned order (Annexure P/1) dated 28.09.2005 therefore deserves to be set-aside/quashed.
6. The counsel appearing for the respondent/employee opposing the petition submits that since there was a categorical findings by the Court of law acquitting the respondent for the alleged charges, which were leveled against him, the finding of the Registrar cannot be faulted with. According to the respondent, it is a case where on the same set of facts, same set of charges, the respondent was on one hand prosecuted in a departmental enquiry and on the same

charges an FIR was also lodged and the respondent was prosecuted before the Criminal Court. That later on the Criminal Court reached to the conclusion that the prosecution has not been able to prove the charges leveled against the respondent and therefore the respondent stood acquitted from the criminal case. Once when he has got an acquittal, according to the respondent, it would be a case where there is no evidence available against the respondent and since there is a finding from the Judicial Court of Law acquitting the respondent, the order of termination on the ground of charges which could not be proved before the Criminal Court would not be sustainable and hence the finding of the Registrar cannot be found fault with.

7. The counsel for the respondent/employee in support of his contentions relied upon the judgments of Hon'ble Supreme Court in the case of **"G.M. Tank v. State of Gujarat and others"** 2006 (5) SCC 446, **"State Bank of India and another v. Mohammed Abdul Rahim"** 2013 (11) SCC 67 and **"Gurpal Singh v. High Court of Judicature of Rajasthan"** 2012 (13) SCC 94.
8. Having heard the contentions put forth on either side and on perusal of record, what has to be seen is the legal position. Before going to the legal position, the admitted facts as it stands is that the respondent was placed under suspension in the year 1992 and the charge-sheet was issued in the year 1998 and the inquiry report was submitted in December, 1998 and an order of punishment i.e. termination from service was issued on 27.02.1999. The order of

termination was challenged before the Deputy Registrar, who dismissed the application first on 22.02.2003, which again stood affirmed in the First Appeal decided by the Joint Registrar on 13.07.2004. The respondent for the same offence was prosecuted in a Criminal case and the Criminal case was finally decided on 29.03.2004. From these, what is revealed is that the judgment of acquittal was in fact already there in favour of the respondent/employee, when the First Appeal was decided. The judgment of acquittal was not one of the grounds taken by the respondent while contesting the First Appeal before the Joint Registrar. The Registrar while passing the impugned order has only relied upon the judgment of acquittal from the Criminal case leveled against the respondent.

9. Hon'ble Supreme Court recently in the case of **“Divisional Controller, Karnataka, State Road Transport Corporation v. M.G. Vittal Rao” 2012 (1) SCC 442**, in paragraph Nos. 11 to 15 has held as under:

11. The question of considering reinstatement after decision of acquittal or discharge by a competent criminal Court arises only and only if the dismissal from services was based on conviction by the criminal Court in view of the provisions of [Article 311 \(2\) \(b\)](#) of the Constitution of India, 1950, or analogous provisions in the statutory rules applicable in a case. In a case where enquiry has been held independently of the criminal proceedings, acquittal in a criminal Court is of no help. The law is otherwise. Even if a person stood acquitted by a criminal Court, domestic enquiry can be held, the reason being that the standard of proof required in a domestic enquiry and that in a criminal case are altogether different. In a criminal case, standard of proof

required is beyond reasonable doubt while in a domestic enquiry it is the preponderance of probabilities that constitutes the test to be applied.

12. In *Nelson Motis v. Union of India & Anr.*, AIR 1992 SC 1981, this Court held :

"5.The nature and scope of a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceeding."

13. In State of Karnataka & Anr. v. T. Venkataramanappa, (1996) 6 SCC 455, this Court held that acquittal in a criminal case cannot be held to be a bar to hold departmental enquiry for the same misconduct for the reason that in a criminal trial, standard of proof is different as the case is to be proved beyond reasonable doubt but in the departmental proceeding, such a strict proof of misconduct is not required.

14. In *State of Andhra Pradesh v. K. Allabaksh*, (2000) 10 SCC 177, while dismissing the appeal against acquittal by the High Court, this Court observed as under:-

"2.that acquittal of the respondent shall not be construed as a clear exoneration of the respondent, for the allegations call for departmental proceedings, if not already initiated, against him."

15. While dealing with a similar issue, a three-Judges Bench of this Court in Ajit Kumar Nag v. General Manager (PJ) Indian Oil Corporation Ltd., (2005) 7 SCC 764, held as under:-

"11.In our judgment, the law is fairly well settled. Acquittal by a criminal Court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating

statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a Court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability."

10. Earlier also the Hon'ble Supreme Court had taken the same stand in the case of **"Commr. for Police, Delhi v. Narender Singh, 2006 AIR SCW 1958**, wherein in paragraph Nos. 12 to 14 has held as under:

"12. It is not in dispute that the standard of proof required in recording a finding of conviction in a criminal case and in a departmental proceeding are distinct and different. Whereas in a criminal case, it is essential to prove a charge beyond all reasonable doubt, in a departmental proceeding preponderance of probability would serve the purpose. [[See Kamaladevi Agarwal v. State of W.B. and Others](#), (2002) 1 SCC 555].

13. It is now well-settled by reason of a catena of decisions of this Court that if an employee has been acquitted of a criminal charge, the same by itself would not be a ground not to initiate a departmental proceeding against him or to drop the same in the event an order of acquittal is passed.

14. [In Manager, Reserve Bank of India, Bangalore v. S. Mani and Others](#) [(2005) 5 SCC 100], this Court held :

"It is trite that a judgment of acquittal passed in favour of the employees by giving benefit of doubt per se would not be binding upon the employer"

[[See Bank of India and Another v. Degala Suryanarayana](#) (1999) 5 SCC 762; [Ajit Kumar Nag v. General Manager \(PJ\), Indian Oil Corporation Ltd., Haldia and Others](#) (2005) 7 SCC 764]"

11. A similar view has again been taken by the Hon'ble Supreme Court in the case of **"Noida Entrepreneurs Association v. Noida and others"** 2007 (10) SCC 385, wherein in paragraph Nos. 11, 15 & 16 held as under:

"11. A bare perusal of the order which has been quoted in its totality goes to show that the same is not based on any rational foundation. The conceptual difference between a departmental enquiry and criminal proceedings has not been kept in view. Even orders passed by the executive have to be tested on the touchstone of reasonableness. (See: [Tata Cellular v. Union of India](#) (1994(6) SCC 651), and [Teri Oat Estates \(P.\) Ltd. v. U.T. Chandigarh and Ors.](#) (2004 (2) SCC 130). The conceptual difference between departmental proceedings and criminal proceedings have been highlighted by this Court in several cases. Reference may be made to [Kendriya Vidyalaya Sangathan and Others v. T. Srinivas](#) (2004(7) SCC 442), [Hindustan Petroleum Corporation Ltd. and Others v. Sarvesh Berry](#) (2005(10) SCC 471) and [Uttaranchal Road Transport Corpn. v. Mansaram Nainwal](#) (2006(6) SCC 366).

"8.The purpose of departmental enquiry and of prosecution is two different and distinct aspects. The 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. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service.

It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be 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. Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the [Indian Evidence Act 1872](#) (in short the '[Evidence Act](#)'). Converse is the case of departmental enquiry. The enquiry in a departmental proceedings relates to conduct or breach of duty of the delinquent officer to punish him for his misconduct defined under the relevant statutory rules or law. That the strict standard of proof or applicability of the [Evidence Act](#) stands excluded is a settled legal position. ... Under these circumstances, what is required to be seen is whether the department enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances.”

15. The position in law relating to acquittal in a criminal case, its effect on departmental proceedings and reinstatement in service has been dealt with by this Court in [Union of India and Anr. v. Bihari Lal Sidhana](#) (1997 (4) SCC 385). It was held in paragraph 5 as follows:

“5. It is true that the respondent was acquitted by the criminal court but acquittal does not automatically give him the right to be re- instated 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."

16. The standard of proof required in departmental proceedings is not the same as required to prove a criminal charge and even if there is an acquittal in the criminal proceedings the same does not bar departmental proceedings. That being so, the order of the State Government deciding not to continue the departmental proceedings is clearly untenable and is quashed. The departmental proceedings shall continue."

12. So far as the judgments, which have been relied upon by the respondent/employee, there can be no quarrel, so far as the principles of law laid down in those judgments, but at the same time,

what has to be seen is the relevant dates in the present case. In the instant case, the judgment of acquittal is much after the departmental enquiry was concluded. The judgment of acquittal was even much after the services of the respondent stood terminated, there is a gap of many years between the date of termination and the date of acquittal. Therefore the judgments relied upon by the respondent/employee are distinguishable on its facts alone and would not come to the rescue of the respondent.

13. Another aspect, which goes against the respondent/employee is the fact that there is no finding of the Registrar that the departmental enquiry conducted against the employee was bad, perverse, contrary to evidence or in violation of the principles of natural justice, neither is there a finding of the punishment being either excessive or disproportionate.
14. Under the circumstances, the judgment referred to and discussed in the preceding paragraphs would make it evident that the reasons assigned by the Registrar while setting aside the order of the Deputy Registrar as well as by the Joint Registrar is not sustainable and is also contrary to the legal positions as it stands and the impugned judgment therefore deserves to be and is accordingly set-aside/quashed and the orders passed by the Deputy Registrar and the Joint Registrar, thereby stand affirmed. The writ petition therefore stands allowed.

Sd/-
(P. Sam Koshy)
Judge