

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

LPA No. 1877 of 2017 (O&M)
Date of Decision: 04.07.2019

Baldev Raj BerryAppellant

versus

Punjab Agricultural University, Ludhiana and othersRespondents

**CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

Present : Mr. G.K.Dulat, Advocate-Legal Aid counsel, for the appellant.

Mr. Deepak Agnihotri, Advocate, for the respondents.

KRISHNA MURARI, CHIEF JUSTICE (oral)

CM No. 4052-LPA of 2017

Heard. For the reasons mentioned in the application, delay of 184 days in filing the appeal is condoned. Application stands disposed of.

LPA No. 1877 of 2017

This intra-court appeal under Clause X of the Letters Patent has been filed by the petitioner-appellant challenging the judgment and order dated 03.03.2017 passed by the learned Single Judge dismissing the petition filed by him challenging the order of dismissal from service.

2. Facts required to be noticed for proper adjudication of the controversy in brief can be summarized as under:-

The appellant who was working as cashier in the office of Controller of Punjab Agricultural University, Ludhiana, was issued charge-sheets dated 11.01.2002, 20.09.2002 and 12.12.2002 levelling charges of

embezzlement and serious financial irregularities. Two Enquiry Officers were appointed to conduct regular departmental enquiry against him separately into the allegations leveled against him in the two charge-sheets. Both the Enquiry Officers submitted their separate reports dated 03.04.2003 and 11.06.2003 respectively holding the petitioner-appellant guilty of the charges. Thereafter a notice dated 10.12.2003 was issued requiring the appellant to show cause as to why he may not be terminated from service on account of grave financial irregularities and why an amount of Rs.14,72,402.32 be not recovered from him. The appellant-petitioner was also afforded an opportunity of personal hearing and thereafter Vice Chancellor of the University directed termination of his services beside recovery of the amount of Rs.14,72,402.32. The order was communicated to the appellant on 15.03.2004.

3. The termination order passed by the Vice Chancellor was subject matter of challenge by way of an appeal before the Board of Management. The Appellate Authority kept the appeal pending because of the pendency of the criminal case against the appellant-petitioner. During this period the appellant-petitioner retired from service on attaining the age of superannuation. Aggrieved by the said inaction he filed a writ petition being Civil Writ Petition No. 14017 of 2008 which came to be disposed of by the learned Single Judge of this Court vide order dated 21.12.2009 directing the respondents to put up the statutory appeal before the Appellate Authority with a further direction to dispose of the same in accordance with law within a period of three months. In pursuance of the aforesaid direction the appeal filed by the appellant came to be considered by the Appellate Authority and the same was dismissed vide order dated 23.02.2010. After acquittal in the criminal case vide order dated 15.09.2004 upheld in appeal

vide judgment and order dated 11.05.2016, the appellant filed a writ petition challenging the termination order dated 15.03.2004 and the Appellate order dated 23.02.2010. A further relief of mandamus was claimed to command the respondents to make payment of back wages from the date of termination to the date of superannuation together with interest at the rate of 18% per annum.

4. The challenge was mainly on the ground that the termination order and the Appellate order are rendered illegal since the appellant-petitioner has been acquitted of the charges in the criminal case. Learned Single Judge vide judgment and order impugned in the appeal dismissed the writ petition.

5. Learned counsel vehemently contended that the appellant-petitioner has been acquitted in the criminal case which order has been upheld in appeal, thus the departmental proceedings are liable to be quashed and he is entitled to be reinstated back.

6. We have considered the arguments advanced and perused the record.

7. It is well settled proposition of law that the nature and scope of a criminal case are very different from a departmental disciplinary proceedings and the order of acquittal, therefore, cannot conclude the departmental proceedings. Reference may be made to the decision of the Hon'ble Apex Court in ***Nelson Motis v. Union of India (1992) 4 SCC 711***.

8. In the case of ***Capt. M.Paul Anthony v. Bharat Gold Mines and another (1999) 3 SCC 679***, Hon'ble Apex Court while considering the scope of departmental proceedings viz.a.viz. criminal prosecution has observed as under:-

“So far as criminal cases are concerned, it is well known that they drag on endlessly where high officials or persons holding high public offices are involved. They get bogged down on one or the other ground. They hardly ever reach a prompt conclusion. That is the reality in spite of repeated advice and admonitions from this Court and the High Courts. If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage. The interests of administration and good government demand that these proceedings are concluded expeditiously. It must be remembered that interests of administration demand that undesirable elements are thrown out and any charge of misdemeanour is enquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements”.

9. In the case of ***Manager, Reserve Bank of India v. S.Mani 2005(5) SCC 555***, the Apex Court observed as under:-

“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”.

10. In an identical matter before the Hon'ble Apex Court in the case of ***Commissioner of Police, New Delhi v. Narender Singh (2006) 4 SCC 265***, wherein the argument that since the respondent was discharged in

a criminal case, the order of punishment was not sustainable was repelled and it was observed as under:-

“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.”

11. The view has been reiterated by the Apex Court in the case of ***Ajit Kumar Nag v. General Manager, (PJ), Indian Oil Corporation Ltd. Haldia and others (2005) 7 SCC 764***, by observing as under:-

“11. As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. 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”. Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside.

12. The standard of proof required in recording a finding of conviction in a criminal case is distinct and different from that required in departmental proceedings. In a criminal case it is essential to prove a charge beyond all reasonable doubt whereas in departmental proceedings the preponderance of probability would serve the purpose. Thus the acquittal in a criminal case cannot be made a basis for either dropping the departmental proceedings or setting aside the punishment inflicted upon the delinquent in the said proceedings.

13. In view of the law and facts discussed hereinabove, we see no ground to take a view different from the one taken by the learned Single Judge while dismissing the writ petition of the appellant. The appeal is thus devoid of merits and accordingly stands dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

04.07.2019
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Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No