

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

**CWP-9582-2020 (O&M)
Date of Decision:13.07.2020**

Hira Lal @ Heera Lal

... Petitioner

Versus

State of Haryana & others

... Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Aditya Yadav, Advocate for the petitioner.

....

TEJINDER SINGH DHINDSA, J. (ORAL)

Matter has been taken up through Video Conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

Petitioner who was working as a Water Bill Clerk under the Public Health Engineering Sub Division, Mahendergarh office under the Public Health Engineering Department, State of Haryana was imposed the extreme penalty of dismissal from service as also recovery of the government loss of Rs.3,43,516/- vide order dated 16.05.2014 passed by the Chief Engineer (Project) Haryana (Annexure P-3).

Instant writ petition has been filed assailing the afore noticed order dated 16.05.2014 (Annexure P-3).

Counsel submits that the allegations against the petitioner were that after conduct of an audit inspection between 15.03.2012 to 22.03.2012, it came to light that the total collection as per receipts/bill book of water and sewerage charges were of an amount of Rs.29,83,345/- whereas the amount deposited by the petitioner was Rs.26,40,329/- and thereby resulting in

embezzlement of Rs.3,43,516/-. The entire case projected on behalf of the petitioner is that on the basis of these allegations, FIR bearing No.161, dated 08.05.2012 was lodged in Police Station Mahendergarh and in the trial that ensued the petitioner had earned acquittal vide judgment dated 02.08.2016 passed by the JMIC, Mahendergarh. Against the judgment of acquittal, an appeal had also been preferred by the State and which has been dismissed vide order dated 26.09.2018 by the learned Additional Sessions Judge, Narnaul (Annexure P-5). It is vehemently argued that the petitioner having been acquitted in the criminal proceedings, he is now entitled to reinstatement as the allegations have not been proved by the prosecution.

Having heard counsel for the petitioner at length and having perused the pleadings on record, this Court is of the considered view that the instant writ petition is wholly misconceived and deserves to be dismissed.

Perusal of the impugned order dated 16.05.2014 (Annexure P-3) would in itself show that against the allegations of embezzlement of Rs.3,43,516/-, the department had initiated regular departmental inquiry proceedings in terms of serving charge sheet dated 10.10.2012 upon the petitioner. Thereafter Sh. C.L. Lakhanpal, IAS (retired) was appointed as an Inquiry Officer vide office order dated 27.11.2012. Inquiry Officer submitted his report dated 04.01.2013 holding the petitioner to be guilty of remaining absent from duty and of embezzling an amount of Rs.3,43,516/-. Thereafter a show cause notice along with copy of inquiry report was also served upon the petitioner so as to enable him to submit objections/representation within a period of one month. Even though, the petitioner acknowledged the receipt of the show cause notice but he chose

not to submit his reply to the same.

In other words, the order of dismissal as also recovery of government loss of Rs.3,43,516/- is in pursuance to regular departmental proceedings initiated and concluded by the State Government.

It is by now well settled that pertaining to a set of allegation(s) against a government employee, simultaneous proceedings can be initiated i.e. Departmental inquiry proceedings under the relevant Punishment and Appeal Rules as also criminal prosecution. In the facts of the present case, both proceedings have been conducted against the petitioner. Undoubtedly, petitioner has earned acquittal in the criminal proceedings. That however, will not negate/absolve the findings recorded in the departmental inquiry proceedings and on the basis of which the order of dismissal has been passed. It is well settled in law that the parameters and scope of a departmental inquiry as opposed to criminal prosecution pertaining to the same very charge would be different. In a criminal proceedings, the guilt of accused has to be proved beyond any shadow of doubt. On the other hand, in departmental inquiry proceedings, the guiding factor is preponderance of probabilities.

In the instant case, the departmental inquiry proceedings initiated against the petitioner on the same very charge of embezzlement while serving as Water Bill Clerk have culminated in an order of dismissal after findings having been recorded against him upon following due procedure of issuance of charge sheet, appointment of Inquiry Officer, supply of inquiry report as also after issuance of show cause notice.

If the petitioner had any grievance as regards the procedure

adopted during the course of departmental inquiry, it was open for him to have assailed the order of dismissal dated 16.05.2014 (Annexure P-3) by filing a statutory appeal or having approached the competent Court of law. He concededly chose not to do so.

Petitioner cannot be permitted to gain any mileage only on account of acquittal in the trial that had ensued upon registration of FIR No.161, dated 08.05.2012.

The instant order was dictated while counsel for the petitioner had joined proceedings through video conferencing. Faced with an order of dismissal, counsel has now prayed for withdrawal of the instant writ petition with liberty to raise a challenge to the departmental proceedings that had been initiated against him vide issuance of a charge sheet dated 10.10.2012.

Even such submission is rejected and the same can only be termed as unfortunate. Counsel for the petitioner has argued at length and has taken his chance. It is only upon finding that this Court is not agreeing with him that he now wishes to withdraw the writ petition. That apart, departmental inquiry proceedings were initiated in the year 2012 and culminated in the imposition of extreme order of dismissal vide order dated 16.05.2014 (Annexure P-3). It would be too late in the day for the petitioner to be permitted to raise a challenge to the same as also to the decision making process that had led to the passing of the order of dismissal.

No merit.

Writ petition is dismissed.

13.07.2020

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |