

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

217

CWP-7336-2016

Date of Decision :17.10.2022

Poonam

...Petitioner

Versus

Rajender Singh Chahal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Shreesh Kakkar, Advocate for
Mr. Keshav Pratap Singh, Advocate for the petitioner.

Mr. Ravi Malik, Advocate and Mr. S.K. Pawar, Advocate
for respondent No.1.

Mr. Rajesh Gaur, Addl. A.G. Haryana
for respondents No.2 to 4.

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Harsimran Singh Sethi, J. (Oral)

In the present writ petition, challenge is to order dated 23.02.2016 (Annexure P/10) passed by respondent No.2, by which, the appeal filed by the respondent No.1 against the order dated 07.09.2015, (Annexure P/8), by which, respondent No.1 was dismissed from service was set aside.

The facts leading to filing of the present writ petition are that the petitioner, who was working as Guest Lecturer with the respondent-department filed a complaint against the respondent No.1 in the year 2014 of misbehaving under the influence of liquor and threatening the petitioner with dire consequences. Feeling aggrieved against the said action of respondent No.1, the petitioner along with other employees submitted a

complaint on the basis of which FIR No.64 dated 18.02.2014 was registered against respondent No.1 at Police Station Sadar, Gohana. After registration of an FIR, the disciplinary proceedings were also initiated against respondent No.1 along with other two accused by issuance of charge sheet dated 19.03.2014 and the respondent No.1 submitted the reply to the said charge sheet. Before any action could be taken on the charge sheet, the petitioner was acquitted by the competent Court of law in the said FIR. After the acquittal, the respondent No.1 filed a supplementary reply to the charge sheet informing the authorities that he has been already acquitted by the competent Court of law. The matter was enquired into by the respondent-department and ultimately vide order dated 07.09.2015 (Annexure P/8), the punishing authority dismissed the respondent No.1 from service keeping in view the fact that he was found guilty by the enquiry officer. Against the said order, an appeal was filed by respondent No.1, which appeal has been accepted by the appellate authority vide order dated 23.02.2016 (Annexure P/10) and the order of dismissal of respondent No.1 from service has been set aside, which order of the appellate authority is under challenge in the present petition.

Notice of motion was issued and the respondents have filed reply wherein, the respondents have submitted that Appellate authority considered the case of respondent No.1 keeping in view the fact that the allegations alleged against the petitioner before the department in the departmental proceedings and before the criminal Court were identical and the appellate authority in its wisdom had set aside the said order.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The first argument, which is being raised by the learned counsel for the petitioner is that the respondent No.1 was rightly held guilty by the punishing authority on the basis of the enquiry report whereas, the appellate authority merely on the ground that the petitioner has been acquitted by the competent Court of law in the criminal proceedings had set aside the order of dismissal whereas, the evidence required in the departmental proceedings is of preponderance and the evidence required in criminal proceedings is that of beyond reasonable doubt hence, the ground which is being taken by the appellate authority, is contrary to the settled principle of law.

Before examining the said argument, it is to be seen whether petitioner has any right to challenge the order, by which, the appeal filed by the respondent No.1 has been accepted. The petitioner is only a complainant and after the complaint filed by the petitioner, the department initiated the departmental proceedings in accordance with rules governing the service. Once the competent authority i.e. appellate authority has come to the conclusion that as respondent No.1 was acquitted by the criminal Court of the same allegations on the basis of the same evidence, no grievance can be made by the petitioner. The petitioner is not prejudiced in any manner as the order of dismissal was causing prejudice to respondent No.1 only, who had filed appeal against the said order and it was for the appellate authority to pass an order on the appeal of the petitioner keeping in view the facts and circumstances of the case therefore, the petitioner does not have any locus standi to challenge the order by which the appeal filed by the respondent No.1 has been accepted.

The second argument, which is being raised by the learned counsel for the petitioner is that the appeal has been accepted by the

authority, which is not competent to do so. As per the petitioner, Principal Secretary, Department of Industrial Training Government of Haryana namely, Anil Kumar was transferred on 01.12.2015 to be replaced by Mr. Roop Ram Jowel whereas, the impugned order was passed by the said Anil Kumar on 23.02.2016 when he was under transfer hence, once the office was under transfer, he could not have passed order on the appeal filed by respondent No.1. This argument of the learned counsel for the petitioner cannot be accepted for the reason that till the officer is not relieved of the charge of the post after being transferred, the officer remains competent to pass an order as the said officer continues to hold the charge of the said post despite being transferred and he/she is competent to pass an appropriate order with regard to the matters, which are placed before him/her while holding the charge of the said post. It is not denied that on the date when the order was passed i.e. 23.02.2016, Mr. Anil Kumar was holding the charge of the post of Principal Secretary, Department of Industrial Training, Government of Haryana, hence, the argument being raised by the learned counsel for the petitioner to challenge the impugned order cannot be accepted and is accordingly rejected.

Further, the petitioner has challenged the acquittal of respondent No.1 in criminal proceedings by way of filing revision petition and the said revision petition was dismissed by this Court vide order dated 25.07.2021. That being so, the petitioner has already availed the remedy available with her on criminal side but with regard to challenging order dated 23.02.2016 (Annexure P/10) passed by respondent No.2, by which, the appeal filed by the respondent No.1 against the order dated 07.09.2015, (Annexure P/8), by which, respondent No.1 was dismissed from service was

granted, petitioner does not have any locus standi to challenge the same.

Keeping in view the facts noticed hereinbefore, no ground for interference by this Court is made out and the present writ petition is accordingly dismissed.

October 17, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No