

**LPA No.1959 of 2019 (O&M)**

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

**LPA No.1959 of 2019 (O&M)**

**Date of decision:15.11.2022**

Joginder Singh

...Appellant

Versus

State of Punjab and others

...Respondents

**Coram:     Hon'ble Mr. Justice G.S.Sandhawalia  
              Hon'ble Ms. Justice Harpreet Kaur Jeewan**

**Present:**     Mr. Ranjit Saini, Advocate,  
                      for the appellant.

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**G.S.Sandhawalia, J. (Oral)**

Under consideration in the present *intra-court* appeal is the order of the learned Single Judge dated 21.08.2019 passed in CWP No.11136 of 2014, whereby the writ petition has been dismissed.

The learned Single Judge noticed the argument that the writ petitioner had been exonerated by the Arbitrator vide his award dated 25.11.2002 qua a sum of Rs.81,045/-, which was the principal amount, but came to the conclusion that it would be no ground as such to set aside the departmental proceedings since there were other charges of embezzlement against the appellant-petitioner ranging from Rs.28,277/- and went up to Rs.24,75,739/-, as per the charge sheet dated 17.02.2001. Accordingly, it was noticed that neither necessary evidence has been placed on record in the form of arbitral award/proceedings nor any other document had been appended to show that there was similar arbitral proceedings decided in favour of the writ petitioner so that he was not liable to be departmentally proceeded against. It was also noticed that the Enquiry Officer had

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exonerated the writ petitioner for three charges, namely, 9, 10 and 12, whereas for the other 10 charges, the employee as such was held negligent having caused financial loss to the Bank while performing his duty and has violated the Bank Rules.

The objection had been called from the employee by the Bank regarding the enquiry report and copy of the enquiry report had also been served upon him, who responded to the same and submitted his objections. The same had been considered by the Committee of three Directors from the Board and he was also heard by the Committee, as depicted in the Committee proceedings Annexure R-3/1 and, thereafter, on account of no material being placed on record by the employee, the punishment was proposed vide resolution dated 24.12.2011.

In such circumstances, the writ petition had been dismissed by holding that the services of the writ petitioner had been dispensed with on account of dismissal order by agreeing with the punishment proposed and there was no infirmity of any kind in it.

Counsel for the appellant has vehemently tried to re-argue on the same issue but has not been able to substantiate and place on record anything regarding the fact that there was any arbitral award in his favour, which was an overlap in the departmental proceedings. The charge sheet on the basis of which the Enquiry Officer had gone into the factual aspect reads as under:-

“Charge sheet against Sh. Joginder Singh, Clerk/ Cashier, Pakhowal Branch under suspension.

1. The recovery of S.T.A. loan of the Pakhowal C.A.S.S. members by not entering the same in the day cash bank book for committing embezzlement of Rs.690468.00 of bank funds.

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2. By not entering the recovery of consumption loan in the cash book/day book of the bank committed embezzlement of Rs.331605 of the bank.
3. By not attaching the prescribed document in the N.S.C. loan and by making payment of loan, embezzlement of Rs.55000.00 of bank funds.
4. The recovery received from the debtors of branch Pakhowal by entering late in the books of banks misuse of Rs.2255000.
5. While working in branch Pakhowal (a, b & c) to commit serious negligence while performing bank duty.
6. For giving S.T. loan to debtor members of the Pakhowal C.A.S.S. Society to make fake entry in the branch in the accounts of members.
7. By making fake entries at Branch Pakhowal in the accounts of debtors of loan cash credit revolving limit, making wrong overdraft payments.
8. To commit embezzlement/fraud of Rs.2475739.25 paise while working in Branch Pakhowal.
9. By not receiving the recovered amount of loan and by not receiving interest of Rs.28277/- to cause financial loss to the bank.
10. By not entering the recovered amount of Rs.473706/- in the concerned heads to violate the instructions.
11. While working in Branch Pakhowal to commit temporary embezzlement and to cause financial loss of Rs.35653.00 to the bank.
12. To commit negligence in performing Bank duty.
13. To erode the bank branch and to cause financial loss to the business.”

Perusal of the enquiry report would go on to show that the writ petitioner was working as a Cashier and had not entered recovery of the loan amounts in the Pakhowal Branch and had embezzled the said amount(s) and caused financial loss to the Bank. Reliance has also been placed upon the

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Special Audit Report(s) conducted in the Branch. The Enquiry Officer has, thus, placed reliance upon the factual aspect as to how the amounts were received and not deposited against the accounts of the members.

Though, in appeal, the matter had been remanded back by the Appellate Authority on the ground that there was no description of the evidence of the witnesses and the concerned Enquiry Officer was to reach the conclusion by giving reasoning of every charge. The said order had admittedly been set aside in revision by the Secretary, Cooperation while noticing that it was on the basis of the evidence adduced and was a case of embezzlement of funds in connivance with the Bank Manager. The cross revision, whereby permission was given to initiate *de-novo* proceedings by the Appellate Authority had been challenged by the appellant, was dismissed. Perusal of the enquiry report would go on to show that the Enquiry Officer has given benefit of three charges to the writ petitioner but has come to the adverse conclusion after looking into the other 10 charges and the said charges are pertaining to the financial embezzlement by the writ petitioner.

The Apex Court, in the case of **Janatha Bazar (South Kanara Central Co-operative Wholesale Stores Ltd.) vs. the Secretary, Sahakari Noukarara Sangha**, 2000(7) SCC 517, has held that it would not be appropriate to legalize by reinstatement in service an employee who is guilty of misappropriation and when there has been a breach of trust. Thus, there is no question of showing uncalled sympathy and to reinstate the employee in service, which observations would be directly applicable in the facts and circumstances of the present case. The factual aspect remains that due procedure prescribed has been followed and the appellant had been given

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due opportunity and all possible attempts including hearing before the Committee of Board of Directors was given to the writ petitioner before the dismissal order has been passed.

In the absence of any concrete evidence in favour of the appellant, the recommendation of punishment of dismissal from service had been forwarded, which was acted upon. In such circumstances, we are of the considered opinion that the Secretary was well justified in setting aside the Appellate Order which had directed the matter to be re-inquired into and till the same was done, the employee was to be kept under suspension. The said order was rightly set aside by noticing the settled position that in case of misappropriation of funds and where bogus entries were made but the amount was not deposited, there can be no leniency.

Resultantly, we are of the considered opinion that the order of the learned Single Judge does not suffer from any infirmity which would warrant interference in this intra-court appeal and hence, the same is hereby dismissed.

**(G.S. Sandhawalia)**  
Judge

**November 15, 2022**  
**Mehak/vinod\***

**(Harpreet Kaur Jeewan)**  
Judge

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