

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

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LPA No.713 of 2021 (O&M)
Date of Decision: September 6th, 2022

Ramesh Kumar

...Appellant

Versus

The Transport Commissioner, Haryana and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ALOK JAIN**

Present: Mr. Bhisham Kumar Majoka, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.1759-LPA of 2021

Prayer in this application is for condonation of delay of 521 days in re-filing the appeal.

It has been stated that initially the appeal was filed on 12.11.2018, however, the same was returned with certain objections by the Registry. Thereafter, the brief pertaining to the present appeal misplaced and it was in the month of December 2019, the same was traced out but inadvertently the appeal could not be re-filed, resulting in delay of 521 days in filing the appeal. It has further been stated that the delay in re-filing the appeal is neither intentional nor deliberate.

In view of the above, the present application which is supported by the affidavit of the Clerk of the counsel, is allowed.

Delay of 521 days in re-filing the appeal stands condoned.

CM No.1758-LPA of 2021

Prayer in this application is for condonation of delay of 68 days in filing the appeal.

For the reasons mentioned in the application, which is duly supported by an affidavit of the Clerk of the counsel, the same is allowed.

Delay of 68 days in filing the appeal stands condoned.

LPA No.713 of 2021

Challenge in this appeal is to the order dated 20.07.2018 passed by the learned Single Judge, whereby the writ petition preferred by the appellant challenging the award dated 03.10.2017 (Annexure P-6) passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Gurugram, has been dismissed.

It is the contention of learned counsel for the appellant that the Labour Court as well as the learned Single Judge have not taken into consideration the fact that in the FIR which was registered against the appellant in pursuance to the alleged bogus/forged tickets and embezzlement as well as fraud which has been alleged to have been committed by the appellant upon the respondent-Transport Department, he being working as a Conductor, has not been proved against him and the appellant has been acquitted by the Criminal Court. In the light of the acquittal of the appellant, the Labour Court should have taken that into consideration and proceeded to set aside the findings recorded by the Inquiry Officer against the appellant, which has led to the ultimate passing of the order of dismissal from service. Submission has also been made that during the pendency of the inquiry proceedings/trial in the criminal case, initially the appellant was suspended but on his reinstatement, he performed his duties for a period of five years during which no aberration on the part of the appellant was found by the department. His further contention is that the extreme punishment of dismissal is excessive in nature and the

Labour Court should have exercised its powers under Section 11-A of the Industrial Disputes Act for reducing the punishment. Having failed to exercise the said powers, the present appeal deserves to be allowed and the appellant reinstated in service.

Having considered the submissions made by the counsel for the appellant and on going through the order passed by the learned Single Judge as well as the award of the Industrial Tribunal-cum-Labour Court-II, Gurugram, we are not inclined to accept the same.

The first contention as has been raised by the counsel for the appellant is based upon the acquittal in criminal case which was registered against the appellant. The said contention cannot be accepted as the criminal cases are totally different and the aspects with regard to the evidence to be led by the parties are totally different. In a criminal case, the offence has to be proved beyond doubt, whereas in the case of civil proceedings, especially the departmental proceedings, it is the preponderance of the aspect with regard to the sufficiency to prove the allegations against the person. The said being the principles, mere acquittal in a criminal trial would not be a ground for setting aside the order of termination/dismissal passed by the competent authority of an employee.

As regards the aspect with regard to the departmental proceedings having been held against the appellant, suffice it to say that it was found that the appellant, who was a Conductor, was selling bogus/forged tickets worth ₹3,000/- leading to the commission of fraud and embezzlement upon the Transport Department, where he was employed. In the departmental inquiry, the said allegations were proved and on the basis of the said inquiry report, proper procedure has been followed for

passing an order of dismissal against the appellant. In the case of a domestic inquiry, where no illegality has been found, the scope of interference is very limited of the Industrial Tribunal and, therefore, the Court has refrained itself from interfering in the same. Tribunal does not sit as a Court of appeal and it is under these circumstances that the Tribunal had proceeded to assess the claim of the appellant while passing the award and rightly so rejected the assertion of the appellant.

As regards the plea of non-exercise of powers under Section 11-A of the Industrial Disputes Act is concerned, suffice it to say that the Court cannot interfere with the punishment which has been imposed upon an employee, where the allegations have been found to be of such a grave nature as in the present one, where selling of bogus/forged tickets, which led to the commission of fraud and embezzlement upon the department of which the appellant was an employee, cannot be said to be one where punishment of other than dismissal could have been passed. It is settled proposition of law that where embezzlement is proved to the hilt in the departmental proceedings, there can be no lenient view taken.

In the light of the above, we do not find any ground for interfering with the order passed by the learned Single Judge.

The appeal being devoid of any merit, the same stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

September 6th, 2022
Puneet

(ALOK JAIN)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No