

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

LPA-396-2023

Date of Decision: 17.04.2023

Shankar Dass Jindal

.....Appellant

Versus

State Bank of India and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

Present : Mr. V.K. Syal, Advocate,
for the appellant.

Mr. Akshay Jain, Advocate,
for the respondent.

ARUN PALLI, J.

1. This is an intra-court appeal, under Clause X of the Letters Patent, against an order and judgment dated 20.01.2023, vide which the writ petition preferred by the appellant was dismissed, for it suffered from **delay and laches**.

2. The facts that are required to be noticed are limited.

3. The appellant was employed with the State Bank of India (respondent No.1), as Head Cashier. He approached the Vigilance Bureau, Patiala, with a complaint that one Mr. V.A. Ghai (who was working with the Bank as Assistant General Manager), was demanding money from him to help him in a case relating to departmental enquiry. A raid was conducted. Whereafter, it transpired that Mr. Ghai had never demanded money and, in fact, it was the appellant, who, by forcing money upon him, was trying to falsely implicate him. Consequently, an FIR No.18 dated 04.04.2002 was registered against the appellant under Sections 7/12/13(2) of the Prevention of Corruption

Act, 1988, ('the Act'). Subsequently, vide judgment dated 13.05.2004, he was convicted under Section 12 of the Act, and sentenced to undergo rigorous imprisonment for a period of 2½ years. He appealed against his conviction to this Court. In the meanwhile, he was also charge-sheeted on 29.01.2003, for making an attempt to falsely implicate a senior officer. Per the enquiry report dated 20.02.2004, furnished by the Enquiry Officer, the charges made against him were found to have been proved. Whereupon, after affording him a show cause notice, the competent authority, vide order dated 31.05.2004, removed him from service. But with superannuation benefits and without any disqualification from future employment. The appellate authority, vide order dated 15.01.2005, dismissed his appeal and affirmed the punishment imposed upon him. Later, since his appeal, as indicated earlier, against conviction was pending, this Court, vide judgment dated 28.02.2019, allowed the same and acquitted the appellant. He, post acquittal, claimed to have repeatedly represented to the authorities to reinstate him in service. But to no avail. Accordingly, he approached this Court vide a writ petition, which, as indicated above, has since been dismissed on account of **delay and laches**.

4. We have heard learned counsel for the appellant and perused the records.

5. *Ex facie*, vide order dated 31.05.2004, a penalty of removal from service was imposed upon the appellant. The said order was preceded by a regular departmental enquiry. Having examined the records, we find that, at each stage of the departmental proceedings, he was afforded due notice and opportunity. The principles of natural justice were duly complied with. There was no violation of any statutory provision/rule either. The conclusions arrived at by the Enquiry Officer were specific and based upon the material on record.

The appeal preferred against the order of punishment was dismissed by the appellate authority on 15.01.2005. For the appellant accepted the order of punishment, the same attained finality. Thus, apparently, the writ petition preferred by him, after over 17 years, on 20.09.2022, assailing those orders, suffered from gross, inordinate and unexplained delay. Albeit, even the judgment dated 28.02.2019 (*ibid*), as would be demonstrated in the successive paragraph, would not advance the cause of the appellant either, but even after passing of the said decision, the appellant approached this Court after over 3½ years.

6. ***In Chairman, U.P. Jal Nigam and another Vs. Jaswant Singh and another, 2006 (11) SCC 464***, the Supreme Court had observed that the litigant, who is guilty of long delay and laches, is deemed to have acquiesced or waived off his claim or right. Similarly, in ***the State of M.P. and others Vs. Nandlal Jaiswal and others, 1986 (4) SCC 566***, as regards Rule of delay and laches, in context of the discretionary, equitable and extra-ordinary jurisdiction exercised by the Court under Article 226 of the Constitution, the Supreme Court observed:

“24 Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extra ordinary remedy under

the writ jurisdiction because it is likely to cause confusion and public inconvenience and brings in its train new injustices...”

7. We may now advert to the argument that since the appellant was acquitted in a criminal case, it would vitiate the departmental proceedings in issue.

8. Apparently, the offence for which the appellant was tried in the criminal case was materially and substantially different than the misconduct for which he was proceeded against in the departmental proceedings. Suffice it to say, in the criminal case, he was tried for abetting the offence of bribery. Whereas, in the departmental proceedings, the charges against him were that he tried to falsely implicate Sh. V.A. Ghai, Assistant General Manager, Region-III, Patiala, by making an attempt to bribe him. We are, rather, reminded to point out that the ground that formed basis of his **acquittal**, in fact, proves the misconduct for which he was charge-sheeted: ***“In the present case, the appellant had no intention to pay a bribe and his intention was actually to falsely implicate Mr. V.A. Ghai. In the context of the Prevention of Corruption Act a genuine bribe giver can be an abettor but a complainant can never be an abettor.”***

9. The position of law is settled that acquittal in a criminal case, by itself, cannot be a ground to set aside the order of punishment passed by the disciplinary authority. It does not automatically result in vitiating the disciplinary proceedings and reinstatement of the delinquent employee. Needless to assert that standard of proof required to establish the charges against the accused in a criminal trial and the misconduct against the delinquent employee in the disciplinary proceedings are altogether different. In the first, the guilt has to be established beyond reasonable doubt, whereas in the other the

charges can be proved on preponderance of probability. We may, at this stage, refer to the decision of the Supreme Court in **The State of Rajasthan and others Vs. Heem Singh, 2020 SCC OnLine SC 886.**

10. Further, the Supreme Court in **Deputy Inspector General of Police and another Vs. S. Samuthiram, 2013 (1) SCC 598,** observed that even if an employee is honourably acquitted by a Criminal Court, in the absence of any provision in the service rules for reinstatement, no right is conferred upon him to claim any benefit, including reinstatement:

“26. As we have already indicated, in the absence of any provision in the service rule for reinstatement, if an employee is honourably acquitted by a Criminal Court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to

claim reinstatement since the Tamil Nadu Service Rules do not provide so.”

27. We have also come across cases where the service rules provide that on registration of a criminal case, an employee can be kept under suspension and on acquittal by the criminal court, he be reinstated. In such cases, the re-instatement is automatic. There may be cases where the service rules provide in spite of domestic enquiry, if the criminal court acquits an employee honourably, he could be reinstated. In other words, the issue whether an employee has to be reinstated in service or not depends upon the question whether the service rules contain any such provision for reinstatement and not as a matter of right. Such provisions are absent in the Tamil Nadu Service Rules.”

11. Nothing is indicated if there exists any such rule, governing the service conditions of the appellant that postulates reinstatement in service upon an employee being acquitted by a court in a criminal case.

12. Thus, in the wake of the position sketched out above, the only and the inevitable conclusion that could be reached was/is: not only the petition, filed by the appellant, suffered from gross, inordinate and unexplained delay, but also lacked bonafides, and was speculative in nature.

13. In conspectus of the above, we are dissuaded to interfere with the impugned judgment. The appeal, being devoid of any merit, is accordingly dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

17.04.2023
AK Sharma

Whether speaking/reasoned	Yes
Whether reportable	Yes/No