

CM-6996-CWP-2023 in/ &
CWP-30488-2018 (O&M) &

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2023:PHHC:140786

CM-6998-CWP-2023 in/ &
CWP-30478-2018 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

107+243 (02 cases)

(1) CM-6996-CWP-2023 in/ &
CWP-30488-2018 (O&M)
Date of Decision :-06.11.2023

Rakesh Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

(2) CM-6998-CWP-2023 in/ &
CWP-30478-2018 (O&M)

Rakesh Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. J.K. Goel, Advocate and
Mr. Shvetanshu Goel, Advocate for the petitioner(s).

Mr. Harish Rathee, Senior DAG, Haryana.

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Harsimran Singh Sethi, J. (Oral)

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Applications are allowed as prayed for.

Replication to the written statement filed in the respective cases
are taken on record.

Main cases

Present petitions have been filed challenging the charge sheets

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dated 12.12.2011 and 13.11.2009 as well as letter/communication dated 15.10.2018, copies of which are appended with the present petitions as Annexures P-2 to P-7 and Annexures P-3 to P/5 respectively.

2. Certain facts are needed to be mentioned for the correct appreciation of the issue in hand.

3. Petitioner was appointed as Clerk under the ex-gratia policy on 20.05.2002 with the respondent-department. In the year 2009, the petitioner was issued a charge sheet dated 13.11.2009 raising certain allegations thereafter in the year 2011, another charge sheet was issued to the petitioner. The said charge sheets were pending with the respondents when the present petition was filed challenging the charge sheet dated 13.11.2009 as well as letter/communication dated 15.10.2018 to proceed with the proceedings in respect of the charge sheet.

4. Learned counsel for the petitioner argues that there is a delay in concluding the disciplinary proceedings hence, delay itself is a good enough reason to quash the charge sheets. Learned counsel for the petitioner relies upon the judgment of the Hon'ble Supreme Court of India in **Civil Appeal No.1101-1995 titled as State of Punjab vs. Chaman Lal Goyal decided on 31.01.1995** to contend that where the disciplinary proceedings are under challenge on the ground of delay, the Court has to consider the nature of offence, circumstances leading to delay and prejudice going to be caused to the delinquent on account of delay and the Court can pass an appropriate order for mitigating the grievance of the delinquent.

5. Learned counsel for the respondents submits that in the present

case, the allegations alleged against the petitioners relate to the Prevention of Corruption Act. Learned counsel for the respondents further submits that keeping in view the criminal proceedings, which were pending against the petitioners, no action was taken by the department so as to proceed only after the conclusion of the criminal proceedings. After the conclusion of the criminal proceedings, the respondent-department issued a letter so as to continue with the charge sheets and now the same are to be concluded but keeping in view the interim order passed by the Coordinate Bench of this Court, the said proceedings could not be completed.

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

7. The only argument which has been raised by the learned counsel for the petitioners is that the charge sheets were issued in the year 2009 and 2011 but no action was taken by the respondent-department against the said charge sheets for a sufficient period hence, the charge sheets deemed to have been lapsed after expiry of a period of 08 years hence, the respondent-department cannot proceed with the disciplinary proceedings.

8. The said argument of the learned counsel for the petitioners cannot be accepted for the reason that allegations alleged against the petitioners relates to the Prevention of Corruption Act and the same are serious in nature. Though, the petitioners have already been acquitted in the criminal proceedings but as per the settled principle of law settled by the

Hon'ble Supreme Court of India in **Civil Appeal No.1763-1764 of 2022**

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titled as The State of Karnataka and another vs. Umesh, decided on

22.03.2022, mere acquittal in the criminal proceedings does not give right to an employee to claim that no departmental proceedings could be held thereafter. Reliance being placed on the settled principle of law settled by the Hon'ble Supreme Court of India in Umesh's case (supra). Relevant paragraph of the said judgment is as under:-

“13 The principles which govern a disciplinary enquiry are distinct from those which apply to a criminal trial. In a prosecution for an offence punishable under the criminal law, the burden lies on the prosecution to establish the ingredients of the offence beyond reasonable doubt. The accused is entitled to a presumption of innocence. The purpose of a disciplinary proceeding by an employer is to enquire into an allegation of misconduct by an employee which results in a violation of the service rules governing the relationship of employment. Unlike a criminal prosecution where the charge has to be established beyond reasonable doubt, in a disciplinary proceeding, a charge of misconduct has to be established on a preponderance of probabilities. The rules of evidence which apply to a criminal trial are distinct from those which govern a disciplinary enquiry. The acquittal of the accused in a criminal case does not debar the employer from proceeding in the exercise of disciplinary jurisdiction.”

9. The simple delay itself is no ground to quash the charge sheet unless and until a prejudice is shown to have been caused to an employee, which has occurred due to the delay in concluding the departmental proceedings and the same can be looked into by the Court and an appropriate order can be passed qua the challenged charge sheet.

10. In the present case, no prejudice caused has been shown by the petitioners on account of delay except the statement that the petitioners could not get promotion due to the pendency of the charge sheet.

11. It may be noticed that for the last 05 years, keeping in view the interim order passed by a Coordinate Bench of this Court, departmental proceedings could not be culminated. Furthermore, all these grounds can be agitated by the petitioner before the authorities concerned.

12. In the absence of any prejudice shown to have been caused to the petitioners, merely the contention that the simple delay is a good enough ground to quash the charge sheet, cannot be accepted. Even in *Chaman Lal Goyal (supra)*, it has been held that wherever, there is a delay, the Court is to see the intensity of the charges alleged as well as any prejudice caused to the delinquent.

13. In the present case, the allegations alleged against the petitioner relate to Prevention of Corruption Act, which are serious in nature and as stated hereinbefore, no prejudice which has been caused to the petitioner has been brought to the notice of this Court hence, the reliance being placed by the petitioner on the case of *Chaman Lal Goyal (supra)* is totally misplaced.

14. At this stage, learned counsel for the petitioner submits that the petitioner was acquitted in the year 2010 in the criminal proceedings and the charge sheets were issued in the year 2009 and 2011 and for the next 07 years, the respondents had not proceeded hence, the charge sheets are liable to be quashed.

15. As noticed hereinbefore even if, respondents have not mentioned any valid reason for not concluding the disciplinary proceedings but petitioners have not been able to show any prejudice caused to them due to the delay and mere simple delay on the part of the respondent will not give a right to the petitioner to claim quashing of the charge sheet especially when charges are serious in nature being related to Prevention of Corruption Act.

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16. Keeping in view the above, no ground for interference by this Court is made out and both the petitions are accordingly dismissed. However, this Court is not opining anything on the merit of the case and the petitioners are free to raise all the objections before the authorities concerned.

17. Civil miscellaneous application pending, if any, is also disposed of.

18. Copy of this order be placed on the file of connected case.

November 06, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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