

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

(256)

RSA-2407-2017 (O&M)

Date of Decision : May 24, 2023

Shashi Kumar

.. Appellant

Versus

State of Punjab and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Gurbuneet Singh Randhawa, Advocate, for the appellant.

Mr. Rozer Kumar Aggarwal, Assistant Advocate General,
Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-5839-C-2017

As prayed for, the application is allowed.

RSA-2407-2017

1. In the present Regular Second Appeal, the challenge is to the judgment and decree of the lower Appellate Court dated 25.01.2017 by which, the judgment and decree of the trial Court dated 09.03.2016 has been set aside and the suit filed by the appellant-plaintiff has been dismissed.

2. Certain facts may be noticed for the correct appreciation of the issue in hand.

3. The appellant-plaintiff was working as a Constable in the Punjab Police and while he was posted in Gurdaspur, an FIR was registered

against him being FIR No.24 dated 23.02.2007 under Sections 379 and 34 of the IPC. Keeping in view the registration of the said FIR, a departmental enquiry was also ordered wherein, the allegations were proved and vide order dated 12.09.2012, punishment of forfeiture of three years approved service for the purpose of increment with cumulative effect was imposed upon the appellant-plaintiff. Thereafter, the appellant-plaintiff filed departmental appeal against the said order of punishment dated 12.09.2012 but the said appeal was dismissed vide order dated 10.10.2013. The said punishment orders were challenged by the appellant-plaintiff before the Civil Court on the ground that in the criminal proceedings, the appellant-plaintiff was acquitted vide order dated 05.08.2011.

4. The trial Court keeping in view the evidence and facts which came on record held that once the appellant-plaintiff has been acquitted by the competent Court of law in the criminal proceedings which also involve the similar allegations, the order passed in the departmental proceedings holding the appellant-plaintiff as guilty, cannot sustain and the order of punishment as well as order passed in appeal were set aside and three increments which were stopped were ordered to be restored.

5, Feeling aggrieved against the judgment and decree dated 09.03.2016 of the trial Court, State appeal was preferred before the lower Appellate Court which came to be allowed on 25.01.2017. The lower Appellate Court reversed the findings recorded by the trial Court and the suit filed by the appellant-plaintiff was dismissed by recording a finding was recorded that as being claimed by the appellant-plaintiff that his case is covered under Rule 16.3 of the Punjab Police Rules, the same was distinguishable keeping in view the fact that in the present case, the

complainant had turned hostile and did not support the complaint, which complaint existed before the Department and was filed by the complainant himself, hence, the findings recorded by the Enquiry Officer in the departmental proceedings, cannot be set aside merely on the ground that the appellant-plaintiff was acquitted of the charges in the criminal proceedings. Hence, the present Regular Second Appeal.

6. Learned counsel for the appellant-plaintiff argues that once the appellant-plaintiff was acquitted of the charges associated with FIR No.24 dated 23.02.2007 by the competent Court of law, the same allegations cannot be proved in the departmental proceedings. Hence, the findings recorded by the lower Appellate Court are perverse.

7. Learned counsel for the appellant-plaintiff further argues that keeping in view Rule 16.3 of the Punjab Police Rules, once the appellant was acquitted of the charges, no departmental enquiry could have been held.

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

9. It may be noticed that the proof required to prove the guilt in the criminal trial is beyond reasonable doubt whereas, the proof required in the departmental proceedings is preponderance of the facts. In the present case, in the departmental enquiry, due opportunities were given to the appellant-plaintiff to defend himself and keeping in view the evidence which came before the Enquiry Officer, the charges alleged against the appellant-plaintiff were proved. Merely that the complainant had turned hostile in the criminal proceedings, the same will not render the disciplinary proceedings bad. Hence, the findings recorded by the lower

Appellate Court cannot be treated as perverse to the settled principle of law.

10. Further, as per the judgment of the Hon'ble Supreme Court of India in ***Civil Appeal No.1763-1764 of 2022 titled as State of Karnataka and another vs. Umesh decided on 22.03.2022*** that even after acquittal in the criminal proceedings, the Department can initiate the departmental proceedings. The said settled principle of law clearly goes against the argument being raised by the learned counsel for the appellant that once in the criminal trial, an accused has been acquitted, no departmental proceedings can be held, hence the said argument cannot be accepted being contrary to the settled principle of law. The 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 proceedings 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.”

11. Further, the argument raised by the learned counsel for the appellant that keeping in view Rule 16.3 of the Punjab Police Rules, once the appellant was acquitted of the charges in the FIR No.24 dated

23.02.2007, departmental enquiry could not be held, cannot be accepted for the reason that as per the exception provided to Rule 16.3 of the Punjab Police Rules, which have already been discussed in detailed by the lower Appellate Court in paragraph 14 of the judgment dated 25.01.2017, the departmental proceedings can be held if, the prosecution witnesses have been won over. In the present case, the complainant though got FIR registered, was declared hostile during his testimony, which fact clearly shows that in the facts and circumstances of the present case, Rule 16.3 of the Punjab Police Rules will not be in hindrance to hold departmental enquiry against the appellant.

12. No other argument was raised.

13. Keeping in view the above, no ground is made out for any interference by this Court as learned counsel for the appellant has not been able to point out any perversity qua the facts and evidence on record qua the judgment of the lower Appellate Court.

14. Dismissed.

May 24, 2023

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No