

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(108) LPA-279-2024 (O&M)
Decided on : 30.04.2024

Islam AhmedAppellant(s)
Versus

State of Haryana and othersRespondent(s)

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA,
ACTING CHIEF JUSTICE
HON'BLE MS.JUSTICE LAPITA BANERJI

Present: Mr. Amit Bansal, Advocate for the appellant (s).

Mr. Deepak Balyan, Addl. AG, Haryana.

G.S. Sandhawalia, Acting Chief Justice (Oral)

CM-2565-LPA-2024

Application for placing on record charge framed by Criminal Court as Annexure P-4, in compliance of the order dated, is allowed, subject to just exceptions. Said document is taken on record. Office to append the same at the relevant place.

CM stands disposed of.

CM-642-LPA-2024

Application for condonation of delay of 20 days in filing the appeal, is allowed, in view of the averments made in the application, duly supported by affidavit. Delay of 20 days in filing the appeal is condoned.

CM stands disposed of.

LPA-279-2024 (O&M)

Consideration in the present letters patent appeal is sought of the order of the learned Single Judge dated 04.12.2023 passed in CWP No.22365

to pursue the departmental proceedings. Challenge in the writ petition was that during the pendency of the trial in case FIR No.5 dated 14.09.2020 (Annexure P-1) registered under Section 7 of the Prevention of Corruption Act, departmental proceedings should be stayed.

2. The Learned Single Judge has noticed that all the common witnesses in the departmental proceedings have been examined and, thus, the present writ petition has been rendered infructuous. An effort was also made for recalling the said order by filing CM-181-CWP-2024, which was dismissed on 11.01.2024, which is also subject matter of challenge herein. The Learned Single Judge again reiterated that employee has already cross-examined the common witnesses and, thus, the plea of prejudice cannot be raised.

3. Counsel for the appellant lastly submitted that since the Investigating Officer has not been examined, the departmental proceedings should be kept in abeyance.

4. We are not in agreement with the argument raised by the counsel for the appellant. A perusal of the paper-book would go on to show that the FIR was lodged 3½ years back and the charge was framed by the Criminal Court on 01.06.2022. The departmental proceedings are already at an advanced stage. The purpose of the departmental proceedings is to ensure that the persons against whom there are serious allegations of mis-conduct are not to be kept in service. Merely on account of the fact that the trial in the criminal proceedings is going on, the appellant cannot seek the benefit to continue in service, in case there is no report against him.

5. Reliance can be placed upon the observations of the Apex Court in **Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd., 1999 (3) SCC 679** wherein it has been held the departmental proceedings cannot be unduly delayed and even if the criminal proceedings do not proceed, the departmental proceedings, even if they have been stayed, the same can be resumed and proceeded with. Similarly reliance can also be placed upon the judgments of the Apex Court rendered in **Indian Overseas Bank, Anna Salai and another vs. P. Ganesan and others, (2008) 1 SCC 650; Kendriya Vidyalaya Sangathan and others vs. T. Srinivas, (2004) 7 SCC 442; State Bank of India and others vs. Neelam Nag and another, (2016) 9 SCC 491** and **The Divisional Controller, Karnataka SRTC vs. M.G. Vittal Rao, (2012) 1 SCC 442** and a judgment of the Coordinate Bench rendered in **CWP-7539-2021, Dr. Balwinder Kumar Sharma vs. Hon'ble Punjab and Haryana High Court through Registrar General**, decided on 28.05.2021.

6. In **LPA-565-2020, State of Haryana and others vs. Satish Kumar** decided by Division Bench of this Court on 30.05.2022, authored by one of us G.S. Sandhawalia, J., we allowed the appeal of the State and dismissed the writ petition by keeping in mind the difference and scope of criminal proceedings and departmental proceedings and the SLP filed against the same i.e. **Special Leave to Appeal (C) No. 15243 of 2022** was also dismissed on 10.11.2022.

7. In **State of Karnataka and others vs. Umesh, 2022 SCC Online SC 345**, the employee had been proceeded against under the provisions of Prevention of Corruption Act, 1988 and had been acquitted after giving him the benefit of doubt. Resultantly, the Apex Court had gone on to hold that the principles which govern a disciplinary inquiry are distinct from those which

apply to a criminal trial and in the former, the charge has to be established beyond reasonable doubt whereas in the later, the charge of misconduct has to be established on the principle of 'preponderance of probabilities'. It was also held that the rules of evidence which apply to both the procedures are distinct.

8. A three-Judge Bench of the Apex Court in **Shashi Bhusan Prasad vs. Inspector General, Central Industrial Security Force and others, (2019) 7 SCC 797** held that the two proceedings i.e. criminal and departmental operate in different fields and have different objectives. The objective of criminal trial is to inflict appropriate punishment on an offender whereas the purpose of inquiry proceedings is to deal with the employee departmentally and to impose penalty in accordance with the Service Rules. 9. Similar view was also taken in **LPA-2096-2017, State of Haryana and others vs. Suresh Punia**, decided on 09.09.2022 by Division Bench of this Court in which one of us i.e. G.S. Sandhawalia, J. was member. **SLP (Civil) bearing Diary No.22 of 2023** filed against the same also stands dismissed on 16.01.2023.

9. In such circumstances, we are not inclined to interfere in the order of the Learned Single Judge. It is settled principle that the departmental proceedings always proceed on a different footing wherein preponderance of probabilities is to be kept in mind, whereas on the criminal side the principles are that the prosecution has to prove his case beyond a shadow of doubt on the basis of the evidence of stellar quality. Resultantly, we do not think it is a fit case to exercise extra-ordinary jurisdiction under Article 226/227 of the Constitution of India, since finding of the Learned Single Judge does not suffer from any infirmity.

10. Resultantly, in view of the above discussion, the present appeal is hereby dismissed. All pending applications are also disposed of.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

30.04.2024
Naveen

(LAPITA BANERJI)
JUDGE

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