

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(111) CM-1723-LPA-2024 in/and
LPA-373-2024 (O&M)
Decided on : 18.03.2024

Rakesh KumarAppellant(s)
Versus
State of Haryana & othersRespondent(s)

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

Present: Mr.Parvesh K.Saini, Advocate for the applicant-appellant (s).
Mr.Deepak Balyan, Addl.A.G., Haryana.

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

CM-1723-LPA-2024

1. Application for placing on record additional documents as Annexures A-3 & A-4 is allowed, in view of the averments made in the application duly supported by affidavit of the appellant. Same are taken on record, subject to just exceptions. Office to append the same at appropriate place.

2. CM stands disposed of.

CM-867-LPA-2024

3. Application for condoning the delay of 18 days in filing the appeal is hereby allowed in view of the averments made in the application duly supported by affidavit of the appellant. Delay of 18 days in filing the present appeal is hereby condoned.

4. CM stands disposed of.

LPA-373-2024 (O&M)

5. Consideration in the present appeal is to the judgment passed by

said writ petition had been dismissed. The relief claimed was for quashing of the order dated 05.09.2023 (Annexure P-5) wherein disciplinary proceedings had been initiated by the Superintendent of Police against the writ petitioner, Head Constable Rakesh Kumar. Similarly, the charge-sheet issued in the departmental proceedings dated 11.09.2023 (Annexure P-6) was also subject matter of challenge.

6. The Learned Single Judge found that though there was also a criminal case registered bearing FIR No.22 dated 24.08.2023 under Section 384 IPC and Section 7 of the Prevention of Corruption Act, 1988 (for short, the 'PC Act') but no complicated question of law was involved. The list of witnesses in the departmental proceedings had been annexed but no list of witnesses in the criminal case had been annexed and therefore, it could not be ascertained as to who were the common witnesses. The Learned Single Judge placed reliance upon the initial law which had been laid down in the celebrated judgment of the Apex Court in **Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd., 1999 (3) SCC 679** and the subsequent judgments reported in **Kendriya Vidyalaya Sangathan & others Vs. T.Srinivas, 2004 (7) SCC 442**, **Indian Overseas Bank, Anna Salai & another Vs. P.Ganesan & others, 2008 (1) SCC 650**, **Karnataka SRTC Vs. M.G.Vittal Rao, (2012) 1 SCC 442** and **State Bank of India & others Vs. Neelam Nag & another, 2016 (9) SCC 491** and the judgments of the Division Bench of this Court in CWP-7539-2021 titled *Dr.Balwinder Kumar Sharma Vs. Hon'ble Punjab & Haryana High Court through Registrar General*, decided on 28.05.2021 and LPA-239-2022 titled *Paramjit Kaur Vs. Punjab & Sind Bank & others*, decided on 24.03.2022, to dismiss the writ petition.

7. Vide CM-1723-LPA-2024, additional documents have now been placed on record whereby the charge-sheet which was prepared by the Addl.Sessions Judge, Hisar dated 11.12.2023 is sought to be placed on record as Annexure A-3. Similarly, the list of witnesses in the above-said FIR by way of additional documents have also been placed on record. A perusal of the charge-sheet would go on to show that the Criminal Court came to the conclusion that prima facie case was made out and accordingly, framed the charge under Section 384 IPC which is of extortion by threatening the complainant by falsely implicating him in a case of kidnapping and for having received Rs.10,000/-. Similarly, the charge under Section 7 of the PC Act for illegal gratification for not implicating the complainant in the case of kidnapping was also framed apart from the charge under Sections 7, 13(1)(b) read with Section 13(2) of the PC Act.

8. A perusal of the departmental charge-sheet would go on to show that the statement of allegations were regarding serious dereliction and carelessness in government duty, having tarnished the image of Police Department in public and having misused the post. In such circumstances, it is apparent that the charge in the departmental proceedings and the criminal proceedings are operating in two different fields. The charges have to be proved in a different manner in as much as in criminal proceedings, the charges have to be proved beyond the shadow of doubt whereas in departmental proceedings, on the principle of preponderance of probabilities. The Learned Single Judge has also taken notice of the developments which had taken place over the period of time. The charge has recently been framed in December, 2023, as placed on record and the trial is likely not to conclude in the near future. In such circumstances, the loss of confidence on having

misused his post and the manner in which he has behaved would have to be considered in the departmental proceedings.

9. The principle of law is that the criminal proceedings and departmental proceedings can proceed simultaneously and there is no bar as they operate in different fields. It is a matter of common knowledge and experience that criminal cases drag on endlessly and get bogged down on one or the other ground and the chances of reaching to a logical end expeditiously is almost impossible as it is in the interest of the accused that the proceedings drag on forever. Disciplinary proceedings are thus meant to keep the administration clean and the loss of confidence is an important factor with the employer and for this purpose, the disciplinary proceedings should be concluded at the earliest. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different as in criminal proceedings, the prosecution has to prove its case beyond the shadow of doubt whereas in departmental proceedings, on the preponderance of probabilities that a person can be removed from service arise in the facts and circumstances so that appropriate punishment can be imposed. Reliance can be placed upon the judgment of the Apex Court in **State of Rajasthan Vs. B.K.Meena, (1996) 6 SCC 417.**

10. The said view was then followed in **Lalit Popli Vs. Canara Bank & others, 2003 (3) SCC 583** wherein it was held that approach and object are altogether distinct and different in both the proceedings and while exercising jurisdiction under Article 226 of the Constitution of India, the Writ Court does not act as an Appellate Authority and it is only to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice.

11. Similar view was also taken in **Chairman-cum-M.D.,T.N.C.S. Corpn. Ltd. Vs. K.Meerabai 2006 (2) SCC 255** wherein the Apex Court set aside the Division Bench judgment of the High Court by noting as under:

“23. The learned Judges of the Division Bench who dismissed the writ appeal filed by the Corporation upheld the patently erroneous judgment of the learned single Judge virtually on all those grounds and reasons which had appealed to the learned single Judge. While passing the impugned judgment, the learned Judges have lost sight of the following:-

(i) The scope of the Criminal Proceedings in a Criminal Code and the scope of disciplinary proceedings in a departmental enquiry are quite distinct, exclusive and independent of each other;

(ii) The Criminal Proceedings in the Court of the Chief Judicial Magistrate and Disciplinary Proceedings were on totally different sets of facts and charges;

(iii) The order of dismissal dated 28.11.1991 (Annexure P-5) passed by the Disciplinary Authority and the order dated 16.6.1994 of the Appellate Authority, dismissing the respondent's Departmental Appeal are exhaustive orders, incorporating the statement of the correct and relevant facts of the case and impeccable conclusions based on dispassionate appreciation of the evidence on record and supported by legally irrefutable reasons.

24. In our opinion, both the learned single Judge and the learned appellate Judges of the High Court failed to consider and appreciate dispassionately and judicially the Corporation's most emphatically pronounced plea that it would be virtually impossible for them to reinstate the respondent who was found in the departmental enquiry guilty of mis-appropriation and other malpractices causing thereby enormous loss in stock and cash to the Corporation, an institution primarily concerned with the distribution of essential commodities

among the weaker sections of the population of the State of Tamil Nadu whose dismissal from service has been upheld by the appellate authority vide its very detailed, well-considered and well-reasoned verdict and in whose integrity, honesty and trustworthiness the Corporation have lost their faith completely and absolutely.”

12. Reliance can also be placed upon the judgment of the Apex Court in **Maharashtra State Road Transport Corporation Vs. Dilip Uttam Jayabhay, 2022 (1) SCT 340** wherein while allowing the appeal, the Apex Court upheld the order of dismissal of the workman from service passed by the disciplinary authority. In the said case, the workman was working as Driver and plying a passenger bus and met with an accident with a jeep. He was also proceeded under Section 279 IPC and came to be acquitted and therefore, got reinstatement since the Industrial Tribunal came to the conclusion that drivers of both the vehicles were negligent. The said order had been upheld by the High Court and was then taken to the Supreme Court wherein the reasoning which prevailed with the Apex Court was that the Industrial Court was in error in laying stress on the acquittal of the workman by the Criminal Court. The fact that disciplinary proceedings had been initiated and it was on conclusion of an enquiry he had been dismissed by noting that the workman was driving the vehicle at a great speed and pushed the jeep back by 25 feet. Resultantly, it was held that the workman was negligent and it could not be said that the dismissal was shocking and disproportionate or that it was unfair labour practice. The record of the case had also been seen that the workman was in service for 3 years and was punished 4 times during that period.

11. In such circumstances, we are of the considered opinion that the Learned Single Judge, keeping in view the settled principle, did not err in any

present appeal, the same is hereby dismissed. All pending application(s) including CM-868-LPA-2024 for additional evidence also stand disposed of.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

18.03.2024
Sailesh

(LAPITA BANERJI)
JUDGE

Whether speaking/reasoned :	Yes	
Whether Reportable :		No