

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
Neutral Citation No. 2024:PHHC:058969-DB

(110) LPA-509-2024 (O&M)
Decided on : 30.04.2024

Gurbachan Singh @ Gurbachan DassAppellant(s)

Versus
State of Punjab and othersRespondent(s)

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

Present:- Mr. Nikhil Sabharwal, Advocate for the appellant.

Mr. Saurav Khurana, Addl. AG, Punjab.

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

CM-1231-LPA-2024

Application for condonation of delay of 23 days in filing the appeal, is allowed, in view of the averments made in the application, duly supported by affidavit. Delay of 23 days in filing the appeal is condoned.

CM stands disposed of.

LPA-509-2024 (O&M)

Consideration in the present letters patent appeal is sought of the order dated 12.12.2023 of the learned Single Judge passed in CWP-26677-2015, whereby the writ petition filed by the appellant was dismissed. The learned Single Judge chose not to interfere in the punishment order of forfeiture of one year service, which was awarded by the punishing authority vide order dated 05.03.2010 (Annexure P-3). The same was further upheld in appeal by the Appellate Authority on 26.11.2010 (Annexure P-5) and by the Revisional Authority vide order dated 27.04.2011 (Annexure P-7). The mercy

petition was also dismissed on 29.05.2012 (Annexure P-11) by the Secretary, Department of Home, Government of Punjab.

2. The Learned Single Judge was primarily of the view that under Article 226/227 of the Constitution of India scope of interference is very limited regarding the issue of punishment. Reliance was placed upon judgment of the Apex Court in **Union of India and others Vs. Subrata Nath, 2022 LiveLaw (SC) 998** and **Union of India and others Vs. P. Gunasekaran, 2015 AIR (Supreme Court) 545** to come to the said conclusion. The ground which prevailed with the Learned Single Judge was that the writ petitioner was head of the security team and was posted at Passport Office, Khanna and the FIR No.133 dated 24.07.2009 had been registered under Sections 420, 467, 468, 471 and 120B IPC against different persons regarding preparing of fake passports.

3. The reasoning given by the punishing authority as such was that above referred FIR No.133 was registered against Avtar Singh and Tarlochan Singh regarding the preparing of fake passports of the people with wrong names and addresses after preparing forged voter cards and forged ration cards. The same was being done in connivance with the officials of government departments. The allegations against the present appellant were that he did not bring the said fact into the notice of any senior officials. In such circumstances the inquiry was initiated. Keeping in view the fact that the departmental inquiry had been conducted and on the basis of the said allegations, show cause notice dated 09.02.2010 (Annexure P-2) was issued as to why three years regular services be not forfeited. Resultantly, keeping in view the reply submitted and the personal appearance of the appellant, the order was passed forfeiting only one year service. It was noticed that a lenient

view was already being taken and being the dealing hand, it was the responsibility of the appellant to prepare correct passports. By noting that only one year permanent service was being forfeited, in spite of the proposal of three years of forfeiture of service, which had been given, the said order had been passed which has been duly upheld on the departmental side.

4. Counsel for the appellant has tried to convince us by pointing out that in FIR No.132 dated 23.07.2009 Avtar Singh son of Devinder Singh and other accused have been given benefit of doubt. He has referred to the order of Judicial Magistrate 1st Class, Khanna dated 25.01.2017, now placed on record as Annexure AX1 by way of application for placing additional evidence. It is, accordingly, argued that the basis that the documents were forged has not been substantiated. It is also pointed out that in the said FIR some zimni orders were recorded mentioning the fact of his knowledge and same could be used for recording conviction by referring to Annexure AX2.

5. On the other hand counsel for the State has specifically pointed out that the said accused were also involved in FIR7 No.133 dated 24.07.2009 (Annexure R-1) which was also registered against the same Avtar Singh, Tarlochan Singh on the same set of allegations regarding preparing of false passports.

6. A perusal of the above facts would go on to show that the said person is a habitual offender and benefit of doubt having been granted cannot take away the preponderance of probabilities which is the standard of proof in the departmental proceedings, which are based on a totally different concept, rather than the principle which would apply in criminal proceedings regarding the fact that the prosecution has to prove its case beyond any shadow of doubt.

Challenge as such was also raised to the inquiry report before the Learned Single Judge.

7. In such circumstances, once the punishment order has been passed on the basis of the material available on record, the argument which has now been raised is without any basis. Resultantly, keeping in view the settled principle it is not for the Writ Court to interfere with the punishment which has been imposed on the departmental side unless it shocks the conscience of the Court and is per se arbitrary, is beyond the scope of judicial review. The Learned Single Judge has, thus, chosen not to interfere and we do not find any tangible reason to take a different view than what the Learned Single Judge has taken. The present appeal is, accordingly, dismissed. All pending applications including **CM-1232-LPA-2024** for additional evidence are also disposed of.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

30.04.2024
Naveen

Whether speaking/reasoned :	Yes
Whether Reportable :	No