

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(101) LPA-381-2022 (O&M)
Decided on : 04.03.2024

Balbir SinghAppellant(s)
Versus
State of Punjab & othersRespondent(s)

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

Present:- Mr.Balbir Kumar Saini, Advocate, for the appellant.
Mr.Saurav Khurana, Addl.A.G., Punjab, for the respondents.

G.S. Sandhawalia, Acting Chief Justice

1. Consideration in the present appeal is to the order dated 22.02.2022 passed by the Learned Single Judge in CWP-3337-2022 filed by the appellant wherein the order of dismissal passed by the Senior Superintendent of Police, Ludhiana City dated 29.08.2007 (Annexure P-1) on account of being habitually absent from duty has been upheld and on account of forging signatures of higher officials for purpose of taking leave. The said order was also upheld by the Appellate Authority and the Revisional Authority apart from the mercy appeal filed before the Addl.Chief Secretary which met with dismissal on 14.02.2019 (Annexure P-8), leading to filing of the writ petition.

2. The Learned Single Judge noticed that though there was an acquittal on the criminal side but on account of the fact that the leave had also been taken by forging the signatures of the superior officers for a period of 3 days each on more than one occasion but the same would not entitle the employee to remain in service on the basis of preponderance of

probabilities which govern departmental proceedings. The factum of

forgery of signatures of superior officers having been committed was admitted before the Enquiry Officer and also the disciplinary authority and accordingly, it was held by the Learned Single Judge that the scope of judicial review was very limited and therefore, he did not deem it fit to exercise his power of judicial review. The tabulated chart of the absent period on 7 occasions which ranged from 15 days to 129 days on account of which there had been forfeiture of service and the fact that he had also been dismissed from service at one point of time but was reinstated on filing of the appeal were also various factors which weighed with the Learned Single Judge.

3. A perusal of the dismissal order would go on to show that the appellant had signed the leave by putting the fake signatures of MHC Shingara Singh and Line Officer Chamkaur Singh. The departmental enquiry was initiated against him and it was held by the Enquiry Officer that the allegations stood proved. The enquiry report had been supplied to the appellant and he had submitted his written reply. Notices were issued to him but he did not come forth initially and then eventually appeared and was given an opportunity of personal hearing. Resultantly, keeping in view the fact that criminal proceedings were pending and also the service record, the dismissal order was passed.

4. Reliance can be placed upon the judgment in **State of Punjab & others Vs. Mohinder Singh, 2005 (12) SCC 182** wherein the Apex Court allowed the appeal by noticing that there was absence of 5 ½ months and it was reprehensible conduct by a person in uniform. The basic principle which has been time and again laid down is that remaining absent from duty after the sanctioned leave by a uniformed personnel is

fatal. Keeping in view the fact that the appellant voluntarily kept away

from his duties which were very much required by his department and the fact that the matter was duly enquired upon and thus, the absence from service without permission. The chart of the absent period, as reproduced in the judgment of the Learned Single Judge, has not been reproduced here for the sake of duplication.

5. Regarding the issue of acquittal on the criminal side, the principle of law is that the two proceedings and departmental proceedings can proceed simultaneously and there is no bar as such 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 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 to 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 a person can be removed from service in the facts and circumstances by way of appropriate punishment. Reliance can be placed upon the judgment of the Apex Court in **State of Rajasthan Vs. B.K.Meena, (1996) 6 SCC 417**.

6. 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.

7. 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.”

8. 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.

9. Accordingly, keeping in view the above, having availed his remedy in departmental proceedings by way of filing appeals and revision, which were duly considered and also keeping in view his track record, the orders had been upheld. On account of the limited scope for judicial review, the Learned Single Judge has rightly declined to interfere in the said orders. Accordingly we do not find any such error of jurisdiction since the principles of natural justice were duly followed and the appellant was given due opportunity of hearing. Thus, we are of the considered opinion that it is not for this Court to substitute the findings of the departmental proceedings by exercising the power of judicial review.

10. Resultantly, in view of the above discussion, the present appeal is hereby dismissed.

(G.S.SANDHAWALIA)
ACTING CHIEF JUSTICE

March 4th, 2024
Sailesh

(LAPITA BANERJI)
JUDGE

Whether speaking/reasoned :	Yes	
Whether Reportable :	Yes	