

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

112

CWP-7198-2024
Reserved on : April 22, 2024

Pronounced on : May 14, 2024

HARBHAJAN SINGH AND ANOTHER

..... Petitioners

Versus

SHRIOMANI GURUDWARA PRABHANDHAK COMMITTEE AND
ANOTHER

..... Respondents

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Jagdish Singh Mahal, Advocate
for the petitioners.

NAMIT KUMAR, J. (Oral)

1. The present petition has been filed by the petitioners under Articles 226/227 of the Constitution of India seeking writ in the nature of *Certiorari* for quashing the charge-sheet dated 22.07.2015 (Annexure P-2 & P-3) and office order dated 10.07.2021 (Annexure P-8), whereby the petitioners have been awarded punishment, and for setting aside the order dated 29.04.2015 (Annexure P-1), whereby the petitioners have been placed under suspension, and seeking a writ of *mandamus* seeking directions to the respondents to reinstate the petitioners with all consequential benefits.

2. The brief facts leading to the filing of the present petition, as have been pleaded in the writ petition, are that the Petitioner Nos.1 and 2 have joined as 'Sewadar' and 'S/Granthi' on 15.10.1991 and 04.08.2008, respectively, at 'Takhat Shri Keshgarh Sahib, Shri Anandpur Sahib and were posted at 'Gurdwara Sahib Baba Gurditta Ji', Kiratpur Sahib, District Ropar (for short 'the Gurudwara'). The affairs of the Gurdwara are supervised and managed by

'Gurudwara Sahib Takht Shri Keshgarh Sahib', Ropar under the overall control of 'Shiromani Gurdwara Prabandhak Committee, which deals qua the management of all the Sikh Gurdwaras under the Sikh Gurdwaras Act, 1925.

3. On the intervening night of 18.04.2015 and 19.04.2015, at about 12:30 PM, one 'Bhai Himmat Singh', who was posted as 'Akhand Pathi' in the Gurdwara, had vomited by the side of the 'beer' of Shri Guru Granthi Sahib and though the petitioners were not at any fault but they have been placed under suspension vide impugned order dated 29.04.2015 (Annexure P-1) and further charge-sheeted vide impugned orders dated 22.07.2015 (Annexure P-2 & P-3) and after the culmination of enquiry proceedings they were found guilty of disobedience of 'Gur Mariada' and resultantly, Petitioner No.1 - Harbhajan Singh was imposed penalty of Rs.5,000/- and whereas Petitioner No.2 – Jaimal Singh was found guilty for not disclosing the occurrence and destroying the proofs as well as disobedience of 'Gur Mariada' and was imposed penalty of demotion in rank with penalty of Rs.50,000/- and were reinstated into service in different Gurudwaras. Simultaneously, during the continuation of departmental proceedings, an FIR No.64 dated 23.07.2015, under Sections 295-A, 120-B and 201 IPC, was also got registered against the petitioners at Police Station, Kiratpur Sahib and vide Judgement dated 19.09.2022 passed by the Court of learned Sub-Divisional Judicial Magistrate, Shri Anandpur Sahib, both the petitioners were acquitted from the charges, since the prosecution has failed to prove their guilt beyond the shadow of reasonable doubt. Thereafter, the petitioners preferred writ petition i.e. CWP No.3418 of 2024 challenging the charge-sheet dated 22.07.2015 as well as the order of suspension dated 10.07.2021, however, the same was dismissed as withdrawn with liberty to file a fresh petition on the same cause of action with better particulars. Hence, this petition.

4. The sole contention raised by learned counsel for the petitioners is that since both the petitioners have already been acquitted vide Judgement dated 19.09.2022 passed by the Criminal Court, therefore, the respondents' action *qua* placing the petitioners under suspension and imposition of penalty of reduction of rank in service with penalties is illegal, therefore, the impugned orders i.e. charge-sheet dated 22.07.2015 (Annexure P-2 & P-3) and office order dated 10.07.2021 (Annexure P-8), whereby the petitioners have been awarded punishment, and the order dated 29.04.2015 (Annexure P-1), whereby the petitioners have been placed under suspension be set aside and the petitioners be given same rank, with all consequential benefits. In support of this contention, he has placed reliance upon the Judgements passed by the Hon'ble Supreme Court in cases titled as '*The Managing Director State Bank of Hyderabad and Anr. Versus P. Kata Rao*' 2008 (3) SCT 153 and '*Capt. M. Paul Anthony versus Bharat Gold Mines Ltd.*' 1999(2) SCT 660, respectively.

5. I have heard learned counsel for the petitioners and perused the record.

6. Before proceeding further in the matter, it is relevant to mention here that a perusal of the impugned office order dated 10.07.2021 would show that the petitioners have already been reinstated by the respondents and posted in different Gurudwaras. Therefore, the precise grievance of the petitioners is that they be given same rank on which they were working prior to their suspension and consequential benefits in their favour be granted accordingly by setting aside the punishment order. The petition is fraught with certain discrepancies as no such pleadings to this effect has been made in the entire petition.

7. The question, which arises for the determination of this Court in the present writ petition is whether acquittal of an employee by a Criminal Court has any impact on the disciplinary proceedings initiated and concluded by the respondents. The said question has been answered in catena of Judgements passed by the Hon'ble Supreme Court, wherein it has been held that the departmental proceedings and criminal proceedings can be conducted simultaneously and mere acquittal of an employee by a Criminal Court subsequently has no impact on the disciplinary proceedings initiated by the Department.

8. The Hon'ble Supreme Court in 'Deputy Inspector General of Police and another versus S. Samuthiram' 2013 (1) RCR (Criminal) 329 held that mere acquittal of an employee by a criminal court has no impact on the disciplinary proceedings initiated by the department and acquittal in the criminal case cannot be a ground for interfering with an order of punishment imposed by the Disciplinary Authority. The relevant paras of the aforesaid judgement reads as under:-

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“ 16. We may indicate that before the order of acquittal was passed by the Criminal Court on 20.11.2000, the Departmental Enquiry was completed and the respondent was dismissed from service on 4.1.2000. The question is when the departmental enquiry has been concluded resulting in the dismissal of the delinquent from service, the subsequent finding recorded by the Criminal Court acquitting the respondent delinquent, will have any effect on the departmental proceedings. The propositions which the respondent wanted to canvass placing reliance on the judgment in Capt. M. Paul Anthony case (supra) read as follows:-

- (i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.
- (ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.
- (iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.
- (iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.
- (v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest.”

17. This Court, in ***Southern Railway Officers’ Association v. Union of India (2009) 9 SCC 24***, held that acquittal in a criminal case by itself cannot be a ground for interfering with an order of punishment imposed by the Disciplinary Authority. The Court reiterated that order of dismissal can be passed even if the delinquent officer had been acquitted of the criminal charge.

20. We are of the view that the mere acquittal of an employee by a

criminal court has no impact on the disciplinary proceedings initiated by the Department. The respondent, it may be noted, is a member of a disciplined force and non examination of two key witnesses before the criminal court that is Adiyodi and Peter, in our view, was a serious flaw in the conduct of the criminal case by the Prosecution. Considering the facts and circumstances of the case, the possibility of winning order P.Ws. 1 and 2 in the criminal case cannot be ruled out. We fail to see, why the Prosecution had not examined Head Constables 1368 Adiyodi and 1079 Peter of Tenkasi Police Station. It was these two Head Constables who took the respondent from the scene of occurrence along with P.Ws. 1 and 2, husband and wife, to the Tenkasi Police Station and it is in their presence that the complaint was registered. In fact, the criminal court has also opined that the signature of PW 1 (husband – complainant) is found in Ex.P1 – Complaint. Further, the Doctor P.W.8 has also clearly stated before the Enquiry Officer that the respondent was under the influence of liquor and that he had refused to undergo blood and urine tests. That being the factual situation, we are of the view that the respondent was not honourably acquitted by the criminal court, but only due to the fact that PW 1 and PW 2 turned hostile and other prosecution witnesses were not examined.

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23. As we have already indicated, in the absence of any provision in the service rule for reinstatement, if an employee is honourably acquitted by a Criminal Court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There

may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so.

24. We have also come across cases where the service rules provide that on registration of a criminal case, an employee can be kept under suspension and on acquittal by the criminal court, he be reinstated. In such cases, the re-instatement is automatic. There may be cases where the service rules provide in spite of domestic enquiry, if the criminal court acquits an employee honourably, he could be reinstated. In other words, the issue whether an employee has to be reinstated in service or not depends upon the question whether the service rules contain any such provision for reinstatement and not as a matter of right. Such provisions are absent in the Tamil Nadu Service Rules.

25. In view of the above mentioned circumstances, we are of the view that the High Court was not justified in setting aside the punishment imposed in the departmental proceedings as against the respondent, in its limited jurisdiction under Article 226 of the Constitution of India.

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9. Reliance is also placed upon the Judgement rendered by the Hon'ble Supreme Court in ***State of Rajasthan and others vs. Phool Singh, 2022(4) SCT 138***, wherein Apex Court held that :-

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“8. There should be no ambiguity in law on this subject. A departmental proceeding is different from a criminal proceeding. The

fundamental difference between the two is that whereas in a departmental proceeding a delinquent employee can be held guilty on the basis of “preponderance of probabilities”, in a criminal court the prosecution has to prove its case “beyond reasonable doubt”. In short, the difference between the two proceedings would lie in the nature of evidence and the degree of its scrutiny. The two forums therefore run at different levels. For this reason, this Court has consistently held that merely because a person has been acquitted in a criminal trial, he cannot be ipso facto reinstated in service.”

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10. In view of the Judgements referred above, it is held that acquittal in a criminal case by itself cannot be a ground for interfering in the order of punishment imposed by the Disciplinary Authority, since it has no impact on the disciplinary proceedings and the sole reason in support of this phenomena is that the standard of proof required for proving charge in a disciplinary inquiry and criminal case is different as in a criminal case, the prosecution is required to prove the guilt of the accused beyond the shadow of reasonable doubt; whereas in a disciplinary inquiry, the inquiry officer and the punishing authority is entitled to draw an inference and conclude the inquiry on the basis of preponderance of probabilities whereas in the present case, the petitioners have been acquitted from the charges, since the prosecution has failed to prove their guilt beyond the shadow of reasonable doubt and its not a honourable acquittal by the criminal court and even if it is so, still the order of punishment already passed on 10.07.2021 cannot be scrutinized under the scope of judicial review of this Court.

11. There is no quarrel about the law laid down in the Judgements of 'The Managing Director State Bank of Hyderabad' and 'Capt. M. Paul Anthony' cases (Supra) , as referred by learned counsel for the petitioners, however, they are of no assistance to the petitioners.

12. In view of the forgoing discussion, this Court does not find it appropriate to interfere in the matter by invoking jurisdiction under Articles 226/227 of the Constitution of India.
13. The present petition is, accordingly, dismissed with no orders as to costs.

May 14, 2024
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(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No