

210 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-3749-2017 (O&M)

Date of Decision: 06.03.2024

PARVEEN KUMAR

...Appellant

Vs.

SDO DAKSHINI HARYANA BIJLI VITRAN NIGAM AND ORS

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Shilak Ram Hooda, Advocate
for the petitioner.

Mr. Gagandeep Singh, Advocate for
Mr. C.S. Bakshi, Advocate
for the respondents.

HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present appeal, the challenge is to the judgment and decree of the Lower Appellate Court dated 20.05.2017 by which, the judgment and decree of the trial Court dated 16.03.2017 has been set aside and the suit filed by the appellant/plaintiff has been dismissed.

2. Certain facts may be noticed for the correct appreciation of the issue in hand. While the appellant/plaintiff was working as Lower Division Clerk (LDC) with the respondent/Department, departmental proceedings were initiated against the petitioner for embezzlement of Nigam's revenue. Along with the disciplinary proceedings, even the criminal proceedings were initiated for the embezzlement of the amount and as both the proceedings were being simultaneously held, the appellant/plaintiff filed a civil suit being civil suit No. 2013 of 2010 with the prayer that till the criminal proceedings are over, the departmental proceedings be kept in

abeyance. The said civil suit was dismissed and ultimately, the departmental proceedings were concluded by the respondent and the appellant/plaintiff was found to be guilty and a recovery of Rs.14,46,188/- was imposed upon the appellant/plaintiff along with the penalty of stoppage of two increments and the ACR of the appellant/plaintiff from the year 2006 to 2009 was also downgraded. The appellant/plaintiff never availed the remedy of appeal against the said punishment and the same attained finality.

3. Thereafter, the appellant/plaintiff was acquitted in the criminal proceedings initiated in the FIR No.104 dated 24.05.2008 which was registered against the appellant/plaintiff by giving him the benefit of doubt and upon acquittal, the appellant/plaintiff, claimed that as the allegations of embezzlement have not been proved in the criminal proceedings, the recovery of Rs.14,46,188/- as ordered in the departmental proceedings is liable to be set aside and the amount so recovered from the appellant/plaintiff, is liable to be refunded. As the same was not done, the appellant/plaintiff filed another Civil Suit No. 2009 of 2016 claiming that once, the appellant/plaintiff has already been acquitted of the criminal charge, the recovery imposed in the departmental proceedings is liable to be set aside.

4. Keeping in view the facts and evidence which had come on record, the trial Court vide judgment and decree dated 16.03.2017 allowed the suit filed by the appellant/plaintiff and held that once, the allegation of embezzlement had not been proved in the criminal proceedings, asking the appellant/plaintiff to deposit the embezzled amount in terms of the

punishment as ordered in the disciplinary proceedings, is arbitrary and illegal.

5. Against the decree and judgment of the trial Court, the Department preferred an appeal before the Lower Appellate Court and the Lower Appellate Court vide judgment and decree dated 20.05.2017, held that once, the departmental proceedings had attained finality wherein, the recovery of Rs.14,46,188/- was imposed upon the appellant/plaintiff, merely a subsequent acquittal in the criminal proceedings by the competent Court, will not render the disciplinary proceedings bad and once the disciplinary proceedings have attained finality, the punishment of recovery of embezzled amount imposed during disciplinary proceedings is valid and cannot be set aside and the judgment and decree of the trial Court dated 20.05.2017 was set aside and the suit filed by the appellant/plaintiff was dismissed. Hence, the present regular second appeal.

6. Learned counsel for the appellant argues that the once, the appellant has been acquitted of the charges of the embezzlement by the competent Court dealing with the said allegation in the criminal proceedings, holding the appellant guilty in the departmental proceedings looses its significance and any punishment order passed in the departmental proceedings, is liable to be set aside upon acquittal in the criminal case.

7. The said argument has already been dealt with by the Lower Appellate Court starting from paragraph 15 onwards in the impugned judgment. Keeping in view the settled principle of law, mentioned in the judgment itself, the Lower Appellate Court has come to the conclusion that the acquittal in the criminal case will have no bearing upon the disciplinary

proceedings where an employee has already been convicted and merely that by giving benefit of doubt, employee has been acquitted in criminal proceedings, charges proved in disciplinary proceedings cannot be treated as invalid.

8. The said findings have been recorded by the Court below on the basis of the settled principle of law that the evidence required to prove the allegation in the departmental proceedings is entirely different as compared to the evidence required to prove a guilt in the criminal proceedings. Further, it may be noticed that as per the settled principle of law settled by the Hon'ble Supreme Court of India, even if no disciplinary proceedings have been initiated during the pendency of the criminal proceedings on the same set of allegations, the Department is well within its jurisdiction to initiate the departmental proceedings even if the employee concerned has been acquitted in the criminal proceedings. Support can be taken from the judgment of the Hon'ble Supreme Court of India in **Civil Appeal No. 1763-1764-2022 titled as State of Karnataka and another Vs. Umesh, decided on 22.03.2022.** Relevant para is as under:

“13. The principles which govern a disciplinary enquiry are distinct from those which apply to a criminal trial. In a prosecution for an offence punishable under the criminal law, the burden lies on the prosecution to establish the ingredients of the offence beyond reasonable doubt. The accused is entitled to a presumption of innocence. The purpose of a disciplinary proceeding by an employer is to enquire into an allegation of misconduct by an employee which results in a violation of the service rules governing the relationship of employment. Unlike a criminal prosecution where the charge has to be established beyond reasonable doubt, in a disciplinary proceeding, a charge

of misconduct has to be established on a preponderance of probabilities. The rules of evidence which apply to a criminal trial are distinct from those which govern a disciplinary enquiry. The acquittal of the accused in a criminal case does not debar the employer from proceeding in the exercise of disciplinary jurisdiction”

9. Keeping in view the above, the findings recorded by the Lower Appellate Court are in consonance with the settled principle of law as well as the evidence which have come on record. The judgment and decree of the trial Court has rightly been set aside as the same is perverse to the settled principle of law.

10. Keeping in view the above as no perversity in the judgment of the Lower Appellate Court has been pointed out by the learned counsel for the appellant, no interference is called for by this Court in the regular second appeal and the same is dismissed.

11. Pending applications, if any, shall also stands disposed of.

(HARSIMRAN SINGH SETHI)
(JUDGE)

06.03.2024

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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

