

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

113/3, 114/1 and 115

2024:PHHC:037713-DB

LPA No.2217 of 2023 (O & M)
LPA Nos.324 and 327 of 2024 (O & M)
Date of Decision: 15.03.2024

Rajesh Kumar

.....Appellant(s)

Versus

State of Haryana and others

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA,
ACTING CHIEF JUSTICE
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. Ashish Naik, Advocate,
for the appellant(s).

Mr. Deepak Balyan, Addl. A.G., Haryana.

G.S.SANDHAWALIA, ACTING CHIEF JUSTICE (Oral)

1. The present judgment shall dispose of three letters patent appeals i.e. LPA No.2217 of 2023 and LPA Nos.324 and 327 of 2024. For the purpose of dictating the judgment, ***LPA-2217-2023, Rajesh Kumar vs. State of Haryana and others*** is being referred to.

2. The present set of appeals is directed against the order 04.12.2023 passed the learned Single Judge whereby, the two writ petitions bearing CWP No.11203 of 2020, Rajbir Singh and others vs. State of Haryana and others and CWP No. 17535 of 2020, Satish Chander vs. State of Haryana were disposed of, in which appellants were also party.

3. The primary relief as such, which the writ petitioners/appellants were seeking in the writ petitions, was that the departmental proceedings which were initiated during the pendency of criminal proceedings be quashed with a further prayer to keep the departmental proceedings in abeyance till the final decision of the criminal case. The learned Single Judge has placed reliance upon the

observations of the Apex Court in ***Capt. M. Paul Anthony vs. Bharat Gold Mines***

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Ltd., 1999 (3) SCC 679 to observe that the departmental proceedings cannot be unduly delayed and even if the criminal proceedings do not proceed, the departmental proceedings, even if they have been stayed, the same can be resumed and proceeded with. Reliance has also been placed upon the judgments of the Apex Court rendered in *Indian Overseas Bank, Anna Salai and another vs. P. Ganesan and others, (2008) 1 SCC 650; Kendriya Vidyalaya Sangathan and others vs. T. Srinivas, (2004) 7 SCC 442; State Bank of India and others vs. Neelam Nag and another, (2016) 9 SCC 491* and *The Divisional Controller, Karnataka SRTC vs. M.G. Vittal Rao, (2012) 1 SCC 442*. A Division Bench judgment of this Court rendered in *CWP-7539-2021, Dr. Balwinder Kumar Sharma vs. Hon'ble Punjab and Haryana High Court through Registrar General*, decided on 28.05.2021 was also referred to.

4. In the present case, it was also noticed that the departmental proceedings were initiated in the year 2020 and there was a lapse of three years and the same had not been concluded on account of interim orders being passed. It was noticed that in the case of Rajbir Singh, Sahab Singh, Rajesh Kumar and Gurnam Singh, challan was filed on 18.05.2020 and in the case of Satish Chander, supplementary challan was filed on 20.09.2021. It was noticed that there were 81 prosecution witnesses and the challan and the supplementary challan had not been produced on record. The charges had not been framed and the case was fixed for framing of charges. The three departmental witnesses had been examined in writ petition filed by Rajbir Singh, Sahab Singh, Rajesh Kumar and Gurnam Singh. Five witnesses had been examined in the departmental proceedings against Satish Chander, who is petitioner in CWP-17535-2020 and on account of interim orders passed, the progress was not being made. The allegations as such in the FIR in question i.e. FIR No. 84 dated 18.02.2020 under Sections 409, 420, 467, 468, 471

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and 120-B IPC and Section 66 of the I.T. Act, 2000 registered at Police Station Civil Lines, Karnal were that fake TA bills had been prepared by the employees and the same had been got deposited in various accounts and thereafter lakhs of rupees had been withdrawn and misappropriation of huge funds of the State Government had been done. The departmental proceedings, thus, had been initiated against the employees who are police officials and they had misused their position while posted on different positions and prepared fake TA bills and the image of the Police Department had been tarnished in the eyes of general public and being members of the disciplined force, the said image had been apparently lowered. It is in such circumstances, the learned Single Judge has declined the relief as such to stay the departmental proceedings.

5. We are of the considered opinion that the learned Single Judge has considered both the law which has been holding the field and which has developed over the years and dismissed the writ petitions. The general view which has now come from the judgments which have been relied upon is that departmental proceedings cannot as such be kept back to await the result of criminal proceedings which can drag over years to come. In the present case, as noticed, the departmental proceedings were initiated on account of the fact that the police officials as such being entrusted with the work of preparing the TA bills had misconducted themselves and lowered the image of the police, which operates in a different field altogether than what is the charge which is yet to be framed, which could be of embezzlement. Thus, the ambit of departmental proceedings is totally different than what is the scope of criminal proceedings. The criminal Court would have to prove it beyond the shadow of doubt to secure a conviction whereas under departmental proceedings, principle of 'preponderance of probabilities' is to be kept in mind and the loss of confidence the employer has to deal with.

6. In **LPA-565-2020, State of Haryana and others vs. Satish Kumar** decided by Division Bench of this Court on 30.05.2022, authored by one of us G.S. Sandhawalia, J., we allowed the appeal of the State and dismissed the writ petition by keeping in mind the difference and scope of criminal proceedings and departmental proceedings and the SLP filed against the same i.e. **Special Leave to Appeal (C) No. 15243 of 2022** was also dismissed on 10.11.2022.

7. In **State of Karnataka and others vs. Umesh, 2022 SCC Online SC 345**, the employee had been proceeded against under the provisions of Prevention of Corruption Act, 1988 and had been acquitted after giving him the benefit of doubt. Resultantly, the Apex Court had gone on to hold that the principles which govern a disciplinary inquiry are distinct from those which apply to a criminal trial and in the former, the charge has to be established beyond reasonable doubt whereas in the later, the charge of misconduct has to be established on the principle of 'preponderance of probabilities'. It was also held that the rules of evidence which apply to both the procedures are distinct.

8. A three-Judge Bench of the Apex Court in **Shashi Bhusan Prasad vs. Inspector General, Central Industrial Security Force and others, (2019) 7 SCC 797** held that the two proceedings i.e. criminal and departmental operate in different fields and have different objectives. The objective of criminal trial is to inflict appropriate punishment on an offender whereas the purpose of inquiry proceedings is to deal with the employee departmentally and to impose penalty in accordance with the Service Rules.

9. Similar view was also taken in **LPA-2096-2017, State of Haryana and others vs. Suresh Punia**, decided on 09.09.2022 by Division Bench of this Court in which one of us i.e. G.S. Sandhawalia, J. was Member. **SLP (Civil)**

bearing Diary No.22 of 2023 filed against the same also stands dismissed on

16.01.2023.

10. In such circumstances, we are of the considered opinion that the view which has been taken by the learned Single Judge is a plausible view based on the law which has been laid down by the Apex Court and keeping in view the facts and circumstances that the matter has been stayed as there was interim protection operating whereas criminal proceedings are yet to get a start. A large number of prosecution witnesses are involved in a magisterial trial which is likely to drag on for years to come. In such circumstances, the department cannot as such be burdened with the surplus of unwanted employees who have as such tarnished the image of the Department and there is a lack of confidence and, therefore, retaining such kind of employees also would be a factor which has to be kept in mind.

11. In such circumstances, we do not find any reason to interfere in the judgment passed by the learned Single Judge. Accordingly, finding no merit in the present appeals, the same stand dismissed. All pending applications also stand disposed of accordingly.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

15.03.2024
shivani

(MANISHA BATRA)
JUDGE

Whether reasoned/speaking	Yes
Whether reportable	No