



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 13411/2011

Bahadur Singh Son of Shri Hal Ram, (since deceased) through
LRs-

1/1 Smt. Pushpa Devi w/o Late Sh. Bahadur Singh

1/2 Smt. Rinku d/o Late Sh. Bahadur Singh

1/3 Mrs. Priya d/o Late Sh. Bahadur Singh, aged 20 years

1/4 Navneet Singh s/o Late Sh. Bahadur Singh, aged about 16
years through mother Pushpa Devi

1/5 Virat Singh s/o Late Sh. Bahadur Singh, aged about 14 years

-----Petitioner

Versus

1. State Of Rajasthan through Inspector General of Police,
Ajmer Range, Ajmer

2. Superintendent of Police, Tonk

-----Respondents

For Petitioner(s) : Mr. Vinod Kumar Gupta
Mr. Amit Kumar Gupta

For Respondent(s) : Mr. P.S. Naruka for
Mr. Rupin Kala, G.C.

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

Reserved on : 19/04/2023
Pronounced on : 03/05/2023

Reportable

Judgment

(1) Challenge in this petition is to the order dated 11.12.2003 by which compulsory retirement has been given to the petitioner. The appeal has also been rejected vide order dated 28.8.2004.



(2) The facts in brief, as projected by the petitioner are that he was posted as Constable at Police Station Sadar, Tonk and on 28.12.2001 he remained absent from duty. On 18.1.2002 he along with Four other persons abducted one Gopal son of Bajranga and assaulted him and took his signatures on a stamp paper. For the aforesaid act, Crime No. 14/2002 was registered against him with Police Station Todaraisingh (Tonk) for the offences under Sections 365, 342, 327, 323 and 120-B IPC, and the petitioner was arrested on 15.3.2002. A charge-sheet was issued to him under Rule 16 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 (for short "CCA Rules") with the additional charge that such act of the petitioner has spoiled the image of Police in the esteem of public.

(3) The petitioner submitted reply to the charge-sheet and thereafter domestic enquiry was conducted and statements of the following witnesses were recorded :-

- (i) Ram Singh, Station House Officer, Police Station Todaraisingh, District Tonk
- (ii) Ratan Lal, Constable
- (iii) Badri Lal, Constable
- (iv) Mukesh Choudhary
- (v) Sitaram
- (vi) Chauthmal
- (vii) Shankarlal
- (viii) Gopal Lal (complainant in FIR)

and thirteen documents were exhibited and the petitioner cross-examined all these witnesses. In defence, statements of DW-1 Kumari Sarita were recorded. After holding detailed enquiry, the charges were found to be proved against the petitioner and the punishment order was passed against the petitioner by compulsorily retiring him from service vide impugned order dated



11.12.2003. The petitioner unsuccessfully challenged this order before the Appellate Authority by way of filing appeal under Rule 23 of CCA Rules and the same was also rejected.

(4) Feeling aggrieved and dissatisfied by the impugned orders, the petitioner has filed this writ petition before this court.

(5) Learned counsel for petitioner submitted that the allegations levelled against the petitioner in departmental charge-sheet and in the criminal case were same and identical, and in the criminal case petitioner has been acquitted from all the charges under Sections 365, 342, 327, 323, 324 and 120-B IPC by the court of Special Judge (SC/ST Cases), Tonk in Sessions Case No. 63/2005 vide judgment dated 24.10.2005. Counsel submits that the witness Gopal Lal was examined in the departmental enquiry and in the criminal trial. The charges, both in departmental enquiry and in the trial, were substantially same. Petitioner has been acquitted in the criminal trial. The finding of guilt recorded against the petitioner in the disciplinary enquiry on the same charges is, therefore, liable to be quashed and set aside. Learned counsel, in support of his arguments, relied on the judgments of the Hon'ble Apex Court in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd (1999) 3 SCC 679, G.M. Tank v. State of Gujarat (2006) 5 SCC 446 and a judgment of this court in the case of Phool Singh v. State of Rajasthan 2015 (1) WLC (Raj.) 394.

(5.1) Lastly, the counsel submitted that the petitioner has been acquitted by the judgment of "honorable acquittal" and he has been "fully exonerated" in the criminal trial, hence the impugned orders are liable to be quashed in the light of the





judgment of Hon'ble Supreme Court in the case of S. Bhaskar Reddy v. Superintendent of Police (2015) 2 SCC 365. No other point has been raised by the counsel for petitioner.

(6) Per contra, learned counsel for the respondents has opposed the arguments raised by counsel for the petitioner and submitted that charges against the petitioner in the criminal trial were not exactly the same as they were in the departmental enquiry. Counsel submitted that in the departmental enquiry, total eight witnesses were examined and after affording proper opportunity to the petitioner, the charges were found to be proved against the petitioner, while in the criminal trial only one witness, namely Gopal Lal was examined and he was declared as hostile and no other witness was examined and acquittal of the petitioner was not "honorable acquittal". Counsel submitted that acquittal in a criminal case does not entitle a person to automatic reinstatement into service. In support of his contentions he has placed reliance on the following judgments of Apex Court :-

- (i) The State of Rajasthan v. Phool Singh
AIR 2022 SC 4176
- (ii) The State of Karnataka v. Umesh
(2022) 6 SCC 563
- (iii) Union of India v. Managobinda Samantaray
2022 LiveLaw (SC) 244
- (iv) Deputy General Manager (Appellate Authority) v. Ajai Kumar Srivastava
(2021) 2 SCC 612
- (v) State of Karnataka v. N. Gangaraj
(2020) 3 SCC 423
- (vi) Ajay Kumar Singh v. Flag Officer Commanding-In-Chief
(2016) 9 SCC 179



(vii) Baljinder Pal Kaur v. State of Punjab
(2016) 1 SCC 671

(viii) Divisional Controller, KSRTC v. M.G. Vittal Rao
(2012) 1 SCC 442

Counsel submits that under these circumstances, interference of this court is not warranted.

(7) Heard and considered the submissions made at the Bar and perused the material available on record.

(8) PW-4 Mukesh Choudhary, PW-5 Sitaram and PW-7 Shankarlal have clearly spoken about the offence committed by the petitioner with PW-8 Gopal Lal. These three witnesses have categorically stated in their statements during the domestic enquiry that the petitioner had abducted PW-8 Gopal Lal in a Jeep. The witness PW-8 Gopal has specifically stated that he was forcefully taken by the petitioner in a Jeep and he was detained in a room and his signatures were taken forcefully on a stamp paper.

(9) PW-1 Ram Singh, Station House Officer (for short "SHO") lodged FIR No. 14/2002 against the petitioner for the offences under Sections 365, 342, 327 and 323 IPC and arrested him, and the petitioner remained in judicial custody w.e.f. 15.3.2002 to 26.3.2002. Rest of the witnesses, PW-2 Ratanlal, PW-3 Badrilal and PW-6 Chauthmal, have also deposed against the petitioner in the departmental enquiry. All total thirteen documents were exhibited in this enquiry and after considering the defence evidence of the petitioner, both the charge nos. 1 and 2 were found to be proved against him and it was found that such act of the petitioner was unwarranted and the same amounted to



misconduct on his part and the same has spoiled image of the Police Department in the esteem of general public. On the basis of this domestic enquiry, the order impugned was passed and compulsory retirement from service was given to him. The Appellate Authority recorded cogent findings while dismissing the appeal filed by the petitioner.

(10) Now the question which remains for consideration of this court is "whether on the basis of the judgment of acquittal in the criminal case, a person is entitled to automatic reinstatement in service or not?"

(10.1) Hon'ble Apex Court in the case of Ajit Kumar Nag v. Indian Oil Corporation Ltd (2005) 7 SCC 764, has held that acquittal by a criminal court would not debar an employer from exercising its power in accordance with the rules and regulations in force. Acquittal in a criminal case does not entitle a person to automatic reinstatement.

(10.2) In Union of India v. Bihari Lal Sidhana (1997) 4 SCC 385, it has been held in para 5, as under :-

"5. It is true that the Respondent was acquitted by the criminal court but acquittal does not automatically give him the right to be reinstated into the service. It would still be open to the competent authority to take decision whether the delinquent government servant can be taken into service or disciplinary action should be taken under the Central Civil Services (Classification, Control and Appeal) Rules or under the Temporary Service Rules. Admittedly, the Respondent had been working as a temporary government servant before he was kept under suspension. The termination order indicated the factum that he, by then, was under suspension. It is only a way of describing him as being under suspension when the order came to be passed but that does not constitute any stigma. Mere acquittal of government employee does not automatically entitle the government servant to reinstatement. As stated earlier, it would be open to the appropriate competent authority to take a decision whether the enquiry into the conduct is required to be done before directing reinstatement or appropriate action



should be taken as per law, if otherwise, available. Since the Respondent is only a temporary government servant, the power being available under Rule 5(1) of the Rules, it is always open to the competent authority to invoke the said power and terminate the services of the employee instead of conducting the enquiry or to continue in service a government servant accused of defalcation of public money. Reinstatement would be a charter for him to indulge with impunity in misappropriation of public money."

(11) Only if an employee has been acquitted, then and then only he can make a claim for reinstatement. The meaning of the expression "honorable acquittal" was discussed by the Hon'ble Apex Court in detail in the case of Inspector General of Police v. S. Samuthiram (2013) 1 SCC 598, in para 24, which reads as under :-

"24. The meaning of the expression "honourable acquittal" came up for consideration before this Court in RBI v. Bhopal Singh Panchal. In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions "honourable acquittal", "acquitted of blame", "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression "honourably acquitted". When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted."

(11.1) Bare perusal of this judgment clearly indicates that when an accused is acquitted after full consideration of prosecution evidence, and the prosecution had miserably failed to prove the charges levelled against an accused, the accused was honorably acquitted.

(12) Perusal of the judgment dated 24.10.2005 passed by Special Judge (SC/ST Cases), Tonk indicates that the star witness of the prosecution, PW-1 Gopal entered into compromise with the



accused persons and he turned hostile and did not support the allegations levelled by him against the petitioner in the FIR lodged by him. No other witnesses were examined by the prosecution, hence the petitioner was acquitted. The petitioner has not been acquitted by the trial court after full consideration of the prosecution evidence, rather the petitioner has been acquitted on the basis of settlement, because the witness Gopal entered into a compromise with the accused persons and he turned hostile. Hence, the acquittal of the petitioner cannot be treated as "honorable acquittal".

(13) The question of considering reinstatement after decision of acquittal arises only when the dismissal from service was based on conviction by criminal court in view of the provisions contained in Article 311(2)(b) of the Constitution of India. In a case where enquiry has been held independently of the criminal proceedings, acquittal in a criminal case is of no help. It is well settled proposition of law that even if a person stood acquitted by a criminal court, domestic enquiry can be held, the reason being that the standard of proof required in a domestic enquiry and that in a criminal case, are altogether different. In a criminal case, standard of proof is required as beyond reasonable doubt, while in a domestic enquiry it is the preponderance of probabilities that constitutes the test to be applied.

(14) Hon'ble Apex Court in the case of Divisional Controller, KSRTC (supra), has dealt with this point in para 24 as under :-

"24. Thus, there can be no doubt regarding the settled legal proposition that as the standard of proof in both the proceedings is quite different, and the termination is not based on mere conviction of an employee in a criminal



case, the acquittal of the employee in criminal case cannot be the basis of taking away the effect of departmental proceedings. Nor can such an action of the department be termed as double jeopardy. The judgment of this Court in Capt. M. Paul Anthony [(1999) 3 SCC 679] does not lay down the law of universal application. Facts, charges and nature of evidence etc. involved in an individual case would determine as to whether decision of acquittal would have any bearing on the findings recorded in the domestic enquiry."

(15) 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.

(16) Hon'ble Apex Court in the case of Karnataka Power Transmission Corpn Ltd v. C.Nagaraju (2019) 10 SCC 367, has held in para 13 as under :-

"13. Having considered the submissions made on behalf of the Appellant and the Respondent No. 1, we are of the view that interference with the order of dismissal by the High Court was unwarranted. It is settled law that the acquittal by a Criminal Court does not preclude a



Departmental Inquiry against the delinquent officer. The Disciplinary Authority is not bound by the judgment of the Criminal Court if the evidence that is produced in the Departmental Inquiry is different from that produced during the criminal trial. The object of a Departmental Inquiry is to find out whether the delinquent is guilty of misconduct under the conduct Rules for the purpose of determining whether he should be continued in service. The standard of proof in a Departmental Inquiry is not strictly based on the Rules of evidence. The order of dismissal which is based on the evidence before the Inquiry Officer in the disciplinary proceedings, which is different from the evidence available to the Criminal Court, is justified and needed no interference by the High Court."

(17) Hon'ble Apex Court in the case of State of Karnataka v. Umesh (2022) 6 SCC 563, has held that in exercise of judicial review, the court does not act as an appellate forum over the findings recorded by the disciplinary authority. Certain principles have been summarized by the Hon'ble Apex Court in this judgment in para 22, which reads as under :-

"22. In the exercise of judicial review, the Court does not act as an appellate forum over the findings of the disciplinary authority. The court does not re-appreciate the evidence on the basis of which the finding of misconduct has been arrived at in the course of a disciplinary enquiry. The Court in the exercise of judicial review must restrict its review to determine whether :

- (i) the Rules of natural justice have been complied with;
- (ii) the finding of misconduct is based on some evidence;
- (iii) the statutory rules governing the conduct of the disciplinary enquiry have been observed; and
- (iv) whether the findings of the disciplinary authority suffer from perversity; and
- (v) the penalty is disproportionate to the proven misconduct."

(18) However, none of the above tests have been attracted in the present case, which requires interference of this court as the counsel for the petitioner has not raised any of the above issues while arguing this matter. He has confined his submissions to the scope of interference only on the basis of judgment of acquittal of the petitioner. The judgments cited and relied by the



petitioner are not applicable in the present matter.

(19) In the light of aforesaid judgment of Hon'ble Apex Court, judicial review of the departmental enquiry is based on different principles and acquittal of the petitioner from the criminal case will not result into exoneration of the petitioner.

(20) In the considered opinion of this court, there is no flaw in the decision making process. The department has led credible evidence to show that the petitioner was guilty of misconduct. The findings of the Inquiry Officer are neither perverse nor based on 'no evidence'. The impugned orders of the Disciplinary Authority and the Appellate Authority are in accordance with law. In view of the misconduct of the petitioner, it cannot be said that the punishment is disproportionate and shocking, warranting any interference.

(21) In view of the discussion made herein above, this court does not find any error in the impugned orders. The writ petition is dismissed along with application(s), pending if any.

(22) No order as to costs.

(ANOOP KUMAR DHAND), J.

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