

(2009) 11 RAJ CK 0008

In the Rajasthan High Court

Case No : Civil Special Appeal No. 02448 of 2008

State of Rajasthan and Others

APPELLANT

Vs

Bahadur Ram

RESPONDENT

Date of Decision : 11-11-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Limitation Act, 1963 — Section 5

Penal Code, 1860 (IPC) — Section 120B, 379, 411, 420

Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 — Rule 16

Citation : (2009) 11 RAJ CK 0008

Hon'ble Judges : Govind Mathur, J;A.M. Kapadia, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.M. Kapadia, J.—To assail validity, correctness and propriety of the judgment dated 01.11.2007, passed by learned Single Judge, this appeal is preferred. The appeal is barred by limitation, thus, an application u/s 5 of the Limitation Act is also preferred.

2. In brief, facts of the case are that the respondent, a Constable with Rajasthan Police was charged for an offence punishable under Sections 379 and 411 IPC. For the same allegations he was also charged for committing a misconduct as defined under Rajasthan Civil Services (Conduct) Rules, 1971. The respondent accordingly faced criminal trial as well as the disciplinary proceedings under Rule 16 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958. The disciplinary authority dismissed the respondent from service vide an order dated 28.02.1994 and that came to be affirmed by the appellate authority vide order dated 20.12.1994. A review petition preferred before the Governor too came to be rejected, hence the respondent preferred a petition for writ before this Court and that came to be accepted by the judgment impugned. Learned Single Judge, while setting aside the orders passed by the disciplinary authority, appellate authority and reviewing authority, held that the delinquent employee

was honourably exonerated from the charges levelled against him, therefore, on basis of the same set of evidence he could have not been penalised through disciplinary action.

3. While challenging the judgment aforesaid, contention of counsel for the appellant State is that standard of proof required in recording a finding of conviction in a criminal case and in departmental proceedings are distinct and different. In a criminal case it is essential to prove a charge beyond all reasonable doubt, whereas in a departmental proceedings preponderance of probability would serve the purpose and in the case in hand the disciplinary authority on preponderance of probability reached at a definite conclusion, thus, that was not at all warranting interference of this Court under Article 226 of the Constitution of India.

4. We have examined the judgment impugned and also record of the case.

5. It is well settled that standard of proof required in recording a finding of conviction must be of strong nature to the extent that a charge must be proved beyond all reasonable doubts whereas in a departmental proceeding preponderance of probability would serve the purpose. If in a criminal trial the Court concludes that the charge itself is not made out, the incident alleged is absolutely false or concocted then the departmental adjudicating authority must not pass any order contrary, but in the case where a benefit of doubt is extended to the accused, then while considering the allegation of misconduct the departmental adjudicating authority can certainly examine preponderance of probability and also reach at a conclusion different to that of given by the Court of criminal jurisdiction.

6. In the instant case learned Chief Judicial Magistrate by his judgment dated 20.05.1995 not only acquitted the respondent but also gave a specific finding that no case against him is made out for the offences punishable under Sections 420, 120B IPC. As per trial Court there was no evidence against the accused (the respondent) to establish the allegation of forgery. The evidence which was taken into consideration by the trial Court to acquit the respondent honourably was also examined by the disciplinary authority but he reached at a different conclusion, though that was prior to passing of the order of acquittal by the trial Court. Hon'ble Supreme Court in G.M. Tank Vs. State of Gujarat and Another, held that where a honourable acquittal of the employee is made by competent authority, then this fact is required to be taken into consideration in the proceedings giving challenge to the dismissal made as a consequent to domestic inquiry for the same charge. In the present case the disciplinary as well as the appellate authority passed their orders prior to acquittal made by the trial Court, however, before reviewing authority the respondent employee submitted a copy of the judgment acquitting him and urged that his case is required to be considered by keeping in mind the findings given by the trial Court. The reviewing authority, thus, should have considered the findings given by the trial Court which are as a matter of fact based on same set of evidence on basis of

which the employee concerned was penalised with dismissal. The reviewing authority instead of taking into consideration the judgment passed by the trial Court rejected the appeal simplicitor. Learned Single Judge considered this aspect of the matter and quashed the order of dismissal as that was contrary to the findings given by the trial Court acquitting the petitioner and also holding that no charge at all is made out against him. On examination of record, we are satisfied that the respondent was acquitted by the trial Court honourably with a definite finding that no charge of forgery is made out against him. It is also noticed by us that the evidence available before the trial Court and the disciplinary authority during the course of inquiry were same. As such, we also find no justification for maintaining dismissal of the respondent employee.

7. In view of whatever discussed above, we are not at all inclined to condone the delay in filing the appeal. Accordingly, the application as well as the appeal are dismissed.