Before Rajiv Narain Raina, J.

EASI RAJPAL—*Petitioner*

versus

STATE OF HARYANA AND OTHERS—*Respondents*

CWP No.21001 of 2013

September 20, 2013

Constitution of India, 1950 - Art. 226 - Indian Penal Code, 1860 - Limitation Act, 1963 - Punjab Police Rules, 1934 - Service Law - Departmental inquiry - Criminal case - Acquittal - Petitioner an Exemptee Assistant Sub-Inspector of Police was Incharge Airstrip Guard - A constable working under him got an FIR registered against him under Ss.323, 377 and 511 IPC - Petitioner faced criminal trial - Department initiated departmental proceedings against him - Inquiry Officer found him guilty - Petitioner dismissed from service - Appellate authority dismissed appeal - Revision preferred by Petitioner dismissed by Director General of Police - Petitioner acquitted by Additional Chief Judicial Magistrate by holding that prosecution evidence was not sufficient to convict - After acquittal

Petitioner made a representation - Representation not decided by authorities - Civil Writ Petition filed - Held, there is difference between standard of proof required for bringing home a charge in departmental proceedings and a criminal trial - Further held, Cause of action arose on 28.08.2008 - Civil Suit would have been time barred in 2011 - Writ would not lie unless the court finds serious infractions or breaches of fundamental rights - Judgment of acquittal would not give rise to a fresh cause of action against an administrative order - Gravest kind of misconduct - Question of degree can be best judged by those who run police force - Civil Writ Petition dismissed.

Held, that the short question which arises for consideration is whether a dismissal order confirmed up to revision by the Director General of Police, Haryana arising out of departmental proceedings can be recalled, varied, modified or rescinded for reason of subsequent acquittal.

(Para 8)

Further held, that but in this argument, the learned counsel for the petitioner misses the well settled difference between standard of proof required for bringing home a charge in departmental proceedings and at a criminal trial. It is trite to repeat that one is based on preponderance of probabilities while the other on proof beyond any shadow of reasonable doubt. Though acquittal on a criminal charge by giving benefit of doubt in criminal law is equated with innocence for the rest of the world but in service jurisprudence the principle cannot be blindly accepted or followed for retention in service. While dealing with high moral and ethical standards required for service in a uniformed force and the maintenance of purity and absolute rectitude in letting only the untainted best to enter police forces it is now current need that true and honest disclosures in statements made in application forms revealing past criminal record of registration of FIR/s and the stages of investigation and trial thereupon and their confessional applications asked for while seeking appointments to advertised government posts and as to the effect of non-disclosure of material facts justifying non-appointment, the issue deserves to be examined on a canvas of larger social issues arising out of the propensity of letting in dubious people to public office against overriding public interest involved therein demanding the highest moral standards of honesty and probity in public life especially from

those who are engaged on salary paid out of public funds to protect life and liberty of citizens everyday of their service life. This may be a large sentence to put between two commas but the grammar of modern governance-cleansing must begin now as never before there is complete loss of faith in officeholders and the further loss occasioned by the loss of trust that usually runs alongside tainted recruitment processes ought to be restored to the original thinking of the eminent men that formed the think tank of the constituent assembly that gave us our Constitution and the Public Service Commissions that need to salvage their constitutional status. I think the time has come for the Court to sound the reminder call to foster trust, faith and mutual respect when governance appears to be shortsighted, on a low and corruption taller than the Kanchenjunga. The ruling principle is reform much needed in the police department which deserves to be tweak started to suit the aspirations and hopes of the people. This affects us and our security vitally and those who guard our airports and our lives must be above suspicion like Ceasar's wife.

(Para 11)

Further held, that notwithstanding the digression, the cause of action arose on 20.08.2008 in favour of the petitioner with the dismissal of the revision petition by the Director General of Police, Haryana. In case a civil suit had been brought to question the impugned orders of dismissal up to the stage of rejection of revision petition on 20.08.2008 it would have been time barred either on 20.08.2011 or at best on 20.10.2008 giving allowance to two months' notice under Section 80 of the Code of Civil Procedure, 1908. If a suit would be barred against a cause of action then normally a writ would not lie unless this Court in its extraordinary writ jurisdiction finds serious infractions or breaches of fundamental rights or human right violations involved which may require instant intervention. Then perhaps this Court may not on insist on throwing out a just claim on principles of delay, laches and bar resulting from running out of periods prescribed to bring actions under the Limitation Act, 1963 or such other bars as may be prescribed by special statutory law.

(Para 12)

Further held, that the thing to be considered presently is whether a judgment of acquittal can be said to give rise to a right of action or a cause of action. I do not think it would be correct for this Court to hold

that a judgment of acquittal by a Magistrate exercising criminal jurisdiction based on an incident which has earlier been traversed in a departmental proceedings and penalty inflicted would give rise to a fresh cause of action against an adverse administrative order having attained finality or would be enforceable in a court of law against the penalty of say, dismissal from service, notwithstanding the standard of proof being different of the two.

(Para 13)

Further held, that it was lastly urged that the petitioner had served for more than 32 years prior to the incident, given his year of enlistment as Constable in 1975 and that should be sufficient justification in not awarding him the harshest punishment of dismissal which argument does not impress or detain me. The disciplinary authority in the order dated 29.11.2007 had specifically held that the misconduct of the defaulter is certainly of the gravest kind and no leniency can be shown in dealing with him in view of his length of service etc. as that would be an emotional decision against the interest of the police force. This is perfectly good and acceptable reason while dealing with cases under PPR, 1934 of acts involving gravest acts of misconduct. What is grave and gravest is a question of degrees involving many variable factors judged best by those who have to run the police force. Neither does the petitioner have a case on merits nor in equity nor on any sympathetic consideration. Sympathy and compassion tested against a set of given fact situations are purely subjective opinions usually beyond judicially manageable standards and worse still may they differ from decision-maker cum-duty-holder in government office and from court to court.

(Para 14)

Further held, that no ground warranting interference is made out against the dismissal orders which have attained finality long ago. They are held legal and valid and not suffering from any infirmity.

(Para 17)

Manoj Taya, Advocate, *for the petitioner.*

RAJIV NARAIN RAINA, J.

(1) FIR No.93 dated 22.05.2007 under Sections 323, 377, 511 IPC was registered at Police Station Kunjpura against the petitioner. The petitioner was an Exemptee Assistant Sub Inspector of Police and posted

at Hawai Patti, as Incharge Airstrip Guard, Kalvehri. Constable ("Ct.") Ashok Kumar was working under him at the Airbase. Ct. Ashok Kumar made a criminal complaint against the petitioner which led to the registration of the aforesaid FIR. The Constable stated that on 21.05.2007 when he was deputed as Guard Incharge at the Airbase along with the petitioner, the petitioner after consuming alcohol in the evening hours offered him drinks which he refused. The Constable complained that at about 10.30 PM at night the petitioner forced himself upon him and took his trousers off and underwear and attempted to have unnatural sex with him (indicated as masturbation in the complaint). When the complainant objected he was manhandled and bitten on the thumb but the assailant thereafter fled from the scene. This is how the criminal law was set into motion.

(2) The petitioner faced a criminal trial for the aforesaid offences. The respondent-Department took cognizance of the incident and immediately initiated departmental proceedings against the petitioner by serving a charge-sheet on him on the aforesaid allegations and ordering a regular inquiry into the misconduct with a fellow policeman. The chargesheet was issued on 29.06.2007 on the same incident which was subject matter of criminal trial. In committing the misconduct, the petitioner is said to have displayed gross negligence and indiscipline which would bring the Department into disrepute. The Deputy Superintendent of Police, Assandh was appointed as inquiry officer. The petitioner was associated with the inquiry. Prosecution and defence evidence was led and he had full opportunity to cross-examine witnesses produced against him. On conclusion of the inquiry, the report was submitted on 24.09.2007. The Senior Superintendent of Police, Karnal dissatisfied with the conclusions arrived at by the inquiry officer in respect of the charges levelled held that the charges stood proved. A show cause noticed was accordingly issued on 31.10.2007. Reply was received. It was considered and the impugned order dated 29.11.2007 (P-6) was passed dismissing the petitioner from service. The petitioner had been placed under suspension after his arrest on 22.05.2007 and was dismissed during suspension. His appeal before the Inspector General of Police, Rohtak Range, Rohtak was rejected on 20.12.2007 as no merit was found in the appeal. The petitioner was heard in person on 18.03.2008 by the appellate authority who found no reason to interfere with the order of dismissal.

(3) Aggrieved by the decision in appeal, the petitioner approached Director General of Police, Haryana with a prayer for reinstatement with all consequential benefits claiming that he had been wronged. The defence taken was that the complainant Ct. Ashok Kumar was in the habit of sodomizing and being sodomized. The direct implication was that the Constable was a homosexual. The petitioner even produced a defence witness EHC Hoshiar Singh, Incharge Guard, Airport, Kalvehri who stated that on one occassion at night when he and Ct. Ashok Kumar were alone on Guard duty, the complainant asked him to have unnatural sex with him but he refused to do so. Another defence witness EHC Chander Singh became a witness stating that he had once seen the complainant indulging sodomy with a rickshaw puller. The petitioner contended that these facts were not appreciated or taken into consideration and that the story spun by the complainant Ct. Ashok Kumar was false and fabricated story of sodomy against the appellant and therefore made a complaint against the petitioner to ASI Ram Singh of Police Station Kunjpura while he was on patrolling duty.

(4) The petitioner has raised issues based on discrepancies in statement of witnesses as to state of undress of Ct. Ashok Kumar at the scene of alleged commission of offence as to whether he was sleeping only in underwear or whether he was sleeping in uniform. The petitioner took rather strange and pureile defences such as this; the complainant had alleged that the petitioner had consumed liquor but did not disclose its brand name or whether it was 'English' or 'Countrymade'; the complainant also failed to disclose the quantity of liquor consumed at the time of alleged incident. This shows the insidous mind of the petitioner. Counsel submitted that consumption of liquor is not supported by MLR issued by Primary Health Centre, Kunjpura. In the appeal, the petitioner has explained the main cause behind the case according to him as follows:-

> *"(ix) That the main cause behind raising this unlawful and concocted allegation of sodomy is that on 21.05.2007 EHC Hoshiar Singh was already on leave and the complainant and Constable Manjeet Kumar No.1626/KNL along with the appellant were present at Air Strip, Police Post Kalwehri. Constable Manjit Kumar requested the appellant to allow him to go to Doctor for some medicine for his own purpose. The*

appellant allowed him with the condition that he will come back early in the morning on 22.05.2007 In the meantime, the complainant, objected to on the plea that he will go to his native place to see his family members. The appellant told him that he will be allowed to leave for his native place immediately after arrival of Constable Manjit Kumar. But the complainant being aggrieved and taking benefit of being alone with the appellant at Air Strip, Kalwehri has managed to allege the appellant for sodomy with him."

(5) The Director General of Police, Haryana rejected the revision petition on 20.08.2008. The Director General of Police, Haryana has found no mitigating circumstances to interfere with the punishment order.

(6) The order of dismissal and the orders passed in appeal and revision, the last of which was passed on 20.08.2008 became final inasmuch as the petitioner did not call in question those orders before any Court of law. The petitioner consciously awaited the event of conclusion of the criminal trial in his favour. The Additional Chief Judicial Magistrate, Karnal acquitted the petitioner by his judgment and order dated 20.12.2012 holding that the prosecution evidence was not sufficient to convict the accused for the offence or to establish the charge beyond reasonable doubt. The trial Court acquitted the petitioner by extending him the benefit of doubt. It is worthy of note that the complainant Ct. Ashok Kumar deposed against the petitioner at the trial and supported his version in the witness box.

(7) On securing acquittal, the petitioner stirred and made a representation on 31.01.2013 praying for reinstatement in the light of the judgment of acquittal passed by the trial Court. It is siad that this representation has not been decided so far. All this has brought the petitioner to this Court praying for setting aside of the dismissal order as upheld in revision on 20.08.2008.

(8) The short question which arises for consideration is whether a dismissal order confirmed up to revision by the Director General of Police, Haryana arising out of departmental proceedings can be recalled, varied, modified or rescinded for reason of subsequent acquittal.

(9) Heard Mr. Manoj Taya, learned counsel appearing for the petitioner at the threshold at length to examine whether the cause merits admission.

(10) Learned counsel for the petitioner submits that as a result of acquittal in the criminal case on the same set of allegations, the base of the dismissal order passed following departmental proceedings stands removed and all the pre-existing impediments in the way of the petitioner stand foreclosed and are no longer available obstacles or insurmountable hurdles in the path of the success. The findings of acquittal recorded by the Trial Court on 20.12.2012 albeit giving benefit of doubt itself creates a cause of action in favour of the petitioner to approach this Court by electing remedy under Article 226 of the Constitution of India which he has a right to. It is urged that merely because the departmental proceedings have concluded well before the trial and statements of the complainant and witnesses recorded is not sufficient reason to discard the findings arrived at by the trial Court in not entirely relying upon the deposition of the complainant Ct. Ashok Kumar.

(11) But in this argument, the learned counsel for the petitioner misses the well settled difference between standard of proof required for bringing home a charge in departmental proceedings and at a criminal trial. It is trite to repeat that one is based on preponderance of probabilities while the other on proof beyond any shadow of reasonable doubt. Though acquittal on a criminal charge by giving benefit of doubt in criminal law is equated with innocence for the rest of the world but in service jurisprudence the principle cannot be blindly accepted or followed for retention in service. While dealing with high moral and ethical standards required for service in a uniformed force and the maintainence of purity and absolute rectitude in letting only the untainted best to enter police forces it is now current need that true and honest disclosures in statements made in application forms revealing past criminal record of registration of FIR/s and the stages of investigation and trial thereupon and their confessional applications asked for while seeking appointments to advertised government posts and as to the effect of non-disclosure of material facts justifying non-appointment, the issue deserves to be examined on a canvas of larger social issues arising out of the propensity of letting in dubious people to public office against overriding public interest involved therein demanding the highest moral

standards of honesty and probity in public life especially from those who are engaged on salary paid out of public funds to protect life and liberty of citizens everyday of their service life. This may be a large sentence to put between two commas but the grammer of modern governance-cleansing must begin now as never before there is complete loss of faith in officeholders and the further loss occasioned by the loss of trust that usually runs alongside tainted recruitment processes ought to be restored to the original thinking of the eminent men that formed the think tank of the constituent assembly that gave us our Constitution and the Public Service Commissions that need to salvage their constitutional status. I think the time has come for the Court to sound the reminder call to foster trust, faith and mutual respect when governance appears to be shortsighted, on a low and corruption taller than the Kanchenjunga. The ruling principle is reform much needed in the police department which deserves to be tweak started to suit the aspirations and hopes of the people. This affects us and our security vitally and those who guard our airports and our lives must be above suspicion like Ceasar's wife.

(12) Notwithstanding the digression, the cause of action arose on 20.08.2008 in favour of the petitioner with the dismissal of the revision petition by the Director General of Police, Haryana. In case a civil suit had been brought to question the impugned orders of dismissal up to the stage of rejection of revision petition on 20.08.2008 it would have been time barred either on 20.08.2011 or at best on 20.10.2008 (sic) giving allowance to two months' notice under Section 80 of the Code of Civil Procedure, 1908. If a suit would be barred against a cause of action then normally a writ would not lie unless this Court in its extraordinary writ jurisdiction finds serious infractions or breaches of fundamental rights or human right violations involved which may require instant intervention. Then perhaps this Court may not on insist on throwing out a just claim on principles of delay, laches and bar resulting from running out of periods prescribed to bring actions under the Limitation Act, 1963 or such other bars as may be prescribed by special statutory law.

(13) It can be said that even if the petitioner has a right to challenge the dismissal order, the remedy stands taken away by operation of bar of limitation which is three years from the date of accrual of the cause of action. The thing to be considered presently is whether a judgment of acquittal can be said to give rise to a right of action or a cause of action. I do not think

it would be correct for this Court to hold that a judgment of acquittal by a Magistrate exercising criminal jurisdiction based on an incident which has earlier been traversed in a departmental proceedings and penalty inflicted would give rise to a fresh cause of action against an adverse administrative order having attained finality or would be enforceable in a court of law against the penalty of say, dismissal from service, notwithstanding the standard of proof being different of the two.

(14) It was lastly urged that the petitioner had served for more than 32 years prior to the incident, given his year of enlistment as Constable in 1975 and that should be sufficient justification in not awarding him the harshest punishment of dismissal which argument does not impress or detain me. The disciplinary authority in the order dated 29.11.2007 had specifically held that the misconduct of the defaulter is certainly of the gravest kind and no leniency can be shown in dealing with him in view of his length of service etc. as that would be an emotional decision against the interest of the police force. This is perfectly good and acceptable reason while dealing with cases under PPR, 1934 of acts involving gravest acts of misconduct. What is grave and gravest is a question of degrees involving many variable factors judged best by those who have to run the police force. Neither does the petitioner have a case on merits nor in equity nor on any sympathetic consideration. Sympathy and compassion tested against a set of given fact situations are purely subjective opinions usually beyond judicially manageable standards and worse still may they differ from decision-makercum- duty-holder in government office and from court to court.

(15) It cannot be said in the totality of circumstances that the petitioner deserved anything short of dismissal, I think not. The defence taken by the petitioner before the administrative authorities is not only filthy, unscruplous but also deplorable coming from a police official using means fair and foul to exculpate himself. It is a sad reflection of his character that he stooped so low as to corral his colleagues as defence witnesses to support his version to show that complainant Ct. Ashok Kumar was a man given to sodomy and he went to the length of bringing one of them to depose that he had seen him with a rickshaw puller. I say that even assuming that he was given to unnatural urges but that itself would not justify the petitioner lunging on him or calling witnesses from the police force to sling muck in

this wretched fashion in desperation. The fact that the petitioner sat back for four years without seeking legal recourse against the order of dismissal itself speaks volumes and reveals a bad conscience. The Court should not wake up those who have slumbered long.

(16) The learned counsel for the petitioner sought to justify delay in approaching this Court urging that in case the petitioner had been convicted there would have been no occasion to file this writ petition and, therefore, he had no option but to await the final result of the trial Court. I am afraid, this is not sufficient explanation or good enough reason to justify inordinate delay in approaching this Court and for the wrong reasons.

(17) No ground warranting interference is made out against the dismissal orders which have attained finality long ago. They are held legal and valid and not suffering from any infirmity.

(18) No merit. Dismissed in limine as not meriting admission for regular hearing.

J.S. Mehndiratta