



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO. 339 OF 2013

Shri Shantilal Tulshiram Thakre
(Deceased through LRs)

.. Appellant

Versus

Union of India & others

.. Respondents

Mr. Y. B. Yawalkar, Advocate for appellant.
Mr. M. N. Navandar, Advocate for respondents No. 1 to 3.

CORAM : R. M. JOSHI, J.

RESERVED ON : 8th January, 2024.

PRONOUNCED ON : 12th January, 2024.

PER COURT :

1. A constable working with Railway Police Force suffered order of dismissal from service for the act of sleeping on duty and in drunken condition. After exhausting remedy of appeal against dismissal order, suit is filed.

2. This appeal is filed under Section 100 of Code of Civil Procedure taking exception to the judgment and decree dated 2nd November, 2011 passed by Principal District Judge, Jalgaon in Regular Civil Appeal No.

272/2001 whereby the judgment and decree passed by Joint Civil Judge Senior Division, Jalgaon in Regular Civil Suit No. 429/1993 was confirmed.

2. Parties are referred to by their nomenclature in the original proceeding for the sake of convenience.

3. The facts which led to filing of the present appeal can be narrated as under :-

Plaintiff filed suit bearing Regular Civil Suit no. 429/1993 against defendants. It is the case of plaintiff that he was working in Railway Police Force since 1966 and has performed 27 years continuous service as a constable. On 2nd November, 1990, charge came to be framed against plaintiff. Allegation against the plaintiff was that while on duty he was found sleeping and in drunken condition. According to plaintiff, statements of witnesses were recorded in Departmental Enquiry. The charges were not proved against him. However, in order to maintain discipline, the Enquiry Officer suggested stoppage of two increments. Thereafter from 16th April, 1991, he started working in the department and performed his duty upto 23rd May, 1991. It is further claimed that on 16th April, 1991, he was given punishment of reduction of rank however, without considering the same, defendant No. 2 by issuing order dated 21st May, 1991, has dismissed services

of plaintiff. Plaintiff claims that the said order is illegal. It is further stated in the plaint that the said order was challenged by preferring appeal. The said appeal came to be dismissed on 19th August, 1991 and order of dismissal issued against plaintiff was confirmed.

4. It is the contention of plaintiff that during the course of enquiry as well as at the time of hearing of appeal, he was not heard. It is further claimed that though the order of dismissal was illegal, another order was issued on 15th March, 1993, directing him to vacate service quarters. Plaintiff filed revision petition under the relevant rules but notice issued by plaintiff through his advocate on 19th July, 1993 was not taken cognizance of. Plaintiff apprehended that he would be forcibly removed from service quarter and hence suit came to be filed with prayer that defendants No. 1 and 2 without having any right terminated services of plaintiff illegally. Declaration is sought to that effect and re-instatement in service with full backwages with interest was asked for. During the pendency of suit, plaint was amended and as the plaintiff had attained the age of superannuation, he asked for pensionary benefits separately.

5. The suit was resisted by defendants. Learned Trial Court framed issues at Exhibit 33. On the basis of pleadings and evidence on record, Trial

Court dismissed the suit. Plaintiff was unsuccessful in his challenge to the said judgment and decree in the first appeal bearing Regular Civil Appeal No. 272/2001. Hence, this appeal.

6. Learned counsel for plaintiff submits that admittedly, Departmental Enquiry was held against the plaintiff and he was punished with reduction in rank by order dated 18th April, 1991. According to him, in view of Rule 219.4 of Railway Protection Force Rules, the revisional authority was prohibited from initiating revisional proceeding after one year and before expiry of 30 days. According to him, since these facts are not in dispute, the question with regard to non-compliance of the said provision and its impact on the decision of termination can be considered as substantial question of law in this second appeal. It is submitted that once it is held that the exercise of powers by the revisional authority is not in accordance with law, subsequent order of termination cannot sustain and hence, suit deserves to be decreed.

7. Learned counsel for defendants opposed the said contention by submitting that plaintiff was member of Railway Protection Force and was found sleeping on duty in drunken condition and therefore, the competent authority found the punishment imposed on him of reduction of rank to be

inadequate and by exercising powers under Rule 219.4 of the Rules, suo moto action was taken and order of dismissal came to be passed. It is his further submission that the said order of dismissal was duly challenged before the competent appellate authority. Appellate authority has rejected the appeal. It is submitted that with rejection of appeal and with exhaustion of remedies available under the relevant rules, order of dismissal has become final. He further submits that the issue of competency of revisional authority to initiate proceeding under Rule 219.4 was not raised before the appellate authority while challenging dismissal order so also it is not raised in the plaint. As such, according to him, both the Courts have rightly rejected the contention of plaintiff.

8. There is no dispute about the fact that plaintiff was member of Railway Protection Force and that charge-sheet was filed against him alleging that he was sleeping while on duty and was also said to be in drunken state. Departmental Enquiry was conducted and punishment of reduction of rank came to be imposed against him. Admittedly, plaintiff never challenged said punishment nor challenged the validity of Departmental Enquiry against him and no appeal was preferred under Section 9 of Railway Protection Force Act, 1957 (hereinafter referred to as "RPF Act" for short).

9. Undisputedly, Rule 219.4 of the Rules framed under RPF Act, empowers the competent authority to revise punishment imposed against the delinquent. Such exercise of suo moto power is also accepted. Thus, it cannot be said that the authority concerned had no power to suo moto revise the order of punishment issued against plaintiff. Pertinently, after passing of order of dismissal/termination of plaintiff, the said order came to be challenged in appeal and remedies available under relevant law were exhausted. There is nothing on record to indicate that the issue of non-compliance of proviso to Rule 219.4 was ever raised before the appellate or any other authority. The plaintiff never challenged order of confirmation of dismissal passed by appellate authority in this suit. Further, there is serious doubt as to whether such challenge would sustain at all in the eyes of law. In any case, the appeal filed by plaintiff is dismissed with confirmation of order. In such circumstances, the question that arises before this Court is as to whether the Civil Court could have overturned the order of confirmation of dismissal in appeal and proceeding initiated under the relevant rules in this suit. The answer to the same has to be candid "No".

11. Even if this Court intends to take into consideration the arguments on behalf of the plaintiff about non-compliance of proviso to Rule 219.4, the question that would arise for determination is as to whether any

answer to the said question would lead to setting aside the order passed by the appellate authority confirming dismissal of plaintiff from service. Apart from the fact that no such issue was raised before the appellate authority while challenging dismissal order, any finding recorded thereon would be inconsequential for want of challenge to the order passed in appeal and subsequent proceeding in the suit. In this regard, fruitful reference can be made to judgment of Hon'ble Apex Court in case of Boodireddy Chandraiah and others vs. Arigela Laxmi and another, (2007) 8 Supreme Court Cases 155, wherein Apex Court while deciding what could be substantial question of law has observed that :

24. The principles relating to section 100 CPC relevant for this case may be summarised thus :

(i) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing

on the decision of the case (that is a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

(emphasis supplied)

Since answer to the question of law sought to be made out has no bearing on the out come of suit and consequently, this appeal and hence, this Court does not find any propriety to go into the said issue in this appeal.

12. Having regard to the peculiar facts and circumstances of the case, pleadings of plaintiff and prayers made therein, this Court finds no reason or justification for causing interference in the impugned judgment and order.

13. In the result, appeal stands dismissed.

14. Pending application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge

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