



RSA-4887-2001

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**RSA-4887-2001 (O&M)
Date of Decision : 15.10.2024**

State of Punjab

....Appellant

VERSUS

Dina Nath

....Respondent

CORAM : HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Maninder Singh, Sr. DAG, Punjab
for the appellant.

None for the respondent.

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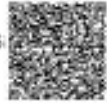
SUDEEPTI SHARMA, J (Oral).

The present appeal is filed against the judgment and decree dated 16.08.2001 passed by the learned District Judge, Rupnagar, whereby the appeal filed by respondent-Dina Nath was allowed and judgment and decree dated 28.05.1999 passed by the learned Addl. Civil Judge (Senior Division), Anandpur Sahib, dismissing the suit, was set aside.

2. The brief facts stated before the learned Trial Court are that Dina Nath is a permanent employee of Punjab Government i.e. Punjab Roadways Undertaking of Punjab Government and Punjab Civil Service Rules are applicable to the plaintiff and he is entitled for the protection of Article 311 of the Constitution of India. It is further averred that the impugned order passed by the General Manager, Punjab Roadways Nangal is illegal, null and void,

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unconstitutional, repugnant, etc., and the established principles of natural justice were not followed and without jurisdiction and against the Punjab Civil Service Rules and the notification of the Government. It is further alleged that the respondent-Dina Nath received a message from the village that his wife was seriously ill. On false charge, he was stated to be absent from duty on 29.03.1996. All the charges in the charge sheet are stated to be false and motivated. It is further alleged that the aforesaid order is liable to be set aside on the grounds i.e. the charge-sheet issued by the defendant- appellant No.2 is not according to the rules and is not binding on the plaintiff- respondent, that the relevant documents have not been supplied to the plaintiff- respondent and he was prejudiced and due to non supply of documents, he has not prepared proper defence of his case; that the reply to the charge sheet is not considered by the competent authority and no opportunity has been afforded to the plaintiff-respondent before appointing the Enquiry Officer; that the copy of the findings of the Enquiry Officer and complaint has not been supplied to the plaintiff-respondent and that the appointment of the Enquiry Officer is illegal and not binding upon the plaintiff-respondent: that no opportunity is given to the plaintiff-respondent for cross-examination of the departmental witnesses; that no procedure has been explained by the enquiry officer to the plaintiff-respondent: that no personal hearing is given to the plaintiff-respondent: that there is violation of rules 8.8, 8.4, 8.11, 8.18, 8.21, 8.23 of Punjab Civil Services (Punishment and Appeal) Rules, 1970 and that the plaintiff-respondent demanded the findings of the Enquiry report but the Enquiry Officer did not supply the relevant documents. It is further alleged that the General Manager, Punjab Roadways Nangal illegally withheld the remaining suspension allowance and

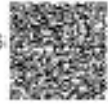
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illegally stopped two increments with the cumulative effect. It is further alleged that the registered notice U/s 80 CPC has been served upon the defendant-respondent before filing the suit and the defendant-respondent did not reply to the said notice, Hence the suit.

3. Upon notice written statement was filed by the defendants denying the allegations in the suit while stating therein that the plaintiff did not submit any reply to the charge-sheet.

4. On the pleadings of the parties, the following issues were framed:-

- 1) Whether the order dated 23.09.1997 bearing No.6257-59/ST/JM is illegal, null and void and not binding upon the plaintiff?
OPP
- 2) If issue No.1 is proved whether the plaintiff is entitled for declaration as prayed for? OPP
- 3) Whether no notice u/s 80 CPC has been served upon the defendants before filing the suit? OPD
- 4) Whether the suit of the plaintiff is not maintainable in the present form? OPD
- 5) Whether the Civil suit is barred under Section 22 of the Payment and Wages Act, 1936? OPD
- 6) Whether the plaintiff is stopped by his act and conduct to file the instant suit? OPD
- 7) Relief.



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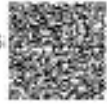
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5. After hearing learned counsel for the parties, the learned Trial Court dismissed the suit of the plaintiff-respondent vide its judgment dated 28.05.1999. The relevant portion of the same is reproduced is as under:-

“7. In order to prove this issue, the Ld. Counsel for the plaintiff examined Dina Nath who stated on oath that he has been working as driver bearing No. 104 in the Nangal Depot for the last 10 years. He further stated that the order dated 23.09.1997 passed by the defendant No. 2 is wrong and illegal. He further stated that he was not given an opportunity and he was also not supplied necessary documents before passing this order. He further stated that he had applied for leave on 29.03.1996 because his wife was ill on that day and he could not attend the duty. He further stated that he was marked absent on that day by the department and stopped his four increments. He further stated that he gave a notice Ex. P1 to the defendants vide postal receipt Ex. P2 through his counsel and the acknowledgement of the same is Ex. P3. He further stated that the order dated 23.09.1996 is Ex. P4 which may kindly be set aside and his increments may kindly be released and he may be paid the arrears of the increments and his suit may be decreed.

8. *On the other hand, the Ld. Law Officer for the defendants tendered into photocopies of the enquiry file Ex. D1.*

9. *The Ld, counsel for the plaintiff has argued that impugned order Ex. P4 dated 23.09.1997 vide which four increments has been stopped is illegal, null and void and may kindly be set aside. He*



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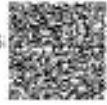
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further argued that no opportunity of hearing was granted or documents were supplied to the plaintiff before passing of the impugned order.

10. *On the other hand, the Id. Law Officer for the defendants has argued that the plaintiff remained absent from duty and he was given telegram to resume the duties but despite that he did not care to resume the duty. So accordingly, he was charge-sheeted and documents were duly supplied to him and after conducting thorough enquiry, his four increments were supplied and the enquiry file is Ex. D1, therefore, the suit of the plaintiff may kindly be dismissed.*

11. *I have considered the contentions of the Ld, counsel for the plaintiff and the Ld. Law Officer for the defendants.*

12. *The perusal of the file Ex.D1 page 41 shows that the plaintiff made the statement before the Enquiry Officer that he has received the charge-sheet and all the documents and he specifically stated that he does not require any more documents. The perusal of the enquiry file shows that a thorough enquiry was conducted in accordance with the rules of C.S.R. (Punishment and Appeal) Rules and after conducting thorough enquiry, the impugned order dated 23.09.1996 Ex. P4 was passed by the defendant to. 2 which is perfectly legal order in the eyes of law, therefore, I do not find any substance and force in the arguments of the Ld. counsel for the plaintiff whereas I fully agree with the contention of the Ld. Law Officer, for the*



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defendants. so this issue is decided against the plaintiff and in favour of the defendants.”

6. The judgment and decree dated 28.05.1999 passed by the learned trial Court was challenged by the plaintiff/respondent-Dina Nath before the first Appellate Court and the learned first Appellate Court vide its judgment and decree dated 16.08.2001, allowed the appeal. The relevant portion of the same is reproduced as under:-

“10. I have carefully gone through the record. The plea of the appellant is that his wife fell ill on 26.03.1996. So, he was proceeded on leave. He has sent a telegram on 31.07.1996 to the department indicating that "I'll unwell to attend office few days". No letter was ever served upon the appellant. The respondent have alleged that when the appellant had failed to join his duty a telegram was sent to him requiring him to join the duty, But, the appellant has failed to join his duty and then charge sheet was framed which was duly sent to appellant through registered post at his home address. But, despite that the appellant did not care to join his duty. On the other hand, the plea of the appellant is that no notice or telegram was served upon him. The respondents though have alleged that telegram was sent to appellant asking him to join his duty and charge sheet was also sent to him at his home address. But there is no document lying on the file to show that notice or telegram was ever served upon the appellant, even postal receipt or registered cover received back and which was returned by the family member of appellant has not been placed on



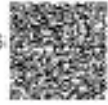
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the file of this court. The learned Law Officer appearing on behalf of respondent has conceded this fact that telegram or registered notice was never served upon the appellant personally. From the documents placed on the file, it is apparent that appellant had been pursuing the departmental enquiry initiated against him. The respondents have not placed on the file any document to show that during the pendency of enquiry proceedings, the appellant was ever asked to join his duty. The appellant has joined his duty only on 27.03.1997. The appellant has not been given personal hearing before passing the order of punishment. Thus, when the respondents have failed to prove the service of charge sheet and show cause notice upon the appellant, so the entire enquiry proceedings conducted by the respondents are null and void and have no effect on legal rights of the plaintiff/appellant. The punishment imposed upon the appellant by punishing authorities also illegal, null and void. Thus, the finding of the learned trial Court on Issue No.1 and 2 are incorrect and has to be set aside.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PARTIES

7. Learned State counsel contends that the learned first Appellate Court reversed the findings of the learned trial Court in the Civil Suit No.207 of 15.06.1998, decided on 28.05.1999, whereby, the plaintiff/respondent challenged the order dated 23.09.1997 vide which four increments of plaintiff/respondent with cumulative effect were stopped. He further contends that the first Appellate Court did not take into consideration the evidence on record i.e. Ex.D-1, which shows that plaintiff/respondent-Dina Nath made statement before the Enquiry Officer that

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he received the copies of charge-sheet and all the documents and he specifically stated that he does not require any more document, whereas, the learned first Appellate Court has dismissed the appeal filed by the appellant-State of Punjab on the ground that the appellant has not been given any personal hearing before passing the order of punishment.

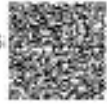
8. No one has put in appearance on behalf of the plaintiff/respondent.

9. I have heard learned counsel for the appellants and perused the whole record of this case.

10. A perusal of the record shows that plaintiff/respondent – Dina Nath was given sufficient opportunities of being heard and the punishment order was passed as per the Punishment and Appeal Rules and after conducting thorough enquiry.

11. A perusal of the record further shows that the learned Appellate Court did not apply its judicial mind and not even the learned Additional Civil Judge (Senior Division), Anandpur Sahib while dismissing the suit vide its judgment and decree dated 28.05.1999 has categorically taken into consideration each and every document placed before it and decided Issue No.1 against the plaintiff/respondent and in favour of the appellant-State.

12. A perusal of judgment dated 16.08.2001, passed by the learned first Appellate Court shows that on the one hand the learned first Appellate Court has observed that no show cause notice was given to the plaintiff/respondent whereas on the other hand it observed that the plaintiff/respondent was pursuing the departmental enquiry initiated against him. The reasoning given by the learned first Appellate Court for allowing the appeal is not acceptable to this Court.

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13. A perusal of the judgement dated 28.05.1999 passed by the learned Trial Court shows that the appropriate opportunity of being heard was given to the plaintiff/respondent before passing the punishment order.

14. In view of the above, the present appeal is allowed and the judgment and decree dated 16.08.2001 passed by the learned first Appellate Court is set aside and judgment and decree dated 28.05.1999 passed by the learned trial Court is upheld.

15. Decree sheet be drawn.

16. Pending applications, if any, also stand disposed of.

October 05, 2024
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(SUDEEPTI SHARMA)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes