

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

R.S..A. No. 226 of 1986

Date of decision : 06.05.2015

State of Punjab through Collector, Gurdaspur & anr.

...Appellants

versus

Amrik Singh

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vaibhav Sharma, DAG, Punjab

RITU BAHRI , J. (Oral)

State has come up in Regular Second Appeal against the judgment and decree dated 16.09.1985 whereby appeal filed by the plaintiff-respondent (for short 'the respondent') was allowed, which was against the judgment and decree dated 17.05.1985, whereby the suit of the respondent was dismissed.

The respondent filed a suit for declaration to the effect that order dated 15.02.1979 is illegal and respondent is entitled for the increments stopped vide impugned order including arrears and all service benefits from the date of order to till date.

The allegations against the respondent is that he was

conducting bus No. 3758 in route No. 41/61, he was found to have charged Rs.2.10 paise from one passenger travelling from Pathankot to Gurdaspur. He had given him the ticket of the denomination of Rs.1.35 paise. He had thus misappropriated Rs.0.75 paise. Kartar Singh, Inspector, Punjab Roadways, Batala checked the bus at Paniar. He made a report against him. On the report of checking staff, the General Manager, Punjab Roadways, ordered the issuance of show cause notice to him calling upon him to show why he be not punished with the stoppage of two annual increments with cumulative effect. The show cause notice was served upon him, to which he gave reply, which was found to be unsatisfactory and the impugned order was passed. It is not the case of the defendant/appellant (for short 'the appellant) before the trial Court that any regular enquiry was held before imposing a major punishment upon the respondent.

This aspect has been considered by this Court in a case of ***Dr. K.G. Tiwari vs. State of Haryana, 2002 (2) S.C.T, 915*** wherein it was held that once the charge-sheet is issued for imposition of major penalty which envisages holding of regular inquiry, the disciplinary authority cannot by merely examining the reply to the charge-sheet inflict even a minor punishment without holding a complete departmental inquiry.

In the present case, the suit of the respondent was rightly dismissed by the lower Appellate Court as no regular enquiry was conducted before imposing a penalty upon the appellant.

Learned counsel for the appellant submits that he impugned order was passed on 15.02.1979 and the civil suit was filed on 15.12.1983 after a period of 03 years and the suit was rightly dismissed by trial Court on the ground of limitation. But the lower Appellate wrongly decreed the suit of the respondent.

R.S.A was admitted on 28.02.1986 and the operation of impugned judgment was not stayed. The respondent was served but he was found not to be residing on the given address and no one has put in appearance on his behalf till date. Thus, the respondent must have retired from service. In the absence of stay order granted by this Court, the necessary benefit must have been availed by the respondent.

Applying the ratio of ***Dr. K.G Tiwari's case (supra)***, this Court in the peculiar facts and circumstances of the case, does not want to put the clock back to 19 years and consider the question whether the impugned order was null and void. The judgment and decree dated 16.09.1985 do not require any interference by this Court.

The regular second appeal is dismissed.

However, a direction is given to the appellant not to make any recovery from the respondent, after his retirement, in view of the judgment passed by Hon'ble the Supreme Court in a case of ***State of Punjab and others v. Rafiq Masih (White Washer) etc, 2015 (1) RSJ 177.***

(RITU BAHRI)
JUDGE

06.05.2015

G Arora