

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

R.S.A No. 135 of 1991 (O&M)
Date of decision:- 19.03.2015

State of Punjab through Collector, Gurdaspur &anr ...Appellants

Versus

Rachhpal Singh ...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Vaibhav Sharma, DAG, Punjab

Mr. G.S. Bal, Sr. Advocate with
Mr. A.D.S Bal, Advocate
for the respondent.

RITU BAHRI J.

This regular second appeal is directed against the judgment and decree dated 06.08.1990 passed by learned Addl. District Judge, Gurdaspur, whereby the judgment and decree dated 02.03.1989 passed by learned Senior Sub Judge, Gurdaspur was dismissed and findings of trial Court on issue No. 1 and 2 was decided in favour of the plaintiff-respondent (for brevity 'the respondent')

The respondent filed a suit for declaration to the effect that order passed by defendant/appellants (for short 'the appellants') regarding removal from service against the respondent, is illegal, null and void and with further relief to the effect that the respondent is entitled to all benefits of service including pay and allowances in the absence of the

impugned order.

The respondent joined service of appellant No. 1 and 2 as Conductor in the Punjab Roadways department on 24.09.1975. Appellant No. 2, vide order dated 18.07.1996 removed the respondent from service with immediate effect. Notice under Section 80-C was served upon the appellants but despite notice the claim of the respondent was not admitted by the appellants.

The suit was contested by the appellants alleging that the civil court has not jurisdiction to try this suit and notice no notice was served upon the appellants under Section 80-C. It was admitted that the respondent was appointed as Conductor. The impugned order was passed in accordance with the provisions of Punishment and Appeal Rules. The enquiry was conducted and a valid charge sheet was issued to the respondent. Reply to the charge sheet was considered. The respondent was given full opportunity to lead his defence by the Enquiry Officer.

From the pleading of the parties, the learned trial Court framed the following issues:-

“1. Whether the impugned order dated 18.7.1986 is illegal, null and void, without jurisdiction etc, as alleges?

OPP

2. Whether the plaintiff is entitled to the declaration as

prayed for? OPP

3. Whether the civil Court has no jurisdiction to try the controversy in dispute? OPD

4. Whether valid notice u/s 80-C CPC was served? OPP

5. Relief.”

The suit of the respondent was dismissed and it was held that there was no evidence before the Court to show that the enquiry officer who had conducted the enquiry against the respondent, had a prejudicial mind.

The respondent filed an appeal against the impugned judgment and the lower Appellate Court examined the enquiry proceedings conducted against the respondent in detail.

As per charge sheet dated 15.11.1984 delivered to the respondent by the then General Manager on that very day. The first charge was based on the allegations that on 10.10.1984, the respondent was conductor on Bus bearing No. 8836 going from Pathankot to Amrtisar. The bus was stopped by the Flying squad near DinaNagar and one passenger was found to be travelling from Pathankot to Gurdaspur from whom the respondent was said to have collected Rs.3/- as fare but issued ticket of Rs.2-30 only, thus the respondent had embezzled the amount of 70 paise. The 2nd charge was with the allegations that on 21.10.1984, he

was conductor of bus bearing No. 7448 which was coming from Chandigarh and booked for Pathankot. At Jalandhar Bus Adda, the bus developed some defect. It was abandoned there and the passengers of that bus were transferred in Bus No. 4013. This bus was checked by Inspector Krishan Singh at Tanda. There were found to be six passengers travelling from Ludhiana to Pathankot who had boarded in the bus bearing No. 7448 and from whom the respondent had recovered Rs.86 as fare but issued tickets of Rs.72.30. Thus, the respondent embezzled Rs.12.30. He also did not give 20 paise to the passengers. The passengers told the Inspecting Staff in the presence of Ashok Kumar Conductor No. 262 of Bus No. 4013 that they had paid Rs.86/- to the respondent. They also gave written statement to the checking staff in the presence of said Ashok Kumar, which was also attested by Ashok Kumar. Thus, the respondent was said to have embezzled Rs.14.20 paise. He was issued show cause notice as to why no action under the Punjab Civil Services (Punishment and Appeal) Rules, 1970 be taken against him. The respondent gave reply to the first charge that on 10.10.1984, when his bus arrived at Adda Kotli, he found Bus No. PBN7291 having gone out of order. On the request of the conductor of that bus, he picked up those passengers in his bus No. 8836. One passenger of that bus got ticket from him

from Kotli to Gurdaspur for Rs.2.30. When the bus was checked at Dina Nagar, that passenger told the checking staff that he had boarded the bus No. PBN7291 from Pathankot to Gurdaspur; that he had yet to purchase ticket from the conductor of that bus, which went out of order at Adda Kotli and that then he purchased ticket from Kotli to Gurdaspur from him. The checking staff asked the passenger to pay 70 paise more and respondent issued one ticket of that denomination and the checking staff made report against him. The respondent submitted that he was not at fault as that passenger did not purchase tickets from the conductor of Bus No. PBN7291 and the respondent issued him ticket from Kotli to Gurdaspur. In reply to the second charge sheet, he stated that on 21.10.1984, he was on duty in Bus No. PBN7448 from Chandigarh for Pathankot. From Ludhiana, six passengers boarded in the bus for Pathankot. They collectively gave Rs.100/- currency note to the respondent to issue them tickets. He issued them 12 tickets of Rs.5 denomination, six tickets of 60 paise denomination besides passenger tax and handed over tickets to those passengers making a note of '100/6' indicating that he had issued six tickets against receipt of Rs.100 and the balance was to be returned. At Bus Adda, Jalandhar, he was asked by the Adda Incharge Rajinder Singh that he was not to proceed

further and then he handed over all the passengers of his bus to Bus No. PJG 4013 after putting his initials on all the tickets issued by him to the passengers and also got a note made to the conductor of Bus No. 4013. This bus was checked by Inspector Krishan Singh at Adda Tanda. Therefore, the report by Inspector Krishan Singh was false because the respondent was not present on the spot. This explanation given by the respondent did not find favour with the General Manager-appellant No. 2 and he appointed Shri Ram Sarup Sharma-Enquiry Officer before whom the respondent appeared on 04.01.1985. He examined Yash Pal and Kuldip Singh Chief Inspectors on the first charge and Krishan Singh, Inspector on the 2nd Charge. The witnesses could not be cross examined. The respondent sent a request to the Enquiry Officer that he had not been spared from the duty to appear but his request was not accepted and he was allowed to make his own statement which he did on 01.08.1985. The Enquiry Officer made a report against the respondent holding him guilty on both the charges. This report was accepted by the punishing authority and a show cause notice dated 29.07.1985 was given to the respondent. The appellant appeared before the General Manager and gave its reply dated 26.08.1985 wherein he levelled serious allegations against the Enquiry Officer of corruption.

General Manager accepted this plea of the appellant and sent the file back to the Enquiry Officer including the explanation dated 26.08.1985 and the Enquiry Officer was asked to allow the appellant to cross examine the witness and the appellant cross examined them. Kuldip Singh Inspector in his cross examination stated that passengers of a broken down bus had boarded in the bus conducted by the respondent. He further stated that the passenger who had allegedly been issued ticket by 0.70 paise short was a male passenger. Yash Pal Inspector contradicted Kuldip Chand when Yash Pal stated that he did not remember if any passenger of any break-down bus had boarded in the bus of the respondent. Then he stated that the offending passenger was female.

So, the Appellate Court had observed that if certain passengers of another bus had boarded the bus, conducted by the respondent at Kotli Adda, it is the duty of the conductor of the previous bus to allow those passengers to board the bus conducted by the respondent who had already been issued tickets or the conductor of that bus was required to inform the respondent that such and such passengers had not been issued tickets.

With regard to 2nd charge, Krishan Singh, Inspector was examined to prove this charge. He admitted in his cross

examination that the entire proceedings were held in the absence of the respondent. He stated that the six passengers were travelling in Bus No. 7448 which was being conducted by Ashok Kumar and which was going from Pathankkot to Chandigarh. He admitted that he did not get un-punched tickets from the conductor to take up the deficiency. A writing exhibited as Exp6 before the Enquiry Officer said to have been given by Jatinderpal Singh, one of the six passengers was produced against the respondent in the enquiry proceedings. Jatinder Pal Singh was not examined. However, Ashok Kumar did not support the departmental case. He stated that the checking was made in the absence of the respondent. The Inspectors did not take into possession the tickets in question. There are ten tickets of Rs.5/- denomination and six of 60 paise denominations. There is to be seen the words '100/6' written on the back of one such tickets which then score out to show that he had paid back the balance. This duly supports the plea of the respondent. The enquiry officer should have enquired if the respondent had deposited the less amount with the cashier than he collected from the passengers. Reference was made to a case Keshirode Behari vs. Union of India 1970 S.L.R 321 relied upon by the Court below on fact, is not applicable to the facts of the present case.

The learned Appellate Court further held that when the respondent had written its explanation dated 26.08.1985 levelling allegations against the Enquiry Officer, the General Manager sent the matter back to the Enquiry Officer along with explanation, who must have got perturbed on reading the explanation given by the respondent and thus, worked against the respondent.

The judgment and decree dated 06.08.1990 passed by learned Addl. District Judge, Gurdaspur do not suffer from any misreading of facts. No substantial question of law arises for adjudication by this Court.

Accordingly, regular second appeal is dismissed

19.03.2015
G Arora

(RITU BAHRI)
JUDGE