

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

R.S.A No. 281 of 1991 (O&M)

Date of decision:- 12.03.2015

State of Punjab

...Appellant

Versus

Baldev Singh

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Vaibhav Sharma, DAG, Punjab

Mr. Puneet Singla, Advocate, for
Mr. M.S. Rana, Advocate
for the respondent.

RITU BAHRI J.

This regular second appeal is against the judgment and decree dated 30.08.1990 passed by learned Additional District Judge, Jalandhar whereby the judgment and decree dated 25.05.1989 passed by the learned Sub Judge (2nd Class) Jalandhar was partly allowed.

Plaintiff-respondent filed a suit for declaration to the effect that the orders dated 25.08.1981 and 01.08.1983 passed by the General Manager, Punjab Roadways, Nawanshahar, vide which the penalties of stoppage of two annual increments with cumulative effect in each case were awarded, are illegal, arbitrary and cryptic.

Baldev Singh was working as conductor. On the basis of two general allegations, he was charge sheeted by the General Manager by two separate charge sheets. He submitted his replies and his replies were treated as un-

satisfactory and enquiry officer was appointed, who submitted his report holding the plaintiff-respondent guilty of the charges.

On notice, the defendant-appellant filed written statement taking preliminary objections that the suit of the plaintiff-respondent is not maintainable and is barred by limitation. It was further submitted that the charge sheets were specified and valid and issued in accordance with the provisions of Punjab Civil Services (Punishment & Appeal), Rules, 1970 (for short 'Rules, 1970'). All the documents were supplied and the enquiry was held in accordance with Rules and principles of natural justice.

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

1. Whether the plaintiff is entitled to declaration prayed for? OPP
2. Whether the suit is not maintainable? OPD
3. Whether the suit is barred by limitation
4. Whether civil court at Jalandhar has no jurisdiction to try the controversy between the parties?OPD
5. Whether notices u/s 80 CPC is not valid? OPD
6. Whether suit is not properly valued for the purposes of Court fee and jurisdiction? OPD
7. Relief.”

As per Ex D1, the plaintiff-respondent was checked on 26.12.1980 by the Checking Staff. He was charge sheeted for embezzlement of Rs.6/- for issuing less tickets. The plaintiff-respondent filed reply to the charge sheet controverting the allegations but the same were found unsatisfactory and enquiry officer was appointed who found the respondent guilty and the General Manager on the basis of report, gave show cause notice for removal from service to the plaintiff. After taking into consideration the reply to the charge sheet and personal hearing, the impugned order for stoppage of two increments with permanent effect was passed. The plaintiff-respondent was again checked on 28.11.1980 and he was served with charge sheet for embezzlement of Rs.3.50 paise. After filing the reply to the charge sheet, the General Manager has appointed enquiry officer who gave his report proving the charges levelled against the plaintiff. After taking into consideration the report of the enquiry officer, General Manager has opined to stop three annual increments with cumulative effects of plaintiff. He was served with show cause notice. After taking into consideration the reply to the charge sheet and personal hearing, the impugned order dated 01.08.1985 for stoppage of two increments with cumulative effect was passed

The parties led their respective evidence and vide

judgment dated 25.05.1989 , the trial Court decided issue No. 1 in favour of the department. Issue No. 2 was decided in favour of the plaintiff. As regard issue No. 3, the suit was held to be barred by limitation as impugned orders were passed on 25.08.1981 and 01.08.1983 and the orders were challenged on 09.03.1988. The suit of the plaintiff was dismissed.

Feeling aggrieved against the judgment dated 25.08.1989, the plaintiff filed an appeal. The Lower Appellate accepted the appeal partly and the order dated 01.08.1985 was reversed, treating it to be illegal order, as the learned Government for pleader made statement before the Court that the order dated 01.08.1983 in the plaint be read as 01.08.1985 since no order was passed on 01.08.1983 by the punishing authority.

Learned counsel for the appellant has argued that the punishment order was passed as per Rule 8.11 of Rules 1970 and the trial Court had returned the finding on issue No. 1 in favour of the department. The plaintiff had challenged the impugned order on the ground that he was not given the assistance of co-worker to assist him. However, at the time of his cross-examination, he himself admitted that did not give in writing for assistance of co-worker and stated that he does not remember whether pointed out regarding the non-giving of the assistance of co-

worker in his replies to show cause notice. Further as per enquiry report, it transpires that the plaintiff had cross examined Chief Inspector Gulzar Singh, Sarkari Lal and Tarlochan Singh and produced the defence witness. Once he had participated in the inquiry proceedings and cross examined the department witnesses, the punishment order could not be set aside on the ground that he was not given the assistance of co-worker. No prejudice was caused to him and the necessary mandatory provision of Rule 8.11 of Rules 1970 was complied with.

Reference at this stage can be made to judgments passed by this Court in cases of Punjab State v. Jasbir Singh, 2004(3) S.C.T 21, Kundan Singh vs. State of Punjab and another, 2014(4) S.C.T 452, Gurdev Singh vs. The Presiding Officer, Labour Court, Bathinda and anr., 2009(1) S.C.T 485 and Sat Pal vs. State of Punjab, 1993(3) S.C.T 259 wherein it has been held that once the plaintiff has cross-examined all witnesses without making a grouse that he needs assistance of co-worker or a prayer for supply of the copy of the relevant document and mandatory provisions of Rule 8(11) by Enquiry Officer has been complied with, orders of termination do not suffer from any infirmity

In the present case, the plaintiff had cross examined the witness of the department i.e Chief Inspector Gulzar Singh, Sarkari Lal and Tarlochan Singh and produced

the defence witness. As per the above mentioned judgments, no prejudice was caused to him and hence, the punishment order was passed in accordance with law.

The present R.S.A was admitted on 08.04.1991 and thereafter on 05.03.1992, this Court declined the prayer for staying the operation of the impugned judgment and decree. This appeal has now come up for hearing after a gap of almost 23 years. The plaintiff has enjoyed the benefit of his pay-scale without imposition of punishment of stoppage of two increments.

Keeping in view the fact that the appeal has come up after a long gap of 23 years, this Court is of the opinion that at this stage, no direction can be given to the department for recovery of excess salary paid to the respondent on account of non-implementation of the punishment order dated 01.08.1985. The plaintiff has not received the excess salary by way of mis-representation. This Court had declined to stay the operation of the judgment. The plaintiff was thus entitled to claim and receive the said two increments, which has been stopped. Moreover, the lower Appellate Court has set aside the impugned punishment order dated 01.08.1985 on the ground that the suit has been filed within limitation. The Lower Appellate Court was required to examine the correctness of the order which has not been done. The

mistake committed by the Lower Appellate Court cannot be corrected while hearing the regular second appeal as it was a question of fact whether punishment had been awarded in accordance with law. This was to be done by the lower Appellate Court.

Thus, the judgments passed by both the Courts below, calls for no interference. No substantial question of law arises for adjudication by this Court.

Accordingly, R.S.A is dismissed

12.03.2015

G Arora

(RITU BAHRI)
JUDGE