

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 4779 of 2002.
Date of Decision : 28.01.2015.

Veer Singh (through his L.Rs.)

...Appellant

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Daldeep Singh, Advocate for the appellant.

Mr. Gaurav Jindal, Additional Advocate General, Haryana.

B.S. Walia, J.(Oral)

The appellant, i.e. widow of the plaintiff, Veer Singh, is in regular second appeal challenging the judgment and decree of the Subordinate Court dated 15.06.1999 as also the judgment and decree dated 20.03.2002 passed by the Lower Appellate Court whereby suit for declaration with consequential relief of mandatory injunction was dismissed.

Brief facts of the case necessary for the adjudication of the instant regular second appeal are that the plaintiff was proceeded against departmentally for alleged misconduct of willful absence from duty from 22.10.1992 to 12.11.1992 and from 13.11.1992 to 22.08.1994 i.e. the date on which he was dismissed from service, whereupon he preferred an appeal to the Deputy Inspector General of Police, Hisar Range, Hisar i.e. respondent No. 2. The afore-mentioned appeal was partly accepted and the punishment of dismissal from service was reduced to that of stoppage of five future increments with cumulative effect. The period of suspension during departmental enquiry till

22.08.1994 was ordered to be treated as such and nothing extra was to be paid except whatever amount had already been paid, while the period from the date of dismissal to that of joining duty was ordered to be treated as leave of the kind due. By virtue of the decision of the appellate authority, the plaintiff reported for duty w.e.f. 16.8.1996 whereafter a Civil Suit was filed impugning order dated 22.8.1994 passed by the Superintendent of Police as well as order dated 16.8.1996 passed by the Deputy Inspector General of Police, Hisar Range Hisar as illegal, null and void and liable to be set-aside on the grounds as mentioned in paragraph Nos. 3(i) to 3(x) of the plaint.

Written statement was filed denying the claim of the plaintiff and challenging the maintainability of the suit. Apart from taking the plea that the Civil Court had no jurisdiction to entertain and try the suit, other objections were that no cause of action had arisen, that the plaintiff was estopped from filing the suit on account of his act and conduct. On the basis of the pleadings of the parties, the following issues were framed :-

1. *Whether the order dated 22.8.1994 and 14.8.1996 passed by the defendants No. 2 and 3 respectively is liable to be set-aside on the grounds mentioned in the plaint? OPP.*
2. *Whether the suit is not maintainable in the present form? OPD.*
3. *Whether the Civil Court has no jurisdiction to entertain and try this suit? OPD.*
4. *Whether the plaintiff has no cause of action to file the present suit? OPD.*
5. *Whether the plaintiff is estopped from filing this suit with his own act and conduct? OPD.*
6. *Whether the suit of the plaintiff is liable to be dismissed with special costs? OPD.*
7. *Relief.*

I have heard learned counsel for the parties and with their able assistance have gone over the record.

Learned counsel for the appellant states that a categorical plea had been taken in ground 3(ii) of the plaint that during the period of alleged absence, he was seriously ill and admitted in Hospital but was not given subsistence allowance. Learned counsel for the appellant states that in response to the afore-mentioned averment in ground 3(ii) of the plaint, respondents in the corresponding paragraph of the written statement took up the stand that subsistence allowance for the duration of the suspension period i.e. from 07.09.1992 to 21.08.1994 was paid vide Treasury Voucher No. 23 dated 22.08.1994. On the basis of the same, learned counsel for the appellant contends that the enquiry proceedings were conducted against the plaintiff without paying subsistence allowance and the said enquiry proceedings culminated in passing of order of dismissal from service dated 22.08.1994 i.e. the date on which the Treasury challan for payment of subsistence allowance was sanctioned.

In the circumstances, learned counsel for the appellant contends that for all intents and purposes, the enquiry was conducted without paying subsistence allowance to the plaintiff. Learned counsel for the appellant relies upon a decision of the Hon'ble Supreme Court of India in **Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and another, AIR 1991 SC 1416.** He further relies upon a decision of the Hon'ble Supreme Court of India in **State of Maharashtra Vs. Chandrabhan Tale, 1983 (3) SCC 387.**

Learned counsel for the appellant relies on paragraph Nos. 31 and 32 of the decision of the Hon'ble Supreme Court of India in **Capt. M. Paul's case (supra)**. Relevant extract whereof is reproduced below :-

“.....The Fundamental Rights, including the Right to

Life under Article 21 of the Constitution or the basic human rights are not surrendered by the employee. The provision for payment of Subsistence Allowance made in the Service Rules only ensures non-violation of the right to life of the employee. That was the reason why this Court in State of Maharashtra V. Chanderbhan, (1983) 3 SCR 337 : (1983) 3 SCC 387 : AIR 1983 SC 803 struck down a Service Rule which provided for payment of a nominal amount of Rupee one as Subsistence Allowance to an employee placed under suspension. This decision was followed in Fakirbhai Fulabhai Solanki v. Presiding Officer, (1986) 3 SCC 131 : (1986) 2 SCR 1059 : AIR 1986 SC 1168 and it was held in that case that if an employee could not attend the departmental proceedings on account of financial stringencies caused by non-payment of Subsistence Allowance, and thereby could not undertake a journey away from his home to attend the departmental proceedings, the order of punishment, including the whole proceedings would stand vitiated. For this purpose, reliance was also placed on an earlier decision in Ghanshyam Dass Shrivastva v. State of Madhya Pradesh, (1973) 1 SCC 656 : AIR 1973 SC 1183.

32..... The question whether the appellant was unable to go to Kolar Gold Fields to participate in the inquiry proceedings on account of non-payment of Subsistence Allowance may not have been raised before the Inquiry Officer, but it was positively raised before the High Court and has also been raised before us. Since it is not disputed that the Subsistence Allowance was not paid to the appellant during the pendency of the departmental proceedings we have to take strong notice of it, particularly as it is not suggested by the respondents that the appellant had any other source of income."

Learned counsel for the appellant states that although specific issue i.e. Issue No. 1 was framed with regard to the sustainability of the orders dated 22.8.1994 and 14.8.1996 on the grounds mentioned in the plaint specifically ground No. 3(ii) yet the

Subordinate Court did not deal with the said matter. Learned counsel for the appellant further states that despite the matter having been agitated before the Lower Appellate Court even the Lower Appellate Court did not appreciate the matter in the correct perspective and rejected the claim of the appellant. Learned counsel for the appellant further contends that the order of dismissal dated 22.8.1994 as modified by the appellant-authority vide order dated 14.8.1996 reducing the punishment of withholding of five increments with cumulative effect were legally unsustainable on account of the fact that during the period, when the plaintiff is alleged to have been willfully absent from duty, the plaintiff was ill and was undergoing treatment, therefore, was not in a position to attend the enquiry proceedings besides was not even paid subsistence allowance thereby was prevented from participating in the enquiry.

Learned counsel for the appellant contended that the fact that the plaintiff was suffering from medical ailment was evident from the Rapat Roznamcha in the Police Line dated 31.07.1992, wherein the departure of the plaintiff is mentioned for treatment in Medical College, Rohtak. The same has not been denied by learned counsel for the respondent.

Although number of substantial questions of law have been framed in the grounds of appeal, yet learned counsel for the appellant re-framed the same and restricted it to the below mentioned question of law only :-

“Whether punishment imposed on the basis of departmental proceedings during the period of suspension without payment of subsistence allowance is legally unsustainable and liable to be set-aside.”

Learned counsel for the respondent-State also submits that the question of law re-framed by learned counsel for the appellant and

noticed by the Court during the hearing is the only substantial question of law which arises for consideration and that no other substantial question of law arises for consideration in the instant case.

Learned counsel for the respondent states that the decision in **Capt. M. Paul's case (supra)** was taken note of by the learned Lower Appellate Court but was distinguished on the ground that no proof was submitted regarding the ailment etc. and further states that in **Capt. M. Paul's case (supra)** the delinquent had prayed for an adjournment on account of ailment and had furnished a medical certificate but was refused an adjournment and was proceeded ex-parte but in the instant case, no such request had been made before the Presiding Officer. It needs to be noticed here that the categoric averment made by the plaintiff in ground No. 3(ii) of the Civil Suit, was not specifically denied. In the absence of there being a specific denial of the plaintiff having remained ill during the period of suspension the same is deemed to have been admitted. Besides it being a matter of record that subsistence allowance was not paid to the plaintiff during the period of suspension and was sanctioned only on the date of passing of order of dismissal dated 22.8.1994. It follows that there was non-compliance with the rule requiring payment of subsistence allowance to a Govt. servant under suspension. Once there is non-compliance with a mandatory requirement of law, the same would vitiate the proceedings culminating in passing of order of punishment. The Rule requiring payment of subsistence allowance is in keeping with the principles enshrined in Article 21 of the Constitution of India. It is not open to the State to take up a technical plea that no request was made to the Enquiry Officer for payment of subsistence allowance. The State was duty bound to make payment of subsistence allowance. In the circumstances, the plea on behalf of the State is rejected.

A perusal of the decision of the Hon'ble Supreme Court reveals that ordinarily on the setting-aside of order of punishment without payment of subsistence allowance, the matter is remanded to the Disciplinary Authority to pass fresh orders after taking into account all aspects of the matter. However, in paragraph No. 36 of the decision of the Hon'ble Supreme Court in **Capt. M. Paul's case (supra)**, the Hon'ble Supreme Court of India taking into account the peculiar circumstances of the case especially of the appellant having undergone agony for a number of years refrained from directing a fresh enquiry and ordered re-instatement along with entire arrears of salary together with all allowance from the date of suspension along with cost. Relevant extract of paragraph No. 36 of the said decision is reproduced below :-

"In the peculiar circumstances of the case, specially having regard to the fact that the appellant is undergoing this agony since, 1985 despite having been acquitted by the criminal court in 1987, we would not direct any fresh departmental inquiry to be instituted against him on the same set of facts. The appellant shall be reinstated forthwith on the post of Security Officer and shall also be paid entire arrears of salary, together with all allowances from the date of suspension till his reinstatement, within three months. The appellant would also be entitled to his cost which is quantified as Rs. 15,000/-."

In the instant case admitted position is that the departmental enquiry culminating in passing of order of dismissal dated 22.8.1994 was without payment of subsistence allowance to the plaintiff and despite the plaintiff being under suspension besides being seriously ill, admitted in hospital and undergoing treatment. The payment of subsistence allowance was made but it was made by sanctioning Treasury Note dated 22.8.1994 i.e. on the date of passing of order of dismissal from service itself. Therefore, for all intents and purposes, no

subsistence allowance was paid during conduct of the enquiry proceedings. Consequently, in view of the law referred to above, the substantial question of law already stands answered in favour of the plaintiff and against the respondent. In the peculiar circumstances of the case especially of the plaintiff having died during the pendency of the appeal, leaving behind his widow, the orders imposing punishment of withholding five increments as passed by the appellate authority i.e. the DIG, Hisar Range Hisar dated 14.8.1996 are set-aside. Consequently the appellant is held entitled to all consequential benefit ensuing there from along with interest @ 6% per annum w.e.f. the date of claim due till the date of payment. No other substantial question of law has been pressed nor has any other argument been raised by either of the parties.

Resultantly, the appeal is accepted and the judgments and decrees passed by the Courts below are set-aside. Consequently, the suit filed by appellant Veer Singh is decreed in the terms as mentioned above.

January 28, 2015.
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(B.S. WALIA)
JUDGE