

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

1. LPA No.2184 of 2011(O&M)

Madhu Sudan -----Appellant

Versus

Secretary Indian Red Cross Society, Punjab State Branch,
Chandigarh and anr.

-----Respondents

2. LPA No. 345 of 2012(O&M)

Secretary Indian Red Cross Society, Punjab State Branch,
Chandigarh and anr.

-----Appellants

Versus

Madhu Sudan -----Respondent

Date of decision:30.07.2015

**CORAM: HON'BLE MR.JUSTICE SATISH KUMAR MITTAL
HON'BLE MR.JUSTICE HARINDER SINGH SIDHU**

Present:- Mr.S.K. Arora, Advocate for the appellant in
LPA No.2184 of 2011 and
for respondent in LPA No.345 of 2012.

Mr. R.K. Girdhar, Advocate for the appellants in
LPA No.345 of 2012 and for the respondent in
LPA No. 2184 of 2011.

HARINDER SINGH SIDHU, J.

This judgment shall dispose of two intra-Court appeals,
referred to above, filed under Clause X of the Letters Patent against
the judgment dated 08.09.2011, passed by Learned Single
Judge, whereby the order dated 25.05.2009 (Annexure P-5) passed
by the Office of the Deputy Commissioner-cum-President District

Red Cross Society, Mukatsar-respondent-society dismissing the appellant-Madhu Sudan from service, has been set aside and the respondent-Society was directed to reinstate him in service forthwith. However, the appellant was not held entitled to any monetary benefits for the period he remained out of service but was held entitled to notional benefits of increments, seniority etc.

In LPA No.2184 of 2011 , Madhu Sudan (hereinafter referred to as 'the appellant') has assailed the order of learned Single Judge to the extent that the payment of arrears have been declined to him whereas LPA No.345 of 2012 has been filed by the Red Cross Society(hereinafter referred to as 'the respondent') challenging the order of learned Single Judge directing reinstatement of the appellant.

The appellant was working as a Regular Clerk with the respondent since 1994. An FIR No.154 dated 9.6.2005 under Section 376 IPC was registered against the appellant and three others who were employees of some other organizations. In that case, the appellant and two other persons were acquitted by learned Additional Sessions Judge Mukatsar vide judgment and order dated 9.1.2006. The other two employees were reinstated in service but the appellant who had been dismissed from service vide order dated 14.06.2005 was not allowed to join despite his acquittal.

Aggrieved, the appellant filed CWP No.15896 of 2008 which was disposed of vide order dated 9.1.2009. The impugned order of dismissal of the appellant was set aside and it was directed

that the appellant be treated as being deemed to be in service though he was not held entitled to any monetary benefit for the period he remained out of service. It was also directed that his salary be fixed by giving him notional benefits of increments and seniority etc. Liberty was given to the respondent to initiate departmental proceedings against the appellant as per law if they so desired. Availing the liberty granted by this Court, the respondent initiated de-novo enquiry against the appellant. On receipt of the enquiry report, the appellant was dismissed from service vide order dated 25.05.2009. Thereafter, the appellant filed CWP No.15316 of 2009 for quashing the order dated 25.05.2009 dismissing him from service.

Learned Single Judge has allowed the aforesaid writ petition . The dismissal order of the appellant was set aside and the respondents were directed to reinstate the appellant in service. The appellant was held to be not entitled to any monetary benefits. However notional benefits of increments and seniority etc. were granted to him.

The contention of the appellant before learned Single Judge was in the de-novo enquiry against the appellant he was held guilty despite the fact that no evidence was led. Not even a single witness was examined to substantiate the charges. Learned Single Judge after going through the enquiry report, and the punishment order, concluded that the department had not examined even a single witness to substantiate the charges. Only observations of the punishing authority were recorded which could not be said to be

evidence and material against the appellant. It was also observed that in order to substantiate the charges, the department should have at least examined the prosecutrix and drawn inference accordingly. It was also observed that the prosecutrix has resiled from her earlier version on the basis whereof the appellant and other employees were acquitted of the charges. No appeal was filed against the judgment of acquittal. Whereas the co-accused of the appellant were reinstated in service, the appellant was dismissed from service.

Learned Single Judge observed as under:-

“In view of the direction issued in CWP No. 15896 of 2008, the proceedings were initiated against the petitioner but virtually no enquiry was conducted and no statement of witnesses were recorded to substantiate any of the charges against the petitioner. Simply by stating that the departmental enquiry was conducted, whereas, there is no evidence on record to support the charges levelled against the petitioner and no document has been placed on record to prove the charges. The petitioner has been held guilty only on the basis of registration of FIR and publication of the news item in the newspaper. Even the statement of members of the raiding party was not recorded. The report and statement of the witnesses were already before the Court when the order of termination was set aside and direction was issued to initiate fresh departmental enquiry. Neither any statement of official from the office was recorded nor it was proved that the petitioner was absent from duty. It is clear from the facts mentioned above that no witness was examined or there was no other evidence on record to connect the petitioner with the alleged charge and the petitioner has been held guilty in the departmental enquiry in absence of any evidence against him. The charge sheet was issued to the petitioner does not disclose anything as nowhere it is mentioned whether it was issued for major and minor penalty and no statement of imputation and list of witnesses or documents sought to be recorded upon has been given alongwith the charge sheet. No evidence has been brought on record to support the charge levelled against the petitioner and no document has been proved. Even from the order of punishment

authority, nothing has been mentioned with regard to recording of the statements of witnesses and affording of any opportunity of the petitioner. In the departmental proceedings, the petitioner has been held guilty of charge sheet without proving the allegations mentioned in the charge sheet. It has not been mentioned in the order passed by the Punishing Authority as to how the case of the present petitioner is different from the other co-accused. It appears from the order passed by the punishing authority that no proper enquiry as per law has been conducted by the respondent department and the petitioner has been held guilty only on the basis of charge sheet which has not been proved in the enquiry.”

Learned counsel for the respondent has not been able to dispute the aforesaid factual position as concededly the enquiry report and the order of punishing authority is based on no evidence. Learned Single Judge has rightly set aside the order of dismissal.

Learned counsel for the appellant states that while directing reinstatement of the appellant in service, the necessary monetary benefits for the period he remained out from service ought to have been granted to him.

Learned Single Judge in the facts of this case has not thought it fit to grant the monetary benefits to the appellant though he was held entitled to notional benefits of increments etc. In the facts and circumstances of the case, we see no reason to interfere with the decision of learned Single Judge in this regard.

Accordingly, there is no merit in both the appeals and the same are dismissed.

(SATISH KUMAR MITTAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

30.07.2015
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