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

RSA No.2511 of 2011 (O&M)
Date of Decision: 11.09.2015

State of Haryana and others
....Appellants

Vs

Smt. Suraj Kaur and others
....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Siddharth Sanwaria, D.A.G., Haryana
for the appellants.

Mr. Gopal Sharma, Advocate for
Mr. Pankaj Nanhera, Advocate
for the respondents.

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1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

RAJ MOHAN SINGH, J.

[1]. Defendants have come in regular second appeal against the judgment and decree dated 21.01.2011 passed by District Judge, Rohtak vide which judgment and decree dated 24.07.2009 passed by Additional Civil Judge (Sr. Divn.), Rohtak has been reversed.

[2]. Plaintiff filed a suit for declaration with consequential relief of permanent injunction and mandatory injunction against the defendants to the effect that order dated 20.11.2002 passed by defendant No.2 is totally illegal, discriminatory, *mala fide* and also

sought permanent injunction restraining the defendants from deducting the amount or 10% per month from the pension of the plaintiff on the basis of order dated 20.11.2002 and also mandatory injunction ordering the defendants to return the amount, if any, deducted from the pension of the plaintiff on the basis of said order.

[3]. Plaintiff was posted as General Manager, District Industries Centre, Rohtak during the period from 03.06.1985 to 06.08.1987. He retired in May 1995. The allegation was made that he committed some acts of omissions and commissions while in service.

[4]. The Unit of M/s Rohit Rice and General Mills was provisionally registered with the office of General Manager, DIC, Rohtak on 04.04.1985 having shown the machinery of about Rs.98,000/-.

[5]. The application was submitted on 03.04.1986 for the issuance of genuineness certificate by taking the plea that the value of machinery installed in the premises of the Mill was below Rs.1,00,000/- and, therefore, M/s Rohit Rice and General Mills were entitled to sales tax exemption for which genuineness certificate was required to be issued. The aforesaid Mill also submitted an application on 15.05.1986 for addition of end product 'Dal' on the same machinery. Addition of item 'Dal' was also claimed. The genuineness certificate was certified by Block Level Extension Officer Mr. Suresh Malik in May 1986, who reported that machinery of above Unit was below Rs.1,00,000/-.

[6]. In departmental proceedings, the act of the plaintiff while

issuing genuineness certificate alleged to be illegal, as the Unit was not entitled for any sales tax exemption on the basis of alleged genuineness certificate. Inquiry Officer was appointed by the defendant No.2 and inquiry was conducted under Rule 7 of the Punishment and Appeal, Rules 1987. The Inquiry Officer conducted the inquiry and recorded the statements of witnesses and ultimately gave the report that there was no ulterior motive behind the genuineness certificate issued by the plaintiff in the claim of the Unit for sales tax exemption. The Inquiry Officer also recorded that value of the machinery installed in the premises of the Unit was less than Rs.1,00,000/- and any extraneous consideration or motive was not proved. It was found that the plaintiff should have exercised some caution in this regard.

[7]. The report submitted by the Inquiry Officer did not find favour with the Competent Authority as the Competent Authority did not agree with the findings of the Inquiry Officer and proceeded to impose penalty of reduction of pension upto 10% by imposing cut thereof.

[8]. Trial Court dismissed the suit on the basis of divergence shown by the Competent Authority. Lower appellate Court while accepting the appeal has recorded the finding that at the time of passing of penalty to the extent of reduction of 10% of the pension was without affording any opportunity of being heard to the employee. Lower appellate Court has observed that order of disagreement with inquiry report should have been passed only after

hearing the plaintiff. In this regard statement of DW-1 Balbir Singh, Superintendent from the office of Director of Industries, Haryana, Chandigarh has been referred to show that the plaintiff was not given any opportunity of being heard at the time of inflicting punishment. The stand of the defendants has been found to be wanting in terms of obeying principles of natural justice.

[9]. This Court has considered the questions of law as formulated in para 7 of the grounds of appeal, which are reproduced as under:-

> *"(i) Whether the judgment and decree passed by Ld. District Judge, Rohtak is sustainable in the years of law.*
>
> *(ii) Whether no opportunity of being heard was given to the plaintiff-respondent despite of the fact that evidences which prove beyond any".....*

[10]. Question No.1 is a pure question of fact. Question No.2 has to be answered in the light of evidence on record. When the Inquiry Officer gave findings in favour of the plaintiff that no extraneous consideration was involved in giving genuineness certificate and the Competent Authority took divergent view then minimum requirement was that a reasonable opportunity of being heard was required to be given to the employee and he should have been given fair chance to explain his position at the time of inflicting punishment upon him. Reference can be made to ***Punjab National Bank and others v. Kunj Bihari Misra, AIR 1998 SC 2713***. The witness of the defendants i.e. DW-1 Balbir Singh Superintendent from the office of

Director of Industries, Haryana, Chandigarh has admitted that no such opportunity of being heard was granted to the plaintiff at the time of passing of order of punishment.

[11]. In view of aforesaid, question No.2 has to be answered against the defendants. Apparently no opportunity of being heard was granted to the plaintiff and there is no evidence to the contrary. The evidence on record cannot be held to be the result of any wrong submissions made by way of evidence on the issue of providing opportunity of hearing to the plaintiff.

[12]. The submission advanced by the learned counsel for the appellants vis-a-vis letters Ex.D-16 and Ex.D-19 cannot be interpreted to mean that opportunity was given to the plaintiff before inflicting punishment. There is no link evidence available on record to show that any opportunity of hearing of was given to the plaintiff before passing the order Ex.D-16 by the Competent Authority. The statement of Balbir Singh-DW1 is categoric to establish that no opportunity was given to the plaintiff before passing the order of disagreement with the report of the Inquiry Officer. Even the order, Ex.D-16 does not bear any date which remained conspicuously missing on record. The plaintiff was issued a show cause. This order was passed prior to giving opportunity to the plaintiff.

[13]. It is relevant to state here that the appellants-Department also filed RSA No.662 of 2011 against the heirs of employee in the context of withholding gratuity to the tune of Rs.70,125/-. The Department pleaded that at the time of retirement of the plaintiff, he

was chargesheeted in terms of Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 and on account of that gratuity amount of the plaintiff was withheld and after regular inquiry punishment to the tune of cut of 10% in pension of the plaintiff was imposed. The punishment was claimed to be result of major financial irregularities as pointed out by the audit report and, therefore, withholding of gratuity amount was claimed to be justified.

[14]. When the aforesaid matter ultimately came up, the High Court, while dismissing the appeal, observed that it is not a case of the defendants-appellants that any order of recovery of any financial loss has been passed against the plaintiff. It is also not the case of the Department that disciplinary proceedings have been initiated against the plaintiff for recovery of any such loss. Reference was made to Rule 2.2 (b) of Punjab Civil Services Rule, Volume II to the effect that no departmental proceedings can be initiated in respect of an event which took place more than four years prior to institution of such proceedings. It was also pointed out that no order, withholding gratuity amount should have been made mechanically and the plaintiff who could not receive the same during his lifetime, now the legal heirs are being deprived of even after expiry of more than 15 years. The retiral benefits are to be paid to the employee immediately on his retirement. Gratuity was not a charity or bounty which could have been withheld by the Department. The appeal was found to be totally devoid of merits and was held to be the result of callous attitude of the State Authorities. The appeal was dismissed

after having found to be the result of high-handedness on the part of the defendants with exemplary cost of Rs.20,000/-.

[15]. In view of above, it has been found that the impugned action of the Department in reducing the pension of the plaintiff by applying 10% cut is wholly unsustainable in law and the same is required to be refunded to the legal heirs of the plaintiff**,** who died during the proceedings.

[16]. In view of aforesaid, no illegality can be pointed out in the impugned judgment and decree dated 21.01.2011 passed by District Judge, Rohtak. Consequently, this appeal is found to be the result of continued *mala fide* of the defendants. Resultanlty, this appeal is dismissed with costs of Rs.25,000/- to be paid to the legal representatives of the plaintiff within three months from the date of receipt of certified copy of this order.

September 11, 2015 **(RAJ MOHAN SINGH)**
Atik **JUDGE**