

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 3095 of 2011 (O&M)

Date of decision : 29.5.2015

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Saudagar Singh

.....Appellant

Versus

State of Punjab and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. M.S Longia, Advocate for the appellant.
Mr. Vaibhav Sharma, DAG, Punjab.

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1. *Whether Reporters of Local Newspapers 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?*

RITU BAHRI, J

C.M No. 8484-C of 2011

For the reasons mentioned in the application, delay of 13 days in refiling the present appeal is condoned.

C.M is allowed.

RSA No. 3095 of 2011

The plaintiff-appellant (hereinafter referred to as 'the plaintiff') has come up in this regular second appeal against the judgment of reversal dated 8.3.2011 passed by the Additional District Judge (Ad hoc) Fast Track Court, Ropar, whereby appeal against the judgment and decree dated 7.10.2010 passed by the Additional Civil Judge (Senior Division), Rupnagar was accepted and judgment of the trial court was set aside. Vide the judgment of the appellate Court, the suit filed by the plaintiff has been dismissed.

Plaintiff had filed a suit for declaration that the order of termination dated 14.4.2005 was illegal, unjust and was liable to be

set aside. On 11.1.2001, plaintiff was posted on duty on bus bearing No. PB-9062 of Punjab Roadways, Chandigarh Depot while on route from Rai Singh Nagar to Chandigarh. The said bus was got checked by the checking team. Four passengers were travelling without tickets who had boarded the bus from Ganga Nagar for Ludhiana. The checking staff charged Rs. 103/- each from the passengers and took un-punched tickets from plaintiff in this regard. A report was made that it was a case of fare not collected and the passengers were allowed to travel without tickets at the instance of plaintiff. The plaintiff was issued a charge sheet on 25.1.2001. The charge was that he had charged Rs.103/- from each of the four passengers and then returned the aforesaid amount to them for the purpose of taking the same subsequently and misappropriating the same. The second charge was that the bus was not being plied as per the rotation programme. The plaintiff filed his reply explaining that two passengers out of four boarded the bus from the front gate and two boarded the bus from the rear gate. The plaintiff got in bus from the rear gate from the bus stand of Ganga Nagar and started issuing tickets to the passengers. The passengers who got in from the rear gate could not purchase tickets due to misunderstanding that the passengers sitting on the front side will buy the tickets for them. This fact was clarified by the passengers to the checking staff that they had failed to purchase the tickets due to non-coordination between each other. Story of charging Rs.103/- from each passenger by the plaintiff and then returning the same to them for the purpose of

embezzlement was thus a concocted story of the checking staff. With regard to the second allegation, the plaintiff stated that the bus was being plied as per the rotation programme and that there was no violation of the rotation system. The General Manager, Punjab Roadways Chandigarh Depot where the plaintiff was posted on the relevant date reported to the Director vide letter No. 18422/S/GM dated 11.11.2002 that plaintiff was plying the bus on that date as per the rotation only. The plaintiff brought sufficient evidence on the record to prove that both the allegations levelled against the plaintiff in the charge sheet are false, baseless but the enquiry officer vide his enquiry report dated 14.3.2001 concluded that the allegations against the plaintiff as contained in the charge sheet are correct one and on the basis of the said enquiry, show cause notice 22.1.2002 was issued to the plaintiff by the defendant no.2 and thereafter the termination order dated 14.4.2005 was passed. On notice of the suit, the trial Court framed the following issues:

- 1. Whether the order dated 14.10.2003 passed by the Director State Transport Punjab and order dated 14.04.2005 by the Addl. Secretary Punjab State Transport Department, Punjab are illegal null and void and are liable to be set aside?.OPP*
- 2. If issue No.1 is proved in affirmative, whether the plaintiff is entitled to be reinstated in service along with all consequential service benefits?OPP*

3. *Whether the suit is not maintainable ?OPP*
4. *Whether the civil court has no jurisdiction to entertain and try this suit?OPP*
5. *Whether no legal and valid notice under Section 80 CPC has been served upon the defendants? OPD*
6. *Whether the suit is bad for mis-joinder of necessary parties?OPD*

The trial Court issued a finding on issue no.1 in favour of the plaintiff and held that there was nothing on the record of the Department concerned to show that the plaintiff had done all this for the purpose of embezzlement. The plaintiff has led satisfactory evidence and even he has examined one of the four passengers who has state in favour of the plaintiff that this all happened due to misunderstanding between four co-passengers and there is no fault on behalf of the plaintiff. As per the deposition of PW-2, one of the four passengers, they had paid Rs. 412/- to the checking staff but they were not issued the tickets in their favour. The checking staff had written on the way bill that fair was not collected. Intention of embezzlement was not proved against the plaintiff as far as the charge no.1 was concerned. The order dated 14.4.2005 was declared, illegal null and void.

On appeal filed by the State, the appellate Court held that the enquiry had been conducted as per procedures by examining the witnesses and by giving opportunity to the plaintiff to cross-examine

the witness produced by the Department as per the Rules of natural justice. It was further held that the plaintiff had embezzled an amount of 412/- and finding on issue no.1 was reversed.

Counsel for the appellant Mr. M.S Longia has referred to Annexure A-4 to show that the information was sent to the Director, State Transport, Punjab Chandigarh that the Bus No.9062 has come back from Rai Singh Nagar to Chandigarh according to the rotation. Hence the charge no.2 had been framed without getting the necessary information from the Director, State Transport, Punjab, Chandigarh. As far as the first charge is concerned he had referred to the departmental enquiry (Annexure A-5). The four passengers who were not carrying the tickets had boarded the bus and had already travelled 30-35 km and they were still to travel 200 km to reach the destination. There were 50 passengers in the bus and at the time of rechecking the issuance of tickets, the checkers arrived over there and said they will check the ticket themselves. The official witnesses have confirmed this fact in their statements that while performing duty on 11.1.2001 on bus bearing registration no. 9062 belonging to Punjab Roadways Chandigarh, the said employee did not issue tickets to four passengers, travelling from Ganganagar to Ludhiana. When the checking staff asked the said passengers for tickets, they told that they had paid a sum of Rs. 412/- i.e @ Rs. 103/- per passenger to the conductor, on which the conductor returned the said money to them by saying that he will get the money from them on later stage. Moreover, the conductor, while admitting

his fault gave unpunched tickets for Rs. 412/- i.e @ Rs. 103 per passenger to the official witness. This fact goes to show that at the time of checking, no recovery of Rs. 412/- was made from the plaintiff and no tickets had been given to the passengers and neither any tickets had been given to the passengers. Hence the allegation of embezzlement was not proved. The charge against the plaintiff was that he would have committed a fraud by taking money from the said passenger at a later stage after returning the same to them. At best it could be a case of irregularity and not embezzlement and the punishment of dismissal from service was disproportionate to the allegations in the charge sheet. The second charge on the basis of Annexure A-4 cannot be made out as the bus was running according to the rotation programme.

Counsel for the State has not been able to controvert the information sent by the General Manager, Punjab Roadways, Chandigarh to the Director, State Transport, Panjab, Chandigarh dated 11.11.2002 that the bus in question had come back from Rai Singh Nagar to Chandigarh according to its rotation. Hence the second charge could not be made out.

After hearing counsel for the parties, the substantial question of law which requires to be decided by this Court is as under:

- (I) Whether as per the evidence led, the finding recorded in the enquiry report that the plaintiff was guilty of embezzlement of Rs.412/- is perverse.

To examine above said question, enquiry report (Annexure A-5) and the cross-examination of Paramjeet Singh would be relevant. In the enquiry report (Annexure A-5), the deposition of Avtar Singh, one of the four passengers who were travelling without tickets would be relevant. He stated that on 11.1.2001 he had boarded the bus and travelled from Ganga Nagar to Ludhiana. It was winter season and thick fog was there. Two passengers accompanying with him entered the bus from front side while he along with another passenger sat down on the backside seats. The bus was fully occupied and the conductor was issuing tickets to the passengers. When the conductor came to him, he told him that there are two passengers with him sitting on front side. The passengers sitting on the front presumed that we have taken their tickets. Meanwhile checking staff arrived and we told the checking staff regarding the said misunderstanding and thereafter checking staff got paid a sum of Rs. 412/- i.e Rs. 103/- per passenger and retained the tickets with them and told that they will not give these tickets to us and submit the same in the office. In cross-examination the said witness stated that the conductor was not known to him and at later stage, the conductor had told him that a report had been prepared against him. This witness told that he was running a medical shop.

As per the second witness, Bhag Singh Driver, Punjab Roadways, Chandigarh on 11.1.2001 his duty was assigned on bus bearing registration No. PB-12-9062. He deposed in favour of the

plaintiff that due to misunderstanding neither any passenger on the front side nor at the backside were issued tickets. Despite the fact that the passengers had narrated their version to the checking staff, a report was prepared against the conductor. The said employee when cross-examined by the presenting officer stated that the four passengers had traveled for a distance of about 30-35 Kms. and they were still to travel 200 km and that the tickets could not be issued due to misunderstanding and since no amount was taken, the passengers had informed the checking staff that they had given Rs. 412/- to the conductor which he had returned by saying that he will get the money at a later stage. The conductor at the time of checking gave four unpunched tickets to the official witness. The official witness stated that if the bus was not checked, the conductor would have committed a fraud by taking money from the said passengers. Moreover the bus was being driven not in accordance with rotation and it was being plied by the conductor and driver on their own free will. In the absence of any recovery of Rs.412/- from the conductor the allegation of embezzlement cannot be made out.

Moreover, as per the cross-examination of Paramjeet Singh, Clerk, Punjab Roadways, (Annexure A-7), the checking report was submitted by Nek Chand Inspector and Balwinder Singh, Inspector. As per report of Way Bill, it was a case of non receipt of fare and travel without tickets. He admitted that one of the passengers had got recorded a statement that an amount of Rs.412/- on account of tickets was given to checking staff. Hence once the

ticket amount was given to the checking staff, a presumption has to be drawn that no recovery was effected from the conductor with regard to the payment of ticket of Rs.412/-. It was further admitted by Paramjeet Singh that the driver had not been charge sheeted.

As per the statement of Nek Chand, Inspector (Annexure A-3) when the passengers were asked for the tickets they told that they had already paid the due fare to the conductor which he had returned to them by saying that that he will take the same at a later stage. The conductor admitted his fault and gave unpunched tickets amounting to Rs. 412/- to the checking staff which are (P-1 to P-12) and report is at P-13 and way bill is at P-14. He further stated that the conductor had got issued the tickets to the four passengers and was to commit fraud to the tune of Rs.412/- . From the statement of Nek Chand (A-3), enquiry report (A-8) and the information (A-4), a conclusion can sufficiently be drawn that the second charge was not made out as the bus was travelling as per the rotation and as regards the first charge that the conductor had not issued tickets to the four passengers when they had travelled about 30-35 kilometers and they had to travel about 200 kilometers to reach the destination at Chandigarh from Rai Singh Nagar and he was to commit a fraud of Rs. 412/-. The appellant-plaintiff had neither received any money nor he had committed any fraud. Hence this is a case where the allegation of embezzlement has not been proved. The appellant was a regular employee of the Department. The contention of the checking staff that he was to commit fraud at a later stage cannot be

accepted to prove charge no.1 against the plaintiff. In the present case wholly irrelevant material have been taken into consideration by the enquiry officer while terminating the services of the appellant-plaintiff. Keeping in view that the termination order is dated 14.4.2005 and almost 10 years have passed, a direction to restart the enquiry and putting the clock back to the stage of charge sheet would not be an appropriate decision in the given set of circumstances.

A reference at this stage can be made to a Division Bench judgment of this Court in the case of **Gurdev Singh vs. State of Haryana and others 2006(4) SCT 433**, where the order of termination was set aside as the charges were not proved against the delinquent employee as he has proved his illness and submission of leave application through his son. The punishment of termination was substituted with that of compulsory retirement with all consequential benefits.

Reference can also be made to the decision of a coordinate Bench of this Court in **Charan Singh vs. Pepsu Road Transport Corp., Patiala and another (RSA No. 2108 of 2008)** decided on **20.10.2009**, whereby the regular second appeal of the plaintiff was allowed. In this case, the appellant had 21 years of service to his credit when he proceeded on leave and that even if, unauthorised absence was established yet the punishment of termination was held to be disproportionately harsh. The order of termination was substituted with the order of compulsory retirement.

In the facts of the present case, both the charges with regard to the embezzlement of Rs.412/- and plying the bus against the rotation programme have not been proved. In my opinion, it is a fit case where this Court should interfere with the punishment and substitute the order of termination with an order of compulsory retirement.

In these circumstances, this appeal is partly allowed and the order of termination is directed to be substituted with the order of compulsory retirement which would, however, take effect from 14.4.2005. Let now the respondents calculate the superannuation benefits due to the appellant and release the same within a period of three months. In the event that these benefits are not released within three months, the same shall be released with 9% interest.

29.5.2015
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(RITU BAHRI)
JUDGE