

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

**RSA No.3765 of 2011 (O&M)
Date of decision: 06.10.2015**

The New India Assurance Co. Ltd. & others ... Appellants

Vs.

Inder Mohan Singh ... Respondent

RSA No.4554 of 2011 (O&M)

Inder Mohan Singh ... Appellant

Vs.

The New India Assurance Co. Ltd. & others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. Ashwani Talwar, Advocate
for the appellant (in RSA No.3765 of 2011)
for the respondent-Insurance Company (in RSA No.4554 of 2011).

Mr. M.S.Virk, Advocate
for the appellant (in RSA No.4554 of 2011)
for the respondent (in RSA No.3765 of 2011).

AMIT RAWAL J. (Oral)

This order of mine shall dispose of two Regular Second
Appeals bearing Nos.3765 of 2011 and 4554 of 2011.

Plaintiff - Inder Mohan Singh instituted a suit claiming declaration to the effect that order dated 18.11.2002 passed by defendant No.2, conveyed vide letter dated 18/19.11.2003, was illegal, null, void, mala fide, un-constitutional, discriminatory against the principles of natural justice and also claimed mandatory injunction to reinstate the plaintiff into service along with all rights, benefits and privileges.

Vide memo dated 31.10.1997, the plaintiff, while in service, was charge sheeted. He filed a detailed reply. Finding reply to be not satisfactory, Inquiry Officer was appointed, who, in his report dated 10.07.1998 proved the charges. The competent authority, i.e., Deputy Manager, inspected the report of the Inquiry Officer and removed the plaintiff from service. The said order was challenged, by availing statutory remedy of appeal before the Manager. The said appeal which was dismissed, vide order dated 18.11.2003.

The trial Court, on the basis of the oral and documentary evidence, dismissed the suit. However, the lower Appellate Court partly allowed the appeal filed by the plaintiff and the matter was remitted back to the appellate authority to pass fresh order.

Mr. Ashwani Talwar, learned counsel appearing on behalf of the appellant-defendant-Insurance Company submits, that there is no cadre of Regional Manager as Regional Manager, is none else but Manager, who is Senior Manager and discharging the duties of

Regional Manager. In support of his aforementioned contention, he relied upon the Schedule of Authorities, i.e., General Insurance (Conduct, Discipline & Appeal) Rules, 1975.

Mr. M.S.Virk, learned counsel for plaintiff - Inder Mohan Singh submits that admission of plaintiff noticed by the Inquiry Officer was under threat and coercion, it is under these circumstances, the impugned orders for removal of plaintiff from the service and rejection of the appeal were assailed. The finding of the lower Appellate Court was also not correct and inasmuch as that Inquiry Officer conducted a farcical inquiry as the principles of natural justice were not followed. He further submits that the trial Court dismissed the suit on the ground that plaintiff had filed another suit during the pendency of the appeal before the statutory authority and did not ponder upon the merits and demerits of the controversy, much less, referred to the oral and documentary evidence, therefore, the plaintiff has been deprived of right to be heard. He further submits that the lower Appellate Court did not ponder upon the order of termination and only referred the order passed by the Appellate Authority.

I have heard learned counsel for the parties and appraised the impugned judgments and decrees of the Courts below.

Before adverting to the rival contentions raised by learned counsel for the parties, it would be apt to reproduce candid admission of the plaintiff suffered before the Inquiry Officer, which reads thus:-

“With regard to the domestic inquiry instituted against me vide charge sheet dated 31.10.1997 vide which you are the inquiry officer have to submit that in the light of proceedings held so far and the witnesses produced, I am unable to contest the charges leveled against me vide charge sheet dated 31.10.1997. Therefore, I admit all the charges individually and severally. Since, I have admitted all the charges, I request leniency in the matter and I assure that I will not commit any such acts in future. I will once again request for leniency and I may please be pardoned.”

The aforementioned admission has not been disproved/controverted by leading direct and cogent evidence. In case, any fraud and coercion had been played upon the plaintiff, he could have led evidence. Except this admission, there is no other evidence. Admission recorded before the Inquiry Officer has to be believed, much less, has been believed by the Courts below. The plaintiff filed an appeal before the Manager, who after discussing the merits and demerits of the matter, rejected the same. The lower Appellate Court found that the Regional Manager was not the competent authority to decide the appeal, therefore, remitted back the matter to the appellate authority, i.e., Manager of the Insurance Company to decide the appeal. As per the Schedule referred above, there is no cadre of Regional Manager, as the appointing authority is

Deputy Manager in respect of the posts in the cadres of Assistants and equivalent cadres and Records Clerks and Appellate Authority is Manager. The Regional Manager being Senior Manager performed the duties of Regional Manager. The post of Manager is substantive post, though pay scales of Manager and Regional Manager are same.

In view of the aforementioned finding rendered by the lower Appellate Court, the order passed by the appellate authority wanting jurisdiction is not correct. Once the plaintiff has not been able to disprove the charges before the Inquiry Officer, in my view, he has failed to discharge the burden, as per the provisions of Section 101 of the Indian Evidence Act. Thus, RSA No.3765 of 2011, would involve the following substantial questions of law:-

“i) Whether the learned lower Appellate Court committed error in not appreciating that as per the General Insurance (Conduct, Discipline and Appeal) Rules 1975 the next Higher Authority after Manager is assistant General Manager and in fact Regional Manager holds the substantive rank of Manager only and thus, the appeal of the plaintiff was decided by the appellate authority designated as per the CDA Rules?

ii) Whether the Court below is right in deciding the challenge of the plaintiff which was neither pleaded nor put in evidence, was not an issue framed by the Court,

but was advanced during the arguments only?”

In view of the aforementioned observations, substantial questions of law are answered in favour of the appellant and against the respondents.

Accordingly, RSA No.3765 of 2011 is allowed and RSA No.4554 of 2011 is dismissed.

(AMIT RAWAL)
JUDGE

October 06, 2015
savita