

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

RSA No.2572 of 2012 (O&M)

Date of Decision:20.07.2015

Pepsu Road Transport Corporation, Patiala and another

.....Appellants

Versus

Gurinder Kumar

.....Respondent

CORAM:- HON'BLE MS. JUSTICE RITU BAHRI

Present:- None for the appellants.

Mr. S.S. Grewal, Advocate,
for the respondent.

RITU BAHRI, J.

Defendants-appellants have come up in appeal against the judgment of reversal dated 13.12.2011 passed by the District Judge, Patiala, whereby appeal filed by the plaintiff-respondent against the judgment and decree dated 28.04.2011 passed by the Civil Judge (Senior Division), Patiala, has been accepted.

Gurinder Kumar-plaintiff (respondent) was working as conductor with the defendants-appellants and was suspended from service w.e.f. 01.01.1986 on the ground that he had misappropriated a sum of Rs.20.75. Thereafter, he made an application by admitting his mistake and prayed that he might be reinstated in service. Upon this, vide order dated 18.02.1986 (Ex.P2/B), the Depot Manager reinstated him into service with

immediate effect, without giving any benefit of suspension period and imposed a penalty of stoppage of three annual grade increments without cumulative effect. Pursuant to the said order, a formal order (Ex.P2/C) was passed by the Depot Manager, whereby his three annual grade increments were stopped with cumulative effect. Thereafter, the plaintiff filed the present suit on 09.06.2005 seeking declaration to the effect that he was reinstated on 18.02.1986 and his three increments were stopped without cumulative effect, however, vide order dated 27.02.1986, his three increments had been stopped with cumulative effect. Therefore, he challenged the order dated 27.02.1986 being illegal, null and void.

Upon notice defendants-appellant filed written statement and controverted the allegations levelled by the plaintiff-respondent.

From the pleadings of the parties following issues were framed:-

1. Whether the plaintiff is entitled to declaration as prayed for?

OPP

2. Whether the suit is time barred? OPD

3. Whether the suit is not properly valued for the purpose of Court fee and jurisdiction? OPD

4. Relief.

Trial Court, after going through the evidence led by the parties, dismissed the suit being time barred, as the impugned order reinstating the plaintiff-respondent in service was passed on 27.02.1986, whereas he had filed the present suit in the year 2005.

On appeal, the lower appellate Court held that the impugned order dated 27.02.1986 had given a recurring cause of action to the plaintiff

and in view of the judgments passed by this Court in Malkiat Singh Vs. State of Haryana, 2007 (4) SCT 801 (P&H) and Makhan Singh Vs. The State of Punjab and others, 2009 (3) Services Cases Today 123 (P&H), the suit was well within limitation. Reference was made to the Amended PRTC (Conditions of Appointment and Service Regulation), 1981 (for short 'the Rules'), where the detailed procedure has been given to conduct an enquiry. Section 20 of the said Rules deals with the penalty, which can be imposed by the disciplinary authority. Relevant portion thereof, is reproduced as under:-

“20. Penalties:

The following penalties may for sufficient reasons be imposed on the employees, namely:-

- (i) Censure;
- (ii) Recovery from pay or security during service, or after termination of services, the whole or part of any pecuniary loss caused to the corporation by negligence or breach of order;
- (iii) Withholding of increments;
- (iv) Reduction to a lower post timescale or to a lower stage in the time scale;
- (v) Withholding of wages for the suspension period.
- (vi) Fines. Fines shall be imposed in accordance with the provisions of the payment of wages Act, 1936.
- (vii) Removal from service which does not disqualify from future employment.
- (viii) Dismissal from service which disqualify from future employment under the Corporation.”

Rule 22 of the aforesaid Rules provides for a procedure for imposing penalty after regular enquiry, which reads as under:-

“No order imposing any of the penalties shall be made except after an enquiry, as far as may be, in the manner provided in this rule:-

- (a) The employer or the Manager or a person authorized by the employer or the Manager shall give to the concerned workman a charge sheet clearly setting forth the imputation of misconduct and the

circumstances appearing against him requiring his explanation.

(b) The employee shall be given at least six days for submitting his explanation:-

Provided that such time may be extended for a maximum period of fifteen days after the expiry of six days, if sufficient reasons are advanced by the employee for seeking an extension.

(c) In case the workman fails to submit his explanation within the prescribed time or extended time allowed to him or where the explanation submitted by him is not found satisfactory, the employer or the manager or the person authorized by the employer or by the manager shall appoint a person to hold an enquiry and issue a notice containing the name of the enquiry officer and the date, time and place of the enquiry.

Provided that in a case where the workman admits in writing the charges leveled against him and the employer is satisfied that such an admission is voluntary, it shall be open to the employer or the manager to award any one of the punishments provided to Clause 20 without holding any enquiry.”

As per Clause (c) of Rule 22 the Rules, in case a workman admits the charges voluntarily, it shall be open to the employer, in that situation, to award any one of the punishments provided in Rule 20. The language of proviso to Rule 22 (c) puts an embargo for providing more than one punishments without conducting enquiry upon the employee.

In the instance case, the appellants-defendants, vide order dated 18.02.1986 (Ex.PW2/B), had imposed penalty upon the plaintiff-respondent when he had admitted his fault. The language of the order dated 18.02.1986 (Ex.PW2/B) is reproduced as under:-

“On his voluntary admission and by taking a lenient view, Sh. Gurvinder Kumar, Conductor No.L2 is reinstated in service with immediate effect. He shall not be paid anything over and above the subsistence allowance already paid to him during suspension period. His 3 annual grade increments are stopped herewith without cumulative effect.”

Thereafter, vide order dated 27.02.1986 (Ex.P2/C), the nature of penalty was changed, which reads as under:-

“Shri Gurinder Kumar, Conductor No.L-2 under suspension since 01.01.1986 is hereby reinstated in service with effect from 18.02.1986. His three annual grade increments are hereby stopped with cumulative effect. He shall not be paid over and above the subsistence allowance already paid to him during the suspension period.”

In the first order dated 18.02.1986 (Ex.PW2/B), the punishment was of stoppage of three annual increments without cumulative effect. However, vide subsequent order dated 27.02.1986 (Ex.P2/C), his three increments were stopped with cumulative effect. Keeping in view the provisions of Rule 22 (c) the Rules and its proviso, once an admission had been made by the workman with regard to the charges levelled against him, there was no need to hold a regular enquiry. In that situation, only one punishment, as detailed in Rule 20 above, could have been imposed upon the workman. However, the plaintiff-respondent was imposed two punishments, one under Sub Clause (iv) and the other under Sub Clause (v) of Rule 20 i.e. “stoppage of three increments with cumulative effect and withholding of salary for the suspension period.” As per language of the proviso to Rule 22 (c), one of the two punishments could have been awarded. The lower appellate Court set aside the judgment of the trial Court. However, at the same time, liberty was given to the defendant-corporation to reconsider the case of the plaintiff-respondent in accordance with the procedure as prescribed under Regulation 1981.

In the facts and circumstances of the present case, this Court is of the view that the lower appellate Court has passed the impugned judgment as per the provisions of Amended PRTC (Conditions of Appointment and Service Regulation), 1981. No illegality, much less perversity has been found in the impugned judgment warranting

interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration.

Dismissed.

(RITU BAHRI)
JUDGE

July 20, 2015

ajp