

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

**Regular Second Appeal No.3447 of 2014 (O&M)
Date of decision:12.03.2015**

Jagdeep Singh

.....Appellant

Versus

The Chairman of School Managing Committee and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. G.P. Vashisht, Advocate,
for the appellant.

Ritu Bahri, J.

Appellant-plaintiff has come up in regular second appeal against the judgment of reversal dated 03.02.2014 passed by the Additional District Judge, Hoshiarpur, whereby appeal filed by the defendant-respondent No.1 against the judgment and decree dated 29.08.2011 passed by the Civil Judge (JD), Dasuya, has been accepted and the suit filed by the plaintiff-appellant for declaration and mandatory injunction has been dismissed.

The facts not in dispute are that the plaintiff-appellant was enrolled as Lower Division Clerk in Army School, Unchi Bassi, Post Office, Lamin, Tehsil Dasuya, District Hoshiarpur w.e.f. 20.12.1999 for one year on adhoc basis vide letter No.16337/2/AS dated 09.12.1999 passed by Sh. K.C. Sharma, Principal. His services were regularized w.e.f. 01.10.2002 in the pay scale of Rs.3050-75-3950-80-4590 vide letter dated 03.10.2002. Later on, the plaintiff-appellant was served with a show cause notice dated 21.11.2006 explaining as to why his services should not be terminated in terms of AWES Rules and Regulations by 27.11.2006. Thereafter, vide

on administrative grounds in terms of para 186 (1) (I) and (iii) of Rules and Regulations October, 2003. Plaintiff preferred an appeal against the said order before the concerned authorities on 05.02.2007, but to no avail. Subsequently, Principal Army School, Unchi Bassi issued another letter dated 28.02.2007 on behalf of Chairman, vide which, the plaintiff was informed that his services had been terminated on 'Disciplinary Grounds'. The plaintiff challenged the aforesaid orders by filing the present suit.

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

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether order dated 07.12.2006 passed by the officiating principal of defendant No.3 and order dated 28.02.2007 passed by Principal on behalf of Chairman of defendant No.3 are illegal, null, void and ineffective? OPP
2. Whether the plaintiff is entitled to relief of declaration as prayed for? OPP
3. Whether the plaintiff is entitled to relief of mandatory injunction as prayed for? OPP
4. Whether the plaintiff is entitled to be reinstated in service with all consequential service benefits as prayed for? OPP
5. Whether the suit of plaintiff is not maintainable? OPD
6. Whether civil court at Dasuya has no jurisdiction to entertain and try this suit? OPD
7. Whether the plaintiff has not come to Court with clean hands? OPD
8. Relief.

The trial Court, after going through the evidence led by the parties, observed that the plaintiff had filed an appeal before the department as per mandatory Rules. Mohan Singh, Principal (DW-1), produced reply to

inquiry was conducted by Major T. Allwyns, but he was not examined as a witness by the defendants. As per Rule 171 of the Army Welfare Education Society Rules and Regulations, a preliminary investigation was required to be conducted before issuing show cause notice to the plaintiff. Reply to show cause notice was not duly proved on record by the defendants, whereby the plaintiff had admitted the financial irregularities committed by him. The impugned orders were held to have been passed without following proper procedure of Army Welfare Education Society Rules and Regulations. Ultimately, the suit of the plaintiff-appellant was decreed and he was held entitled to reinstatement w.e.f. 08.12.2006 along with all consequential benefits.

On appeal, the lower appellate Court re-examined the evidence led by the plaintiff, whereby he had stated that he had been performing his duties honestly and diligently and had been given commendation certificate, Ex.P3. As per plaintiff, the termination order issued by the officiating Principal of the school, was non speaking, illegal, null and void as he was not the appointing authority of the plaintiff and could not terminate his services. He further alleged that no proper opportunity of hearing was given to the plaintiff to explain his defence. As per the deposition of Kishan Singh (PW-2), who was working as Manager in Satluj Motors Ltd., Jalandhar, since 1998, the plaintiff was his sister's son and had approached him to get repair the jeep of Mohan Singh, Principal of Army School. An amount of Rs.55,000/- was spent and Mohan Singh, Principal, gave Rs.35,000/- in advance and remaining amount of Rs.20,000/- was given in second installment. A sum of Rs.5700/- remained to be paid. On asking about the remaining payment, the said Principal started harassing the

At the same time, as per deposition of Mohan Singh (DW-1), he was working as officiating Principal at Army School, Unchi Bassi and Jagdeep Singh-plaintiff was working as Lower Division Clerk. He had committed many irregularities during his service. He had given many oral warnings to the plaintiff in that regard. In reply to the show cause notice, Ex.DWA/1, the plaintiff had admitted that there would be no mistake in future from his side. During enquiry, he (plaintiff) had accepted his mistakes and signed all the statements. On the basis of inquiry report, Ex.DWA2/1, the services of the plaintiff were terminated. In cross-examination, Mohan Singh (DW-1) had stated that the inquiry was conducted by Major T. Allwyn. No witness was examined to prove allegations against the delinquent employee. As per show cause notice, Ex.P4, following irregularities were alleged against the plaintiff-appellant:-

“Financial Irregularities

- (i) You had collected Rs.13475.00 from Master Bhan Kanwar of CI XI as fee for two quarters (01st April to 30th September 2006) in the month of July, 2006. You did not deposit the fee immediately into Bank. You were reminded time and again by me to deposit the said money in the bank. The money was finally deposited by you in the Bank on 18th October 2006. Thus, you kept school money with you for over three months which is a serious financial irregularity.
- (ii) You had collected Rs.4050.00 on account of sale proceed of teachers application in the month of August 2006. You deposited Rs.300.00 less with the office.
- (iii) Fee in respect of Navneet Kaur, studying in CI Ist D/O Smt. Lakhwinder Kaur (working in CSD, 18 FAD) is required to be charged in the civilian category. She has been depositing the fee as per the fee structure of Army other Ranks Cat without taking sanction of appropriate authority. The same has been encouraged by you. The fee book was filled up by her class teacher in civilian Cat which was torn off by you and fresh slip filled under OR Cat.

Indiscipline

- (i) You are habitual late comer to school and regularly absent yourself

from duty without obtaining sanction for leave from me.

- (ii) You are regularly found idling away your time gossiping with outsiders in spite of lot of work remaining pending in your office.
- (iii) You are also sitting a bad personal example in front of students by your irrational behaviour and turnout.

Inefficiency

- (i) Proper record of official Dak received have not been maintained by you. Various important letters which required immediate action have been misplaced by you leading to regular reminders from higher authorities.
- (ii) Board Proceedings of Annual Stock Taking Board of School property for the year 2005-06 is still pending with you. In spite of repeated reminders you have not expeditiously completed the same and put it up for approval of Chairman. The proceeding should have been finalized in April, 2006.
- (iii) You have not maintained EPF account properly. EPF amount at EPF office for the year 2004 is not traceable as initiated by EPF office, Jalandhar which is a serious lapse. No office copies of EPF returns submitted by you are kept as office record.

In the reply to show cause notice, Ex.DWA/1, the plaintiff had stated that he will not commit any mistake in future and he be forgiven. Even though, the inquiry report, Ex.DWA2/1, was not proved by the defendants, the plaintiff never challenged the said enquiry report nor filed any objection against the same. It was a detailed inquiry, which shows that the plaintiff had committed serious irregularities during his tenure in the Army School, Unchi Bassi. None appearance of Major T. Allwyn, Inquiry Officer, would not be a ground to discard the inquiry report. This inquiry report was never challenged by the plaintiff. The scope of interference in the enquiry report has been considered by the Hon'ble Supreme Court in **Sanjay Kumar Singh Vs. Union of India & others**, 2011 (3) Apex Court Judgments 497 (SC) and **Employers Management West Bokaro Colliery of TISCO Ltd. Vs. Concerned Workman, Ram Pravesh Singh**, 2008 (1) Apex Court Judgments 494 (SC), wherein it has been held that the appellate

Courts and Tribunals cannot substitute their subjective opinion in the place of the one arrived at by the domestic Tribunal.

Ultimately, The lower appellate Court, after perusing the termination order/letters dated 07.12.2006 (Ex.P5) & 28.02.2007 (Ex.P8), legal notices issued by the plaintiff (Ex.P9 & Ex.P10), reply dated 27.11.2006 filed by the plaintiff and inquiry report (Ex.DWA/2/1) came to a conclusion that the inquiry had been conducted correctly by the inquiry officer Major T. Allwyn and the plaintiff had signed on all the pages/documents. The plaintiff-appellant had broken discipline of the school and the decision of the school authorities to dispense with the services of the plaintiff after conducting an inquiry, was justified. The appellate Court did not interfere with the final decision of the punishing authority.

After going through the impugned judgment passed by the lower appellate Court, this Court is of the view that inquiry against the plaintiff-appellant had been conducted in accordance with law. The plaintiff-appellant has been rightly held not entitled to be reinstated in service. No illegality, much less perversity has been found in the judgment passed by the lower appellate Court, warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

12.03.2015
ajp

(RITU BAHRI)
JUDGE