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

**RSA No.1355 of 1991
Date of Decision:15.11.2016**

The State of Punjab and others ... Appellants

Vs.

Nasib Chand ... Respondent

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. Rahul Verma, A.A.G. Punjab.

P.B. BAJANTHRI J.

Matter called twice. None appears for the respondent.

The appellant has questioned the validity of the trial and appellate court orders dated 21.7.1990 and 7.1.1991 respectively.

The respondent while working as a conductor with the Punjab Roadways was subjected to nearly 25 allegations for which appellants proceeded to issue show cause notice and to obtain explanation and thereafter proceeded to impose penalty. The penalty orders are dated from 1977 to 1989. Suit was filed on 6.11.1989. Trial Court while deciding the suit upheld Ex. P-6 and P-23. Whereas exhibits Ex.P-2 to P-5, P-7 to P-22, P-24 are held to be invalid. The appellant aggrieved by the order of the trial Court preferred an appeal before the appellate court and the appellate court upheld the order passed by the trial court. Thus, the present appeal has been presented.

Learned counsel for the appellant vehemently contended that except Ex.P-17 and P-19, rest of the exhibits which were questioned in the civil suit are barred by limitation. Suit was filed on 6.11.1989 whereas the orders relates back to 1977 to 1984. However, Ex.P-17 and P-19 relates to order dated 20.10.1989 and 12.12.1989. Therefore, Ex.P-17 and P-19 are within the limitation. It was further contended that insofar as Ex.P-17 and P-19, the respondent has provided ample opportunity by issuing show cause notice and after consideration of his explanation to the show cause notice, the disciplinary authority proceeded to impose the penalty of withholding of one increment without cumulative effect. Therefore, no interference is called since the respondent has been given sufficient opportunity and it is only a minor penalty. In minor penalty, question of inquiry do not arouse under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules 1970.

Heard learned counsel for the appellant.

Perusal of the trial court order reveals that except Ex.P-17 and P-19, rest of the exhibits relate back to 1977 to 1984. Therefore, the suit is not maintainable on the ground of limitation insofar as challenge to other than Ex.P-17 and Ex.P-19. Hence, other than Ex. P-17 and P-19 are upheld only on the ground of limitation. Ex.P-17 and P-19 are challenged within the time limit which are dated 20.10.1989 and 12.12.1989. Admittedly no inquiry has been initiated in respect of Ex.P-17 and P-19 and the allegations of misappropriation of corporation fund. It is a serious misconduct. Merely issuing show cause notice and obtaining explanation and passing penalty order is not sufficient when the disputed facts are involved in respect of misappropriation of amount and which have been disputed by the respondent-workman in the reply to the show cause notice. It is bounden duty of the disciplinary authority to initiate inquiry and misappropriation of money is to be proved in a disciplinary inquiry. Therefore, Ex.P-17 and P-19 are liable to be set aside on the sole reason that it was without inquiry, the respondent has been punished on the allegation of misappropriation. In the case of ***O.K. Bhardwaj*** v. ***Union of India***; 2001 (9) SCC 180 the Hon'ble Supreme Court has held that even for imposing minor punishment, regular inquiry is required to be initiated. Hence, Ex.P-17 and P-19 are set aside.

Accordingly, the appeal is allowed in part.

15.11.2016 **(P.B. Bajanthri)**
rajeev **Judge**

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**