IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1609 of 1995 (O&M)
Date of Decision:-03.11.2016.

Virender Kumar

......Appellant

Versus

The Hissar District Central Coop. Bank Ltd. Hissar

.......Respondent

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

****

Present: Mr. R.K. Malik, Senior Advocate with
Ms. Rimple Kadyan, Advocate for the appellant.

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

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P.B. BAJANTHRI, J. (Oral)

1.) In the instant appeal, the appellant has questioned the validity of the Appellate Court order dated 21.1.1995 by which Appellate Court has reversed the decree passed by the Trial Court dated 4.6.1992.

2.) The appellant was stated to be working as a Secretary in the respondent-Bank. He was subjected to disciplinary proceedings on the allegations that he had misappropriated respondent-Bank's money. Appointing authority to the post of Secretary was Board of Directors. Whereas, the initiation of inquiry against the appellant was made by the Managing Director. The inquiry was concluded in imposing the penalty of dismissal from service. The appellant aggrieved by the order of dismissal preferred an appeal before the Appellate Authority. The same was rejected while confirming the order of dismissal. Thus, the appellant has preferred suit before the Trial Court. The Trial Court framed the following issues:-

> *"1. Whether the order of dismissal dt.10.12.84 and appellate order dt.31.7.85 are bad in law and not binding and plaintiff is entitled to continue in service in the alternative plaintiff is entitled to damages for wrongful dismissal? OPP.*
>
> *2. Whether the Civil Court has got no jurisdiction to try the suit? OPD.*
>
> *3. Whether the plaintiff has not served notice under section 124 of the Cooperative Societies Act? OPD.*
>
> *4. Whether the suit is not maintainable in the present form ? OPD.*
>
> *5. Whether the plaintiff has no locus-standi to file the present suit? OPD.*
>
> *6. Whether the plaintiff is estopped from filing the suit by his own act and conduct ? OPD.*
>
> *7. Whether the plaintiff was filed an appeal which was rejected by the Registrar. If so, to what effect? OPD.*
>
> *8. Whether the suit is barred by limitation ? OPD.*
>
> *9. Relief."*

3.) The Trial Court set aside the order of dismissal as well Appellate Authority order and held that the appellant is entitled to be reinstated in service and further entitled to all pay and allowances. The respondent-Bank, aggrieved by the order of the Trial Court, preferred an appeal before the Appellate Court. The Appellate Court allowed the Civil Appeal No.144-CA of 29.9.1992 filed by the respondent Bank. The appellant aggrieved by the order of the Appellate Court dated 21.1.1995, presented this appeal.

3.) Learned counsel for the appellant submitted that the Appellate Court while allowing the appeal held that the appellant has a remedy of under the Industrial Disputes Act, 1947 for the reasons that the respondent-Bank is an Industry and the appellant is a labourer/employee. Whereas, the appellant was holding the post of Secretary in the respondent-Central Cooperative Bank Limited which is a Registered Society. Therefore, the appellant is not a labourer so as to raise industrial dispute. Consequently, the Appellate Court decision that the appellant has reached under the Industrial Disputes Act, 1947 is wholly incorrect.

4.) It was further submitted that the Board of Directors is the appointing authority insofar as Secretary post which was held by the appellant, the appointing authority alone is competent authority to initiate disciplinary proceedings. Therefore, initiation of inquiry by the Managing Director is without authority of law. Consequently, all the proceedings till the dismissal order are held to be illegal. It was further contended that the appellant has not been provided opportunity by furnishing list of documents which is mandatory under the Rules thereby the appellant has not been given full opportunity to adduce evidence before the Inquiring Officer. Thus, there is a violation of principal of natural justice. Whereas, the Trial Court appreciated the above legal contentions while decreeing the suit whereas the Appellate Court failed to consider legal issues which has been considered by the Trial Court. Therefore, the Appellate Court order dated 21.1.1995 is liable to be set aside.

5.) Per contra, learned counsel for the respondents vehemently contended that the appellant even though holding the post of Secretary in the respondent-Cooperative Bank as per the decision of the Apex Court cited by the Appellate Court, the appellant has to raise an industrial dispute. His grievance is relating to dismissal and seeking back wages. Therefore, rightly the Appellate Court has held that the appellant has no civil remedies and he has to approach Industrial Tribunal raising an industrial dispute. It was further contended that even though the Board of Directors is the appointing authority in relation to the post of Secretary but still the Managing Director can initiate disciplinary proceedings under Rule 28 of the Common Cadre Rules. Therefore, the Trial Court has erred in holding that the initiation of inquiry by the Managing Director is without authority of law is incorrect. It was further contended that the appellant has been given full opportunity in the disciplinary proceedings and he has not availed the same. Thus, there is no infirmity in the disciplinary proceedings as well as decision of the Appellate Court.

6.) Heard learned counsel for the parties.

7.) Substantial law for consideration in the present appeal is whether appellant is a labourer and Industrial Tribunal has jurisdiction or Civil Court and whether the respondents-Bank have complied enquiry proceedings or not. The appellant was holding the post of Secretary in the respondent-Cooperative Bank. No material has been made available so as to show that the post of Secretary falls under the definition of labourer so as to contend that the appellant is required to raise an industrial dispute for the purpose of reinstatement and back wages. Therefore, the contention of the respondent-Bank and the decision of the Appellate Court holding that the appellant is required to raise an industrial dispute for the purpose of reinstatement and back wages is without any material. Consequently, the plea of the respondent-Bank that the appellant has to raise industrial dispute is rejected and so also findings of the Appellate Court, on the issue.

8.) The contention of the appellant that he was appointed by the

Board of Directors, consequently, initiation of inquiry by the Managing Director is without authority of law is contrary to Rule 28 of the Common Cadre Rules. Therefore, the question of jurisdiction in respect of initiation of inquiry by the Managing Director is upheld.

9.) Insofar as discrepancies and not adopting the Rules in the inquiry like not furnishing list of documents and list of witnesses and not giving opportunity to examine and cross-examine witnesses by the appellant is concerned, the same is not disputed by the respondent Bank except stating that the appellant has not availed the opportunity. Whereas, the Trial Court has considered the issue relating to non-furnishing of list of documents and witnesses and so also not giving opportunity to examine and cross-examine witnesses in the inquiry. The order of dismissal is a major penalty and the appellant is a permanent employee. Therefore, before imposing a major penalty, the disciplinary authority is bound to follow the prescribed Rules and procedure before holding the charges levelled against the appellant as proved. The appellant has not been given proper opportunity to adduce evidence. Furnishing of documents relied upon by the prosecution in a enquiry is a mandatory as held by the Apex Court in the case of ***Kashinath Dikshita Vs. Union of India and others (1986) 3 SCC 229*, *Kothari Filaments & Anr vs Commr. of Customs (2009) 2 SCC 192* and *Professor Ramesh Chandra Vs. University of Delhi and others (2015) 5 SCC 549***. Thus, the Appellate Court order 21.1.1995 dated is set aside; the matter is remanded to the disciplinary authority to continue the disciplinary proceedings from the defective stage like furnishing list of documents and conclude the inquiry within a period of six months from today. The appellant is deemed to be under suspension from the date of dismissal till passing of final order in the disciplinary proceedings and the respondent-Bank is directed to pay the subsistence allowance for the intervening period within a period of six months.

10.) Appeal stands disposed of.

11.) Learned counsel for the respondent relied on the decision of the Apex Court in the case of ***Automatic Electric Pvt. Ltd. Vs. Engineering Mazdoor Sabha and others AIR 1975 SCC 2238 (1)*** holding that civil remedies are not available to the labourers. It is undisputed that Engineering Mazdoor Sabha and others were respondents in the above cited decision are labourers. Therefore, they have no right of remedy before the Civil Court. They had the remedy in respect of their grievance before the Industrial Tribunal. Whereas, in the present case, the appellant was holding the post of Secretary which does not fall under the definition labourer. No material has been produced to show that respondent-Bank is Industry and that the post of Secretary falls under the definition of labourer so as to say that the appellant has remedy before the Industrial Tribunal.

(P.B. BAJANTHRI)
JUDGE

November 03, 2016.
sandeep sethi

Whether speaking/reasoned:- Yes / No

Whether Reportable:- Yes / No.