

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

RSA No.3044 of 1997

Date of decision: 16.9.2016

Punjab State through Collector, Gurdaspur and anr.

...Appellants

Versus

Makhan Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE GURMIT RAM

Argued by: Mr. Ajaib Singh, Additional A.G., Punjab
for the appellants.

Mr. G.S. Bal, Senior Advocate with
Mr. A.D.S. Bal, Advocate
for the respondent.

GURMIT RAM, J.

This regular second appeal is preferred by the aforementioned appellants, who were defendants before the learned trial Court, against the judgment and decree dated 8.1.1997 passed by learned Additional District Judge, Gurdaspur vide which the appeal of the respondent - herein (plaintiff) was accepted, judgment and decree dated 9.5.1992 passed by the learned trial Court, Gurdaspur were set aside and suit of the plaintiff was decreed with costs throughout.

2. The case of the respondent – herein (plaintiff) before the learned trial Court in nutshell was that he joined the State Transport Department as a Conductor in the year 1972 under the control and supervision of defendant

No.2. He continued to be in service upto 22.12.1988, when defendant No.2 passed an order regarding his removal from service vide his endorsement No.5692-93/Steno/GM dated 22.12.1988. This order was alleged to be illegal, null and void, unconstitutional, against the principles of natural justice, *mala fide*, non-speaking etc. etc., *inter alia*, on the grounds that charge-sheet issued to the plaintiff was illegal being passed on mere suspicions; that he was not afforded any opportunity to defend himself since he was not supplied with copies of the record on the basis of which charge-sheet was framed and that his reply to charge-sheet was not considered at all. It was further his case that his alleged misconduct was relating to year 1980, whereas the impugned order against him was passed in the year 1988 i.e. after a gap of more than eight years and that too when he was already punished in the year 1984 vide order dated 12.10.1984. He was not associated with any inquiry after 22.1.1986 qua the allegations on the basis of which he had been punished. It was further his plea that at the time of passing the above-said order dated 12.10.1984, he was told that all the previous cases pending against him till date of that order had been filed. He did not appear before the Inquiry Officer for the reason that he was not competent to conduct the inquiry against him when he was no more in service after 12.10.1984. The order dated 22.12.1988 had been passed against him since he was successful in previous litigation and he received salary for the period for which he remained unemployed for the reason of order dated 12.10.1984 which was declared illegal by Sub Judge, Ist Class, Batala on 22.1.1986. He served a notice on the defendants as required under the provisions of Section 80 of the Code of Civil Procedure (for short – CPC) but to no effect, which necessitated to file the instant suit.

3. On receipt of notice, appellants – herein (defendants) appeared and filed joint written statement wherein they took preliminary objections with regard to maintainability of the suit and that Civil Court has no jurisdiction to entertain the same. On merits, the passing of impugned order against the plaintiff was admitted which was alleged to be legal, correct and also according to the provisions of the service rules. Reply filed by the plaintiff to the charge-sheet was duly considered by the competent authority. It was further their plea that services of the plaintiff were terminated on 12.10.1984 in an other case and he was taken back in service on 20.6.1986 as per order dated 22.1.1986 passed by the Court of Sub Judge, Ist Class, Batala. The Inquiry Officer vide his report dated 23.10.1984 held the plaintiff guilty. The competent authority passed the impugned order after duly considering the reply of the plaintiff to show-cause notice. He was afforded full opportunity and was also heard in person before passing the impugned order. Service of notice under Section 80, CPC, was admitted, but its legality was denied.

4. From the pleadings of the parties, following issues were framed:

1. Whether impugned order is illegal, null and void? OPP.
2. Whether plaintiff is entitled to consequential benefits? OPP.
3. Whether suit is not maintainable? OPD.
4. Whether jurisdiction of this Court is barred? OPD.
5. Whether notice under Section 80, CPC, served upon defendants is illegal? OPD.
6. Relief.

5. Learned trial Court (Sub Judge IInd Class, Gurdaspur) recorded findings on issues No.1 and 2 against the plaintiff, on issues No.3 to 5 against

the defendants and dismissed the suit with costs vide judgment and decree dated 9.5.1992.

6. The respondent-herein (plaintiff) feeling aggrieved from the said judgment and decree, preferred an appeal which was accepted by the Court of learned Additional District Judge, Gurdaspur whereby reversing the judgment and decree of learned trial Court and decreed the suit of the plaintiff with costs throughout.

7. The appellants – herein (defendants) being aggrieved from the above-said judgment and decree dated 8.1.1997 passed by learned Additional District Judge, Gurdaspur have come up before this Court vide the instant appeal, notice of which was given to the respondent – herein (plaintiff). Record of both the Courts below was also requisitioned.

8. Counsel for both the parties were heard and record was also perused with their able assistance.

9. The learned counsel for the appellants has contended that in the case in hand, there was no violation of the provisions of Rule 8(11), 8(16) and 8(18) of The Punjab Civil Services (Punishment and Appeal) Rules, 1970 (in short – 'Rules 1970') on the part of the Inquiry Officer during the inquiry since the respondent – herein (plaintiff) was proceeded against *ex parte* during the inquiry proceedings. Herein, he has also contended that when the respondent – herein (plaintiff) had himself absented from the inquiry proceedings and was proceeded *ex parte*, so there was no question of providing him any assistance of a co-worker/co-employee. For this very reason, there can also be no violation of Rule 8.11, 8.16 and 8.18 of the Rules, 1970 on the part of Inquiry Officer. The impugned judgment and decree passed by the First Appellate Court are merely

based on conjectures and surmises and hence the same are not tenable in the eyes of law. Further, he prayed for the acceptance of the appeal by setting aside the impugned judgment and decree and dismissal of the suit of the plaintiff.

10. But on the other hand, learned counsel for the respondent – herein (plaintiff) has denied the above contentions of learned counsel for the appellants and has contended that the impugned judgment and decree of the learned First Appellate Court are tenable in the eyes of law being passed on the basis of facts, evidence as well as relevant provisions of law.

11. In order to appreciate the above rival contentions of learned counsel for both the parties, I deem it essential to see the inquiry file and to discuss its relevant part in some brief. As per the case of the appellants – herein (defendants), respondent – herein (plaintiff) was on duty as a Conductor on bus bearing registration No.PBN-201 belonging to Punjab Roadways, Batala Depot, while plying on Batala to Chandigarh route. His bus was checked by the raiding party headed by Harbhajan Singh, Inspector, Punjab Roadways, Pathankot on 22.11.1980 at the turning of Baba Bakala. During checking, 12 passengers of the bus told the raiding party that conductor had charged fare from them at the rate of Rs.1.20/- paisa each for travelling from Mehta to Baba Bakala turning, but he did not issue any ticket to them. Further, he also failed to produce way bill and un-punched tickets to the raiding party despite demand. Further, he also misbehaved with the staff of the raiding party. On the basis of these allegations, the raiding party submitted report Ex.P1, for taking necessary action, against the respondent – herein (plaintiff). Consequently, the respondent – herein (plaintiff) was served with a charge-sheet dated 30.12.1980 containing all the above-said allegations against him which is available at page No.15 and

reply submitted by him denying all the charges levelled against him in the charge-sheet is available at page No.17 of the inquiry file i.e. Ex.P1.

Then as per record since the reply submitted by respondent – herein (plaintiff) was not found satisfactory, so Traffic Manager was appointed as Inquiry Officer to hold inquiry in the above-said matter and Legal Assistant was appointed as Presenting Officer for this purpose. Then as per page 19 of Ex.P1, respondent – herein (plaintiff) appeared before the Inquiry Officer on 8.5.1981. On the asking of Inquiry Officer, he replied that he did not admit the charges levelled against him and expressed his desire that inquiry be conducted into this matter, but anyhow admitted that he had received the entire documents annexed with charge-sheet. Then on the same day, the Inquiry Officer started recording statement of official witness Inspector Assa Nand which was completed on the same day. Now herein I want to discuss the provisions of Rule 8(11) of 'Rules 1970' which are relevant and the same are as under:

“The inquiring authority shall if the Government employee fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Government employee may for the purpose of preparing his defence-

- (i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list referred to in sub-rule (3);
- (ii) submit a list of witnesses to be examined on his behalf;
- (iii) Apply orally or in writing for the supply of copies of the statements, if any recorded, of witnesses mentioned in the list referred to in sub-rule (3), in which case the inquiring authority shall furnish to

him such copies as early as possible and in any case not later than three days before the commencement of the examination of the witnesses on behalf of the punishing authority; and

(iv) give a notice within ten days of the order or within such further time not exceeding ten days, as the inquiring authority may allow for the discovery or production of any document which is in the possession of Government, but not mentioned in the list referred to in sub-rule (3) and the Government employee shall also indicate the relevance of the document required by him to be discovered or produced by the Government.”

As per the above discussed provisions of Rule 8(11) of 'Rules 1970', if the Government employee fails to appear on the date fixed or refuses to admit the charges levelled against him, then in that eventuality, it is mandatory for the Inquiry Officer to adjourn the case to a later date not exceeding thirty days in order to achieve the object as mentioned in above discussed Clauses (i) to (iv) of this Rule. In the case in hand, as above discussed, the Inquiry Officer started recording the statement of Assa Nand, Inspector (Official witness) and concluded the same on the same day, when the respondent – herein (plaintiff) appeared before him on 8.5.1981 and denied the charges levelled against him. So this act and conduct on the part of Inquiry Officer is certainly in violation of the above-said provisions of Rule 8(11) of 'Rules 1970'.

12. Then as above discussed legal Assistant, who was a law graduate, was appointed as Presenting Officer to present the case on behalf of the department. In that eventuality, the respondent – herein (plaintiff) was entitled to get the assistance of an Advocate to prepare his defence properly, but the Inquiry Officer did not even ask him as to whether he needed the assistance of any co-employee/co-worker. So on this account also, there was a lacunae in the inquiry proceedings.

13. Then as per the enquiry file Ex.P1 as mentioned at page its No.57, Sh.R.S. Sharma was appointed as Inquiry Officer in place of T.M., Punjab Roadways, Batala and one Sukhcharanjit Singh, Assistant was appointed as the Presenting Officer. Then as mentioned at its Page No.75, the respondent – herein (plaintiff) appeared before this Inquiry Officer on 16.8.1984 and he showed his willingness that he was ready to face the remaining inquiry. But the Inquiry Officer started the *de novo* inquiry and recorded the statement of Assa Nand, Inspector again on 3.9.1984, on which date the respondent – herein (plaintiff) did not appear before the Inquiry Officer and was proceeded against *ex parte*. Then statement of second official witness Harbhajan Singh, Inspector was recorded on 24.9.1984 in the *ex parte* proceedings and the evidence of department was closed on the same very date.

14. Learned counsel for the respondent – herein (plaintiff) has contended that respondent – herein (plaintiff) did not appear before the Inquiry Officer on above-said both the dates, since he ceased to be in Government service on his termination from service in other departmental inquiry and as such there would have been no occasion for the Inquiry Officer to proceed any further in inquiry proceedings against the respondent – herein (plaintiff). But this contention of learned counsel for the respondent – herein (plaintiff) is not found to be good as it is an admitted case of both the parties that services of respondent – herein (plaintiff) were terminated in the said other inquiry vide order dated 12.10.1984. So as such he was in Government service on above-said both the dates i.e. 3.9.1984 and 24.9.1984 when the statements of above-said both the official witnesses were recorded and evidence of the department was closed. So in this situation, it is difficult to say that the alleged inquiry

proceedings are bad in the eyes of law due to non-compliance of the provisions of Rule 8(16) of 'Rules 1970'. The compliance of the provisions of Rule 8(16) can only be made if the delinquent official had been co-operating during the inquiry proceedings and was present on the date when the evidence of department was closed. In the case in hand, the delinquent official was himself at fault by absconding from the inquiry proceedings and also for the reason that he was in Government service, when the statements of official witnesses were recorded. It is the settled law that no body can be permitted to take benefit of his own default or wrong.

15. Then as per page 93 of Ex.P1, it came to notice of the department that respondent – herein (plaintiff) has already been removed from service in an other departmental inquiry pending against him vide office order dated 12.10.1984 and as such this inquiry was ordered to be filed for the time being vide order dated 12.12.1987. Then as per its page 97, this inquiry was revived against the respondent – herein (plaintiff) for the reason that he had been taken back into service. Then as per its page 103, show-cause notice was given to him and reply dated 17.9.1987 as filed by him to this show cause notice is available at its page 105. Thereafter, he was also given opportunity of personal hearing and was heard personally by the Punishing Authority which followed the impugned order whereby terminating the services of the respondent–herein (plaintiff).

16. But in the case in hand, before issuing the show-cause notice to the respondent – herein (plaintiff), it was mandatory for the Inquiry Officer, as per the provisions of Rule 8(18) of 'Rules 1970', to generally question him on the circumstances, appearing against him in the evidence for the purpose of enabling the Government employee to explain any circumstances appearing in

the evidence against him.

17. Though the respondent – herein (plaintiff) was proceeded against *ex parte* before the Inquiry Officer when the statements of official witnesses were recorded and he also did not examine himself, even then it was required for the Inquiry Officer to make compliance of the provisions of Rule 8(18) of 'Rules 1970' before issuing the show-cause notice in question. If the department was to re-start the inquiry when the respondent – herein (plaintiff) was reinstated into Government service, then it was to be started from the stage at which it was ordered to be filed for the time being. So it is the case of non-compliance of the provisions of Rules 8(18) of 'Rules 1970'.

18. Then the learned counsel for the appellants has also contended that this inquiry may be remitted to the quarter concerned for holding the fresh inquiry from the stage at which it was found to be defective in order to meet the ends of justice. In the case in hand, the allegations as levelled against the respondent – herein (plaintiff) were relating to the year 1980. Then it was also admitted that respondent – herein (plaintiff) remained in the service of defendants' – department till the year 2001 when he retired on attaining the age of superannuation. He was also given all the retiral benefits. Besides this, he is enjoying his pension since then as permissible under the rule. So period of about 36 years has been elapsed since the date when allegations were levelled against the respondent – herein (plaintiff). So it is does not appeal to any logic or sound reasoning to remit this inquiry for holding fresh one qua the matter in issue as submitted by the learned counsel for appellants.

19. Learned counsel for the respondent – herein (plaintiff) has contended that the impugned order is bad also for the reason that punishing

authority did not discuss all the objections raised by the delinquent official in his reply to show-cause notice while passing the impugned order. From the perusal of the reply to show-cause notice, it is found that delinquent official had levelled allegations of bias etc. against the Inquiry Officer, but he cannot be permitted to raise such objections, since he himself did not appear before the Inquiry Officer or before the Punishing Authority during the inquiry proceedings in order to show his grievance, if any, against the Inquiry Officer. So as such this contention of learned counsel for the respondent – herein (plaintiff) is declined.

20. In the light of above discussion made in para Nos.11, 12, 16 & 17 (supra), this appeal stands dismissed being meritless and disposed of accordingly. The impugned judgment and decree passed by the learned First Appellate Court is upheld.

16.9.2016
Brij

(GURMIT RAM)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No