

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1001 of 2007 (O&M)

Date of Decision:- 10.5.2016.

State of Punjab and another

.....Appellants

Versus

Balwant Singh (deceased) through LRs.

.....Respondents

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

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Neeraj Yadav, AAG, Punjab for the appellants.

Mr. Rohiteshwar Singh, Advocate for the respondents.

P.B. BAJANTHRI, J.

1.) In the instant appeal, the State has questioned the validity of the order passed by the Trial Court as well as Appellate Court dated 5.10.1990 and 18.9.2006, respectively.

2.) Balwant Singh-workman, while serving Punjab Roadways as a Driver was subjected to disciplinary proceedings by filing charge memo on the allegations against him that bus should have consumed only 65 litres diesel on the route but he took 153 litres of diesel and, thus, the respondent-workman had used 88 litres of diesel more than the required quantity. Thus, he has misappropriated 88 litres of diesel. Workman feeling aggrieved by the filing of charge memo

preferred a civil suit seeking for declaration that charge memo is illegal. During pendency of the civil suit, the disciplinary proceedings was concluded in imposing penalty of termination from service on 16.11.1988.

3.) On 5.10.1990, the Trial Court decreed the suit in favour of the workman. It is ordered as follows:-

“It is ordered that the suit of the plaintiff is decreed against the defendants with costs for permanent injunction restraining defendant No.2 from taking any disciplinary action on the basis of illegal show cause notice No.6694/SY/GM dated 23.9.88 and the telegram dated 19.10.88 and also for declaration to the effect that the impugned order No.7857-58/ST/GM dated 16.11.1988 terminating the plaintiff from service on the basis of the impugned show cause notice dated 23.9.88 is illegal and void and the plaintiff is entitled to all the service benefits as if the impugned order dated 16.11.88 had never been passed.”

4.) The appellant aggrieved by the order of the Trial Court preferred an appeal before the Appellate Court. On 18.9.2006 the Appellate Court confirmed the order of the Trial Court. Hence, this appeal.

5.) Learned counsel for the appellant submitted that during pendency of the civil suit, services of the workman were terminated. The order of termination has not been questioned. Consequently, the Trial Court erred in holding the termination is also illegal and

decreeing the suit further confirming Trial Court order by Appellate Court.

6.) Learned counsel for the respondent-workman submitted that in the absence of challenge to the termination order, the Civil Court has ample power to declare that the termination order is illegal or bad. Therefore, there is no error in the order passed by the Trial Court dated 5.10.1990 and affirming the order of the Trial Court by the Appellate Court. The appellants have not made out a case so as to interfere with the order of the Trial Court as well as the Appellate Court. Learned counsel for the respondent, in respect of ample jurisdiction of the Civil Court relied on decision of this Court reported in **1962 (1) ILR (Punjab) 69** titled **Ishar Singh alias Surjan Singh Vs. Pritam Singh and another** decided on 17.5.1961 in which he has pointed out that discretion of the Court is vast and Civil Court can mould the relief having regard to various facts of the case.

7.) Heard learned counsel for the parties.

8.) The question for consideration in this appeal is whether the Trial Court can interfere in respect of an order which is not challenged in a civil suit or not. The Trial Court in its judgment held as follows:-

"I have considered the arguments carefully. As per the case law in the case cited as Anil Kumar Dass (Supra) a show cause notice can be challenged on the basis of malafide on the part of the punishing Authority even without waiting for

the final order of punishment. In my opinion, a inference of malafide can be drawn not only from specific allegations of the delinquent government servant but also from the surrounding circumstances. In the present case, the plaintiff was charge sheeted on 23.6.1983 but inquiry report against him was submitted on 12.3.87. After that the Punishing Authority did nothing till 23.9.88 when it issued the impugned show cause notice (Page 41 of the Inquiry file) against the plaintiff. The sword was thus kept hanging over the head of the plaintiff for such a long period and from that the only possible inference is that of bias and harassment. Therefore, in my opinion, there was cause of action when the suit was filed and in that view of the matter, the order dated 16.11.88 is hit by the Rule of lispendence and the suit is perfectly maintainable even without amending the plaint. Issue is decided in favour of the plaintiff and against the defendants.”

9.) The Trial Court has exceeded its jurisdiction in interfering with the order of termination dated 16.11.1988. Workman respondent had questioned the second show cause notice in the suit i.e. after holding of inquiry and submission of Inquiring Officer's report to him. At the best, the workman could have made necessary amendment to the suit. In the absence of amendment to the suit, workman cannot question order of termination dated 16.11.1988 orally before Trial Court. So also the Trial Court cannot decide the order of termination in the absence of challenge to it. Both the Trial Court as well as the

Appellate Court have erred in interfering with the order of termination dated 16.11.1988.

10.) At this juncture, learned counsel for the petitioner submitted that during pendency of the litigation workman has passed away. The above observation and finding may not come in the way of legal representatives claiming retiral benefits. It is made clear that they are not entitled to any interest of retiral benefits. The Legal representatives of the workman are entitled for pensionary benefits without interest.

11.) Petition stands disposed of.

(P.B. BAJANTHRI)
JUDGE

May 10, 2016.

sandeep sethi