IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1.)

RSA No.2566 of 2011
Date of Decision:- 11.7.2016.

Surinder Kumar

......Appellant

Versus

State Bank of India and others

.......Respondents

(2.)

RSA No.1896 of 2011

State Bank of India and others

......Appellants

Versus

Surinder Kumar

.......Respondent

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. G.S. Bal, Senior Advocate with
Mr. A.D.S. Bal, Advocate for the appellant in
RSA No.2566 of 2011 and for the respondent in
RSA No.1896 of 2011.

Mr. Kapil Kakkar, Advocate for the respondents in
RSA No.2566 of 2011 and for the appellants in
RSA No.1896 of 2011.

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P.B. BAJANTHRI, J.

1.) By this order RSA Nos.2566 and 1896 of 2011 shall be disposed of as the point in issue involved in both the appeals are arising out of same set of facts. Facts are being extracted from RSA No.2566 of 2011.

2.) In these two Regular Second Appeals both the State Bank of India and Surinder Kumar have questioned order of the Appellate Court dated 17.11.2010 passed in Civil Appeal No.321 of 2007.

3.) Surinder Kumar, while he was working as an Assistant Accounts/Cashier at Tibri Branch, he was subjected to disciplinary proceedings on the allegations that he fraudulently added his name in the Term Deposit Receipt (TDR) No.601486 for ₹ 25,000/- dated 05.02.1997 issued in the name of Smt. Taro Devi without any authority of the depositor. He was also alleged to have changed the rate of interest from 8.5 % to 9.5 % on TDR No.601486 to get the benefit of 1% interest rate applicable to staff. On 13.9.2000, eight charges were framed against him and thereafter, he was placed under suspension on 23.10.2002. The inquiry was concluded while holding that the charges levelled against appellant Surinder Kumar were proved. Consequently, the Disciplinary Authority imposed the penalty of dismissal from service on 27.2.2003. Feeling aggrieved by the order of dismissal, Surinder Kumar preferred an appeal before the Appellate Authority. Appeal was rejected on 29.4.2003. He filed suit before the Trial Court on 19.8.2003. The suit was decreed in his favour on 20.11.2006.

4.) The Bank preferred an appeal before the Appellate Court questioning the decree passed in the suit. The Appellate Court remanded the inquiry matter while setting aside the decree of the Lower Court. To that extent, judgment was modified. Thus, appeal was allowed in part. The Bank was permitted to re-inquiry into the matter and pass fresh order after affording reasonable opportunity of being heard to appellant-Surinder Kumar.

5.) Both the Bank as well as Surinder Kumar aggrieved by the order of the Appellate Court dated 17.11.2010 presented the above appeals.

6.) Learned counsel for the Bank contended that Surinder Kumar was dismissed from service on 27.2.2003 and in the year 2010 matter was remanded and order for re-inquiry from the defective stage is improper. Inquiry has been held in accordance with law after giving due opportunity to Surinder Kumar. Therefore, there is no infirmity in the disciplinary proceedings as well as imposing the penalty of dismissal from service. Thus, the Appellate Court has erred in remanding the matter for re-inquiry from the defective stage and the defective stage has not been pointed out by the Appellate Court. Therefore, merely remanding the matter to hold re-inquiry from the defective stage is arbitrary and illegal. It was further submitted that reading of the Inquiring Officer's report, it is evident that Inquiry Officer's finding is based on evidence. The learned counsel for Surinder Kumar on the other hand submitted that Inquiry Officer's report reveals that it was a case of no evidence.

None of the authors of the documents quoted by the Inquiry Officer were examined and cross-examined. There is no corroborative evidence. Hence, the question of remanding the matter to the Inquiring Officer to re-inquire into the matter is impermissible.

7.) Heard learned counsel for the parties.

8.) Perusal of the Inquiring Officer's report, it is evident that the Inquiring Officer while giving finding to each of the charge has given his finding only with reference to Presenting Officer's statement. Serious allegations have been levelled against Surinder Kumar, namely, tampering of Term Deposit Receipt etc. Therefore, necessary corroborative evidence as well as handwriting expert's report to the extent whether Surinder Kumar has tampered the Term Deposit Receipt or not is not forthcoming. Merely Term Deposit Receipt has been changed in the name of Surinder Kumar, it does not amount that Surinder Kumar has tampered the record of Term Deposit Receipt. In this regard, in the absence of evidence as well as corroborative evidence of proof that fraudulently adding name of Surinder Kumar in the Term Deposit Receipt No.601486 for ₹ 25,000/- as well as change of rate of interest from 8.5% to 9.5% etc. cannot be held to be proved on the statement made by Presenting Officer. Thus, the Trial Court set aside the order of dismissal. The Appellate Court erred in remanding the matter for re-inquiry. Admittedly, the contention of learned counsel for the Bank in appeal is that the Appellate Court should not have remanded the matter having regard to the date of dismissal, i.e. 27.2.2003 and remand of matter dated 17.11.2010 which is after lapse of 7 years. It may not be appropriate for holding re-inquiry. In view of these facts and circumstances as well as in not giving opportunity of examination and cross-examination of witnesses so also non-examination of authors of the documents and the Inquiring officer has relied upon affidavit of one Rajwinder Singh in the absence of his evidence, examination and cross-examination. Entire inquiry is vitiated. The Inquiring Officer has totally ignored the procedural aspects while holding the inquiry and giving finding. On the face of the record, it is evident that it is a case of no evidence. Having regard to the fact that Surinder Kumar was dismissed from service on 27.2.2003, it is not appropriate for remanding the matter to hold fresh inquiry. The order of the Appellate Court is set aside while upholding the order of Trial Court dated 20.11.2006.

9.) In view of the above discussions, RSA Nos. 2566 and 1896 of 2011 are disposed of while setting aside the order of the Appellate Court dated 17.11.2010.

(P.B. BAJANTHRI)
JUDGE

July 11, 2016.
sandeep sethi