

In the High Court of Punjab and Haryana at Chandigarh.

RSA-3059-2011

Date of Decision:05.01.2016.

Prithvi Raj

...Appellant

Versus

Haryana Roadways and another

...Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Parminder Singh, Advocate,
for the appellant.

Mr. Saurabh Mohunta, DAG, Haryana.

SABINA, J.

Appellant had filed suit for declaration challenging the order dated 25.11.2004. Suit filed by the appellant was decreed by the trial Court vide judgment/decreed dated 09.06.2010. Aggrieved against the said judgment/decreed, respondents preferred an appeal and the same was allowed by the Appellate Court vide judgment/decreed dated 13.11.2010. Hence, the present appeal by the plaintiff.

I have heard learned counsel for the parties and have gone through the record available on the file carefully.

In the present case, appellant was working as a Conductor with the respondents and retired from service on 05.12.2004. On 06.08.2001, appellant was on duty as a

Conductor when the bus in question was checked by the Inspectors of the respondents/Haryana Roadways. It was found that the appellant had not issued tickets to certain passengers and had, thus, embezzled the amount in question. Departmental inquiry was held against the appellant and vide impugned order, penalty of reduction of pay scale at the initial stage for five years was imposed. It was further ordered that during the said period, appellant will not earn any increment with cumulative effect.

Respondents in their written statement had admitted that the appellant had worked as a Conductor with them from 02.12.1971 to 05.12.2004. It was further averred that during the tenure of service of the appellant, in 16 cases his 18 annual increments were stopped without cumulative effect. In 6 cases his 9 annual increments with cumulative effect were stopped and in one case, he was brought on minimum pay scale for five years and in 3 cases punishment of warning was imposed, whereas, in six cases he was censured. In 22 cases, fine to the tune of ₹10,878/- was imposed. On merits, it was averred that when the checking staff had checked the bus in question, it was found that all the passengers were without tickets and the said passengers had informed the inspecting staff that they had paid the requisite amount to the appellant but they had not been issued the tickets. It was further averred that appellant had

fled away from the spot. It was further averred that during inquiry proceedings, appellant was afforded full opportunity to enable him to plead his case.

On the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiff is entitled to decree for declaration as prayed for? OPP
2. Whether the suit is not maintainable? OPD
3. Whether the suit is time barred? OPD
4. Whether the plaintiff has concealed true and material facts from the court? OPD
5. Relief.

Trial Court while decreeing the suit had placed reliance on the statement of DW-1-Sandeep Kumar. As per the statement of DW-1, inquiry officer had cross-examined the witnesses on behalf of the Department. He further stated that only a copy of charge-sheet was issued to the appellant and no other document was supplied to him. No passenger was made a witness in the alleged inquiry nor the statement of any independent witness was recorded. On the basis of the said statement, the trial Court held that principles of natural justice had been violated in this case.

Appellate Court while allowing the appeal filed by the respondents has held that the inquiry report was not available on record. There was no material on record that

DW-1-Sandeep Kumar had participated in the inquiry proceedings. Hence, the learned Appellate Court came to the conclusion that the trial Court had erred in placing reliance on the statement of DW-1. It has further been noticed by the Appellate Court that the appellant had filed departmental appeal challenging the impugned order and the Appellate Authority had reduced the penalty vide order Exhibit D-12, dated 25.05.2006. The said order had not been challenged by the appellant by amending the suit.

In the present case, the impugned order was modified by the Appellate Authority in appeal vide order Exhibit D-12. However, appellant had failed to amend the suit by challenging the said order. In-fact the impugned order had merged in the order passed by the Appellate Authority. In these circumstances, the Appellate Court had rightly allowed the appeal filed by the respondents.

No substantial question of law arises in this case warranting interference by this Court. Hence, this appeal is dismissed.

January 05, 2016
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(SABINA)
JUDGE