113

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.6275 of 2015 (O&M)
Date of decision: January 08, 2016

State of Punjab and others

.......Appellants

Versus

Surjit Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. K.D.S. Sidhu, Addl. A.G. Punjab.

Mr. P.K. Bansal, Advocate
for the caveator.

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SABINA, J

Respondent had filed suit for declaration challenging the order dated 20.11.2007, whereby, penalty of censure of service and recovery of 50% of the alleged loss to the tune of ₹1,51,901/- was imposed upon him.

The case of the appellant, in brief, was that he was working as a Senior clerk with PWD B&R Department. On false allegations, charge-sheet dated 08.04.2003 was served on the appellant and on the basis of the inquiry report, impugned order was passed. The impugned order was challenged inter-alia on the ground that it has been passed by the Appellate Authority and consequently, the right of the appellant to file an appeal was prejudiced.

Respondents in their written statement averred that the impugned order had been passed as per law.

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

"1. Whether order dated 20.03.2007 issued vide Endrst dated 03.12.2007 by defendant No.1 as detailed in the heading of the plaint is illegal, arbitrary, malafide, unconstitutional, against the Govt. instructions, provisions of Constitution of India and principles of natural justice and is liable to be set aside?OPP

2. Whether the plaintiff is entitled for declaration prayed for?OPP

3. Whether the plaintiff is entitled for injunction prayed for?OPP

4. Whether the suit is not maintainable?OPD

5. Whether the defendants are entitled to special cost?OPD

6. Relief."

Parties led their evidence in support of their respective pleas.

Trial Court vide judgment/decree dated 02.04.2013 decreed the suit of the respondent-plaintiff. The said judgment/decree passed by the trial Court were upheld by the First Appellate Court vide judgment/decree dated 12.05.2015 in an appeal filed by the appellants-defendants. Hence, the present appeal by the appellants-defendants.

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

In the present case, admittedly, the punishing authority of the plaintiff was Chief Engineer, PWD (B&R), whereas, the impugned order had been passed by the Secretary to Government of Punjab, PWD (B&R). Against the order passed by the punishing authority, i.e. Chief Engineer, PWD (B&R), plaintiff could have filed statutory appeal before the Secretary to Government of Punjab, PWD (B&R). It has been held by the Hon'ble Apex Court in *Surjit Ghosh versus Chairman & Managing*

Director, United Commercial Bank and others, 1995 (2) SCC 474 as under:-

> *"The respondent-Bank in its submission contended that although it is true that the Deputy General Manager had acted as the disciplinary authority when he was in fact named under the Regulations as an appellate authority, no prejudice is caused to the appellant because the Deputy General Manager is higher in rank than the disciplinary authority, viz., the Divisional Manager/AGM (Personnel). According to the Bank, it should be held that when the order of punishment is passed by a higher authority, no appeal is available under the Regulations as it is not necessary to provide for the same. It was also contended that there is no right to appeal unless it is provided under the Rules or Regulations. Although the argument looks attractive at first sight, its weakness lies in the fact that it tries to place the Rules/Regulations which provide no appeal on par with the Rules/Regulations where appeal is provided. It is true that when an authority higher than the disciplinary authority itself imposes the punishment, the order of punishment suffers from no illegality when no appeal is provided to such authority. However, when an appeal is provided to the higher authority concerned against the order of the disciplinary authority or of a lower authority and the higher authority passes an order of punishment, the employee concerned is deprived of the remedy of appeal which is a substantive right given to him by the Rules/Regulations. An employee cannot be deprived of his substantive right. What is further, when there is a provision of appeal against the order of the disciplinary authority and when the appellate or the higher authority against whose order there is no appeal, exercises the powers of the disciplinary*

authority in a given case, it results in discrimination against the employee concerned. This is particularly so when there are no guidelines In the Rules/Regulations as to when the higher authority or the appellate authority should exercise the powers of the disciplinary authority. The higher or appellate authority may choose to exercise the power of the disciplinary authority in some cases while not doing so in other cases. In such cases, the right of the employee depends upon the choice of the higher/ appellate authority which patently results in discrimination between an employee and employee. Surely, such a situation cannot savour of legality. Hence we are of the view that the contention advanced on behalf of the respondent-Bank that when an appellate authority chooses to exercise the power of disciplinary authority, it should be held that there is no right of appeal provided under the Regulations cannot be accepted.

The result, therefore, is that the present order of dismissal suffers from an inherent defect and has to be set aside.

The question, however, is what consequential order should be passed in the present case. It will not be fruitful to send the matter back to the Bank for rehearing of the matter by the named disciplinary authority since the appellate authority which is the higher authority has already taken a decision in the matter and it cannot be expected that the lower authority will take a different decision. These proceedings have been pending against the appellant right from the year 1982 till this day and the appellant has been out of employment for all these years. At one stage, the appellant had offered to forego all the arrears of his salary provided he was reinstated in service on the post to which he would be entitled at present on the basis of his continuous service till date.

We had suggested to Shri Gupta appearing for the respondent-Bank to take instructions in the matter: The respondent-Bank, however, has chosen to reject the offer and has instead suggested that the Bank would like to pay compensation to the appellant since it has lost confidence in him. We have considered the charges against the appellant and we find that apart from the fact that much can be said in favour of the appellant in support of his contention that the charge has been trumpeted against him. The inquiry also prima facie suffers from defects as pointed out above, though we must add that we have not gone into the merits of the said defects. The appellant is an ex-Army officer. What is further, the compensation amount, if directed to be paid would come to about Rs.20 lakhs-. The Bank is a nationalised Bank and the money belongs to the public. A huge amount on this scale cannot be paid to anyone for doing no work during this long period just because the Bank feels that it has lost confidence in the employee. He can certainly be placed in a department where he has nothing to do with the monetary transactions of the Bank, such as the establishment section etc., even assuming that the Bank has reasons to lose confidence in him."

Thus, in the facts and circumstances of the present case, the Courts below rightly basing reliance on the decision of the Hon'ble Apex Court in Surjit Ghosh's case (supra) have decreed the suit of the plaintiff.

No substantial question of law arises in this case warranting interference by this Court.

Dismissed.

(SABINA)
JUDGE

January 08, 2016
mahavir