

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1353 of 1991 (O&M)

Date of Decision: 2.3.2017

State of Punjab

... Appellant

Versus

Jasbir Singh

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.P.S.Bajwa, Addl.A.G., Punjab for the appellant

Mr.H.S.Gill, Sr.Advocate with
Mr.Nitin Rampal, Advocate for the respondent

RAJIV NARAIN RAINA, J. (Oral)

1. I have heard learned counsel for the parties at some length.
2. I agree with Mr. H.S.Gill, learned Sr. Counsel that the suit was not barred by time, in view of the recurring cause of action which permitted the court to mould the relief to 36/38 months prior to the filing of the suit. This is because of the impact of the punishment order on salary and pension.
3. The plaintiff/respondent was inflicted major punishment of stoppage of 10 annual increments with cumulative effect which not only made an impact on his salary, but ultimately, had reduced the pension considerably. Therefore, learned Sr. Counsel submits that the ruling in State of Punjab and others vs. Gurdev Singh, (1991) 4 SCC 1 would not apply to this case on point of limitation respecting void orders since that was a case of dismissal from service, which is not a recurring cause of action. When the plea of limitation fails to hold ground and that the suit was not barred, then

this Court has also examined the merits of the case with the assistance of learned Sr. Counsel and Mr.P.S.Bajwa, learned counsel for the State.

4. Mr. Bajwa relies on the findings recorded by the learned trial court who was then the Sub Judge 1st Class, Jalandhar, that the delinquent was given sufficient opportunity before the first Enquiry Officer to make his statement of defence. Sufficient time was given to the delinquent to inspect the record and reasonable opportunity to file his reply to the charge-sheet which he failed to avail. When the Enquiry Officer changed, the threads of the enquiry were picked up from the stage they were left before the Assistant Accounts Officer, appointed as Enquiry Officer. And even before the new Enquiry Officer, the plaintiff did not point out that he was not ready with his defence and was not in a position to cross-examine the witnesses. The witnesses were indeed examined and their testimonies recorded. On the other hand, on 7th March, 1983, the plaintiff made his statement before the Enquiry Officer that he received the documents and had gone through the documents on file and asked that enquiry be conducted in Punjabi language. Thereafter, he appeared on different dates from 11.10.1983 to 13.2.1984, but he did not complain about the appointment of the fresh Enquiry Officer and thus, could not complain later on that change of Enquiry Officer had prejudiced him. In these circumstances, it cannot be said that the delinquent was not given sufficient opportunity to defend himself. When the enquiry proceedings have been held in a fair and reasonable manner and the charges proven on evidence, then punishment lies in the domain of the disciplinary authority to choose one of the punishments available to him. If the disciplinary authority has inflicted major punishment of withholding of 10 increments with permanent effect, then it was not one of the grounds taken

Even if it were pleaded, the Court would still not interfere with the quantum of punishment imposed by taking into account the gravity of misconduct. The plaintiff was a Conductor caught red handed while embezzling money by accepting fares, but not issuing tickets to the passengers.

5. I would, therefore, not agree with the findings of the learned lower appellate court as regards breach of Rule 8.11 of the Punjab Civil Service (Punishment and Appeal) Rules, 1970. The learned Additional District Judge, Jalandhar misread the evidence when he records in paragraph 9 of the judgment that the Enquiry Officer after framing of charge on 7th March, 1983 did not adjourn the case to a later date for recording evidence against the appellant, and therefore, Rule 8 (11) had been breached causing prejudice to the charged employee. This is an incorrect statement of facts which has occurred due to error in reading the evidence and the judgment of the trial court where the discussion on the point is good and sufficient to support that plenty of opportunity was given in defence but the learned District Judge in his work does not say in the judgment in appeal that the findings in paragraph 9 of the trial court order were incorrect on facts or were not based on evidence. There is, therefore, a fundamental flaw of reasoning in paragraph 9 of the judgment of lower appellate court and on this account, it cannot be sustained, and the same deserves to set aside.

6. In view of the above, this regular second appeal is allowed and the judgment and decree dated 7th January, 1991 passed by the lower appellate court is set aside and the judgment dated 9th January, 1990 passed by the trial court is upheld and restored. As a result of this order, the State would not effectuate recoveries from the respondent as that may be unjust to the respondent and which is hit and protected by the constructive and

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etc., AIR 2015 SC 696 by treating the appellant as a pensioner who retired from service decades ago. The file is closed and is consigned to the record room. No costs.

2.3.3017
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

No