

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-394-1994

Date of decision: 25.05.2017

Managing Director, Punjab State Tubewell
Corporation Ltd. & anr.

.... Appellants

vs.

Ashok Kumar and anr.

.... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. P.S.Thiara, Advocate
for the appellant.

Mr. T.C.Bansal, Advocate
for respondent No.1.

Mr. Deepak Garg, AAG, Punjab.

Rajiv Narain Raina, J.(Oral)

This appeal appears to have been filed only for the sake of filing. Both the Courts below are of the same view that the dismissal order was not justified in severity as against the gravity of the charge of misconduct, even if it was committed.

The plaintiff-respondent was a Store Munshi, accused of filling 40 bags with cement, which he swept from the floor of the storehouse where a large number of cement bags were kept. It is not uncommon that in warehouses and godowns where cement bags are stored in gunny bags, there is always some residue cement dust spilling out while loading and unloading material. Applying the test of proportionality, the dismissal order was held to be extremely harsh and some lesser punishment could have been contemplated. The action taken by the disciplinary authority was excessive.

The plaintiff respondent had put five years of service at the time of

dismissal.

I have no reason to differ with the findings of the trial Court and the appellate Court while sitting in second appeal. The view of the courts is based on appreciation of evidence and application of the test of proportionality and reasonableness and is not open to be disturbed either on law or facts. Therefore, the dismissal order has rightly been set aside with all consequential benefits.

Accordingly, this appeal is dismissed. It may be noticed that not only had the plaintiff-respondent been subjected to disciplinary proceedings but also had to face criminal trial in an FIR lodged against him. In the trial ended in acquittal and the plaintiff was found innocent. The FIR was registered by the Vigilance Department, Punjab.

If the State's criminal case failed, then the Corporation must pay compensatory costs for prosecuting an innocent man and dismissing him from service then they are liable to pay costs which are assessed at ₹ 20,000/- to be paid to the plaintiff. The decree in appeal is upheld and it is ordered that the same will be implemented within a period of three months from the date of receipt of certified copy of the order. In case of default, the amount in default from the date payable i.e. on expiry of the period fixed for payment will carry interest at the rate of 9% per annum till payment.

(RAJIV NARAIN RAINA)
JUDGE

25.05.2017
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1. *Whether speaking/non-speaking?*
2. *Whether reportable?*

Yes
No