

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 294

Regular Second Appeal No.3080 of 2013 (O & M)
Date of Decision: September 04, 2017

Central Bank of India & others

..... APPELLANTS

VERSUS

Mohan Lal Saily

..... RESPONDENT

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

. . .

PRESENT: - Mr. Aalok Jagga, Advocate, for the appellants.

Mr. R.S. Bajaj, Advocate, for the respondent.

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Jaspal Singh, J

Delay condoned.

Defendants have preferred the instant regular second appeal against judgment & decree dated March 26, 2013 passed by the Additional District Judge, Fast Track Court (Adhoc), Jalandhar, whereby appeal filed by them has been dismissed and upheld the judgment & decree dated December 23, 2010 passed by the Additional Civil Judge (Senior Division), Jalandhar, vide which, suit of the plaintiff – respondent had been decreed to the effect that plaintiff is deemed to be in continuous service of defendant Bank as Manager, after setting aside order dated April 22, 2005. However, the trial court held that plaintiff is not entitled to back wages of period during which he did not perform duty with the defendants. The defendants

were directed to give the plaintiff posting order at the earliest. In case of his retirement, defendants were further directed to give him all the pensionary/retiral benefits due to him under rules within the period of six months. Defendants were given liberty to pass a fresh order on the basis of enquiry report (Ex.P9) as per rules within a period of six months from the date of order.

2. Brief facts of the case are that plaintiff – appellant, Mohan Lal Sally, instituted a civil suit seeking declaration to the effect that he was in continuous service of defendant – Bank as Manager and entitled to all rights, privileges and emoluments as well as relief of mandatory injunction directing the defendants to give him the posting orders. Plaintiff pleaded that he joined the defendant- Bank on October 21, 1975 as Clerk. He was promoted as Sub Accountant w.e.f. November 02, 1981 and Scale – II Officer in the year 1993. Plaintiff pleaded that he applied for three months Privilege Leave w.e.f. November 27, 1995 for going to New Zealand to attend the marriage of his niece, while he was posted at Central Bank of India, Kapurthala Road, Jalandhar Branch. Though, leave was applied on October 24, 1995 but no order was conveyed. He went to New Zealand on November 27, 1995 alongwith his wife and daughter under the belief that leave was sanctioned. Subsequently, plaintiff applied for extension of his leave on medical grounds that he has to be operated for Chronic Piles in June 1996 and will report back on duty on October 05, 1996. Plaintiff sought voluntary retirement on October 16, 1996 by giving three months' notice to General Manager, Central Bank of India, Cental Officer, Mumbai, under Rule 3.1 of Sub Regulation 1 of Regulation 19 of Central Bank of India (Officers) Service Regulation, 1979 (for short, 'Regulation'). When plaintiff did not get any response, he filed a civil suit seeking declaration to the effect

that he be deemed to be voluntarily retired on expiry of period of three months notice and order dated December 30, 1996 passed by the Assistant General Manager, Central Bank of India, Jalandhar was illegal, null and void. The said suit was dismissed by Civil Judge (Junior Division), Jalandhar vide judgment & decree dated May 03, 2001. That lis met with the same fate upto the level of regular second appeal. Thereafter, after the dismissal of regular second appeal, plaintiff was not given any posting order. Under these circumstances, he filed the instant suit claiming that he is entitled to be in service of defendant – Bank as Manager and is entitled to all the rights, privileges and emoluments attached to that post.

Defendants contested the suit by filing written statement by raising legal objections on the grounds of maintainability, limitation, cause of action, jurisdiction, locus standi, plaintiff being stopped by his act & conduct from filing the suit, plaintiff having come to the court with unclean hands, suit is vexatious, no cause of action accrued in his favour and present suit is barred by principle of resjudicata. On merits, defendants admitted the factum of privilege leave w.e.f. November 27, 1995 for going abroad. But, he went New Zealand without getting his leave sanctioned. Plaintiff was served with show cause notices dated March 26, 1996, October 07, 1996 and Memo dated November 17, 1995. Enquiry was conducted and plaintiff was removed from service vide order dated April 22, 2005 by the Disciplinary Authority.

Plaintiff filed replication to the written statement filed by the defendants – appellants. From the pleadings of parties, issues were framed. Parties led evidence. After hearing learned counsel for the parties and appreciating the evidence, trial court, vide judgment & decree dated

appeal. The appellate lower court, vide impugned judgment & decree dated March 26, 2013 dismissed the appeal of defendants.

Aggrieved defendants have approached this Court challenging the judgments & decrees passed by the courts below, through the instant regular second appeal.

Learned counsel for the appellants has vehemently argued that the judgments & decrees passed by the courts below are liable to be set aside. Misappreciation of evidence has resulted into miscarriage of justice. Plaintiff was served and joined in the enquiry proceedings. His pleas were considered while passing order dated April 22, 2005 (Ex.P12). There is no question of granting retiral benefits once his services have been terminated. The courts below ignored the fact that plaintiff went abroad without getting his leave sanctioned. Plaintiff was not willing to join his duties as he had been living abroad and sought voluntary retirement.

Per contra, learned counsel for the respondent – plaintiff supported the judgments & decrees passed by the courts below submitting that they are absolutely in consonance with the settled proposition of law and facts of the instant case. Each and every aspect of the case has been gone through by the courts below. Instant appeal has been filed by the appellants in order to mislead the court and delay the payment of retiral benefits. Accordingly, the same is liable to be dismissed.

This Court has given an anxious thought to the rival submissions made by learned counsel for the parties and perused the documents available on file but does not find any legal weight in the submissions made by learned counsel for the appellants.

Admittedly, plaintiff has served the defendant – appellants

about 30 years and applied for voluntary retirement. Instead of granting

voluntary retirement, plaintiff was terminated from services by imposing a major penalty by passing order dated April 22, 2005 (Ex.P12), without affording any opportunity of personal hearing or serving the plaintiff any show cause notice prior to passing the aforesaid order nor his pleas taken vide Ex.P11 were taken into consideration, by the Punishing Authority. The Punishing Authority did not even record its reasons to disagree with the findings of enquiry officer exonerating the plaintiff from charges vide Ex.P9. Facts of the case reveal that plaintiff was a good employee until he applied for privilege leave w.e.f. November 27, 1995. Though, plaintiff moved the said application on October 24, 1995 i.e. one month prior to his departure to New Zealand, respondents did not care to inform him the fate of his application whether it was rejected or accepted. Unfortunately, plaintiff suffered from chronic piles in New Zealand and applied for extension of leave on medical grounds. He was operated upon in June 1996 and returned on duty on October 05, 1996. He served a three months' notice dated October 16, 1996 (Ex.P7) upon the defendants – appellants seeking voluntary retirement which was never accepted.

It was incumbent upon the Disciplinary Authority to supply the copy of disagreement note to plaintiff before imposing a major penalty/passing the order of removal. Neither such disagreement note was provided to the respondent – plaintiff nor any opportunity of hearing was afforded. Thus, on this ground alone, the disciplinary proceedings or imposition of a major penalty cannot be held to be legal in view of guidelines of this Court in **State of Punjab & others vs. Jang Singh & others, 2009(8) SLR 124** wherein it has been held as under:-

“When the enquiry is conducted by the enquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary

proceedings stand concluded with the decision of the disciplinary authority. It is the disciplinary authority, which can impose the penalty and not the enquiry officer. Where the disciplinary authority itself holds an enquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted to the employee. It will be most unfair and iniquitous that where the charged officer succeeds before the enquiry officer, but he is deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and while, recording a finding of guilt, imposes punishment on the officer. In any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed."

Undisputedly, the Disciplinary Authority proceeded to disagree with the findings of enquiry officer but there was no reason given in respect of such difference of opinion or a reason as to why an opportunity of hearing be not granted to the employee concerned. In this view of the matter, it is held that procedure adopted by the appellants does not meet the aforesaid requirement.

In the light of what has been discussed above, there is no infirmity or illegality in the judgments & decrees rendered by the courts below which would warrant interference by this Court. Finding no merit in the instant regular second appeal, the same is dismissed. Consequently, suit filed by the plaintiff is decreed and judgments rendered by the courts below are affirmed.

No costs.

September 04, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No

