

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

RSA No.4421 of 2016
Date of Decision: 18.5.2017

Ramesh Kumar ... Appellant

Versus

State of Haryana and others ... Respondents

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

Present: Mr.Ramesh Goyat, Advocate for the appellant

RAJIV NARAIN RAINA, J.

1. This is a Second Appeal against the judgment and decree dated 20th January, 2016 passed by the learned Additional District Judge, Chandigarh affirming the judgment dated 30th May, 2015 passed by the learned trial court dismissing the suit.

2. The appellant/plaintiff (for short “the plaintiff”) was appointed as a Driver in the Haryana Roadways in 2008. He was served with a charge-sheet in 2011 for committing misconduct in the discharge of duties while deployed in a Bus. His services were placed under suspension on 20th July, 2011 on the allegation of the surprise checking party of the Transport Department, Haryana that on 1st April, 2011, he had misbehaved with some passengers and asked them rudely to alight from the Bus. In the

episode, he was charged with misbehaviour with the checking party of the Transport Department, Haryana and refusal to obey instructions.

3. He submitted reply to the charge-sheet. It was not found satisfactory and an Enquiry Officer was appointed to conduct the regular enquiry of the alleged incident. The suspension was revoked and he was reinstated to service on 10th October, 2011 during the pendency of the disciplinary proceedings. The domestic enquiry ended in a finding of guilt recorded in the report. He was served with a show-cause notice on 26th March, 2012 to explain why he be not punished. He submitted reply to the enquiry report and the show-cause notice and after hearing him personally, he was administered a 'warning' by treating the period of his suspension as 'no period of service' vide order dated 21st June, 2012.

4. He filed a statutory appeal against imposition of warning and cut in period of service which is pending. It may be noted that he was not a regular employee, but was engaged on contractual basis w.e.f. 1.7.2008. His services were regularized w.e.f. 30.9.2011 by treating the period of three years as unauthorized absence from duty for 89 days vide order dated 9th July, 2012. Although the plaintiff alleged that he never absented from duty his contract of service was not terminated, but it was the suspension period which was treated as "no period of service" vide order dated 21st June, 2012.

5. The plaintiff approached the trial court in a suit for declaration and mandatory injunction against the the orders claiming that he was entitled to regularization of service w.e.f. 1st July, 2011 and not from 30th September, 2011. The period of suspension was from 20th July, 2011 to 10th October, 2011. The claim was from the date prior to

suspension. The incident is of 1st April, 2011 against which guilt has been

proved. The reason for claiming ante-dated regularization is based on the plea that the enquiry conducted was neither fair nor proper. The learned trial court has not agreed with this contention and found that the enquiry was procedurally correct. If the Enquiry officer asked some questions during cross-examination, it would not make the enquiry bad and is not open to be called off by the court.

6. The trial court read the deposition recorded during the enquiry and found from there that the abbreviation 'PO' has been used which may connote 'Presenting Officer' and not necessarily 'Presiding Officer'. Even assuming that 'PO' means 'Presiding Officer', even then plaintiff delinquent was asked certain questions during cross-examination by way of clarification which was permitted by the Indian Evidence Act, 1872. To this, in common parlance in the law of domestic enquiries, an Enquiry Officer is not called Presiding Officer since that exalted expression is used largely for courts and tribunals. In any case, nothing hinges on this aspect as no prejudice is caused to the plaintiff. It is always open to the Enquiry Officer during cross-examination to ask witnesses questions and if they were asked, it would not make the enquiry illegal and unjust.

7. The two orders challenged by the plaintiff in the suit were dated 21st June, 2012 (Ex. D5) and 9th July, 2012 (Ex. D6). These orders were of punishment of warning and treating suspension period as 'no period of service'. The administration in the Haryana Roadways took a lenient view by issuing only warning and in that manner, punishment with penalty of period of suspension not to be counted for regularization of service. The plaintiff was a contractual hand to begin with. The policy of regularisation requires as one of the conditions that period of suspension is

not to be counted towards regularization. If the policy demands exclusion

of suspension period from length of service for regularization, then the civil court would have no jurisdiction to undo the policy and its terms and conditions. Therefore, the trial court arrived at the conclusion that no illegality was committed for not counting the suspension period towards regularization. In this manner, 83 days period of suspension has been excluded and the major relief of permanency has been brought home to the plaintiff.

8. On the question of entitlement to suspension allowance, the trial court has not expressed any opinion on the point in the absence of proof whether payment was made or not and proof produced by the plaintiff.

9. The first appellate court has not tinkered with this part of the judgment of the trial court. However, it has directed that in case subsistence allowance has not been paid during the period of suspension, the administration may still consider the same and pass an order unless they meant to exclude period of suspension altogether to act as a punishment in connection with misconduct.

10. The plaintiff has failed to make out a clear case on facts and law in support of a decree. He failed before the trial court and the first appellate court. I have no reason to interfere with the findings of fact recorded by the courts below. No substantial question of law arises for this Court to address on the second appeal side. Nevertheless, the dismissal of this appeal will not preclude the plaintiff from pursuing his statutory remedy against the impugned orders which, in case, are pending and have not been decided, should be taken up by the competent authority in the Government and decided as they are obligated to do so by passing a

speaking order thereon, in which case the decision will be fair and independent and this order will not come in the way.

11. With this liberty, this appeal is dismissed.

18.5.2017
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

No