

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 103

Regular Second Appeal No3901 of 2015 (O & M)
Date of Decision: July 17, 2017

Parmatma Saran Yadav

..... APPELLANT

VERSUS

State of Haryana & others

..... RESPONDENTS

. . .

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

. . .

PRESENT: - Mr. Rao Ajender Singh, Advocate, for the appellant.

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Jaspal Singh, J

1. Challenge in this appeal is to judgment & decree dated February 28, 2014 passed by the Civil Judge (Junior Division), Rewari, whereby suit filed by the appellant – plaintiff seeking declaration with consequential relief has been dismissed, as well as judgment & decree dated April 07, 2015 passed by the District Judge, Rewari whereby an appeal filed by the appellant – plaintiff against judgment & decree dated February 28, 2014 has also been dismissed.

2. The facts giving rise to the instant appeal are that appellant – plaintiff was posted as Mathematics teacher at Government Senior Secondary School, Pali, District Rewari. In the year 1997, appellant applied for promotion to the post of English Lecturer and after checking the documents, the Principal forwarded his case to the District Education

Officer, Rewari. He was promoted by the Directorate of Education Department vide order No.15/139-97 E-V(2) dated March 30, 1998 but he did not join the said post. The Principal of the School received an information that appellant had got promotion on the basis of a fake Masters' Degree certificate. In pursuance thereof, the Principal verified about the genuineness of the Masters' Degree certificate by writing a letter to the Registrar of Gorakhpur University on March 12, 1999, in response to which, it was intimated that the said Degree was not issued by the aforesaid University and is a fake one. Thereafter, the Principal of the School got registered FIR No.80 dated April 13, 1999 under Sections 420, 467, 468, 471, 120-B IPC, Police Station, Khor, against the appellant. Simultaneously, departmental enquiry was also initiated against the appellant on November 09, 2001. Mr. V.P. Singh was appointed as Enquiry Officer who submitted his report on October 29, 2009 holding that the charges levelled against the appellant stood proved against him. Thereafter, he was served with show cause notice dated January 13, 2010 issued by the Commissioner –cum- Director General, School Education Haryana, Chandigarh, for imposition of major penalty i.e. dismissal from service. Ultimately, he was dismissed from service vide order dated April 30, 2010 which was challenged by him by way of departmental appeal before the Director, School Education Haryana, Chandigarh but that appeal was dismissed on October 26, 2010. Then, he preferred a revision against orders dated April 30, 2010 and October 26, 2010 before the Financial Commissioner & Principal Secretary, Government of Haryana, School Education Department, Chandigarh. The said revision petition was also dismissed vide order dated March 14, 2011. In the meanwhile, he was acquitted by court in the aforesaid criminal case bearing

departmental authorities even after his acquittal in the criminal case, referred to above, he instituted a civil suit seeking declaration and consequential relief challenging orders dated April 30, 2010, October 26, 2010 and March 14, 2011. The suit was resisted by the respondents – defendants.

3. After hearing learned counsel for the parties and appraisal of evidence & documents placed on record by the parties, the suit filed by the appellant – plaintiff was dismissed vide judgment & decree dated February 28, 2014 and an appeal preferred against the said judgment & decree passed by the trial court, was also dismissed by the lower appellate court vide judgment & decree dated April 07, 2015, which necessitated him to file the instant regular second appeal.

4. Assailing the impugned judgments & decrees passed by the courts below, it has been ebulliently argued by learned counsel for the appellant that same are absolutely against the evidence available on file and settled canons of law. Misappreciation of evidence as well as legal proposition has resulted into miscarriage of justice. While referring to the statements of DW-1, Dr. Dilbagh Singh, HES, Deputy Director, it has been urged by learned counsel for the appellant that Dr. Dilbagh Singh has stated in his examination-in-chief that Manohar Lal, who was also facing similar allegations as that of appellant, was compulsorily retired as he did not join the post after promotion. But, learned trial court failed to appreciate that appellant also never joined the promotional post and this fact has also been admitted by Dr. Dilbagh Singh when he was subjected to cross-examination that appellant never got the benefit of the promotional post. Moreover, appellant submitted photocopy of the Masters' Degree alongwith other documents to the Principal, who after verification, forwarded his case for promotion to the higher authorities. However subsequently, the Principal

intentionally got a false case registered against him particularly on the ground that he (appellant) had lodged a complaint against the Principal for imparting tuitions at his house illegally.

5. Not only this, learned trial court also did not appreciate that charges levelled by the Department against the appellant – plaintiff were also not established as neither he played any fraud with the Department nor he got any benefit of promotion as such. Even, appellant was also not afforded ample opportunity to lead his evidence. The Enquiry Officer submitted his report without agreeing to his request that enquiry be kept in abeyance till the final disposal of criminal case. Even, learned trial court has also committed an error while not appreciating the fact that in the similarly situated cases of Radhey Shyam, Manohar Lal and Parmal Singh, Department took a lenient view and they were compulsorily retired but in the case of appellant, Department, without appreciating the facts, dismissed him from service. Thus, there are substantial questions involved in the instant appeal which are required to be dealt with and disposed of.

6. This Court has given an anxious thought to the aforesaid submissions made by learned counsel for the appellant but find the same to be of no legal and factual weight.

7. As far as meeting out of different punishment to the different officials who were served with chargesheet on the basis of similar allegations is concerned, it can be held without any hesitation that it does not amount to discrimination. Infact, during the course of arguments, learned counsel for the appellant could not point out any violation of any statutory rules or principles of natural justice. Different treatment in the matter of punishment to the similarly situated employees does not amount to violation

allege that although he is guilty of commission of misconduct yet he should not be given any punishment only on account of the reason that others have been let off. If any judgment is needed on this point, we can refer to Hon'ble Full Bench of Delhi High Court in the case of **Ravinder Kumar vs. Union of India & others, 2002 VIII, AD (Delhi) 252** in which it was categorically observed that meeting out different punishments to different officials, who were served with charge sheet on the basis of same allegations, would not amount to discrimination.

8. In the instant case, petitioner was found to be guilty of obtaining a fake Masters' Degree for the purposes of getting promotion. He was selected though he did not join and after holding a disciplinary enquiry, he was dismissed from service. Even otherwise, it is well settled principle of law that delinquent official in no circumstances can base his claim invoking equality clause where its foundation is based on illegality. In support of this finding, we can place reliance on the pronouncement of judgment of Delhi High Court delivered in case **Union of India vs. Ramdass Rakesh, WP(C) Nos.4211-4213 of 2006**.

9. Radhey Shyam, another co-employee of the appellant also filed Civil Writ Petition No.61 of 2015 which was decided on January 06, 2015. In the said case, petitioner was found guilty of obtaining fake degree for the purpose of getting promotion. His services were also dismissed. He also filed a writ petition that Manohar Lal, his co-employee has been given the punishment of compulsory retirement. Radhey Shyam moved to this Court by way of writ petition alleging that similarly situated employee has been awarded punishment of compulsory retirement but this Court observed that the punishment of compulsory retirement in such cases which are based

upon fraud and misrepresentation, is not appropriate and writ petition preferred by Radhey Shyam was dismissed.

10. As far as lodging of complaint against the Principal by the appellant is concerned, it does not mean that the Principal has wrongly got registered the aforesaid FIR, rather it was on the basis of verification report, according to which, Masters' Degree certificate produced by the appellant was found to be fake. Otherwise also, such persons do not deserve any leniency, who just for getting promotion have obtained fake degree and produced the same before the Department. The mere fact that appellant did not join the promotional post does not *ipso facto* mean that charges against him stood washed away or that he is not liable to any kind of punishment. Moreover, learned counsel for the appellant, during the course of arguments, could not point out any material irregularity or illegality adopted by the Enquiry Officer so as to nullify the enquiry report.

11. In the light of above discussion, taking the case of appellant from any of the angles, this Court does not find any substantial question of law for determination thereof in the instant appeal. Rather, this Court is of the considered view that instant appeal is devoid of merits. As such, same is dismissed whereby judgments & decrees dated February 28, 2014 and April 07, 2015 passed by the courts below are upheld.

12. No order as to costs.

July 17, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No