

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

**RSA No. 2458 of 2014
Date of Decision:-06.2.2017**

Ashok Kumar

...Appellant

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. R.D. Yadav, Advocate
for the appellant.

HARI PAL VERMA J.

The appellant/plaintiff has filed the present regular second appeal against the judgment and decree dated 20.1.2014 passed by learned District Judge, Rewari, whereby his appeal against the judgment and decree dated 26.5.2012 passed by the Additional Civil Judge (Senior Division), Rewari was dismissed.

Briefly stated, the appellant/plaintiff had filed a suit for declaration and mandatory injunction with the plea that he had appeared in B.Ed examination held in July 1990 and got supplementary in one paper. However, he again appeared in the exam and cleared the supplementary exam. In November, 1990, Haryana Subordinate Staff Selection Board (for

short 'HSSSB') invited applications for the posts of S.S. Master. By that time, result of the supplementary exam of the appellant/plaintiff was not declared. Accordingly, the appellant/plaintiff had intimated to the Board that he had appeared in B.Ed examination and his result is awaited. Interview for the said post of S.S. Master was conducted in January 1993 and by that time the result of supplementary exam was out and the plaintiff had cleared the said exam. During the interview, the Detailed Mark Sheet was demanded and plaintiff submitted the same in original. Accordingly, plaintiff was selected and given appointment. But a false complaint was filed against the plaintiff to the effect that he had tempered with the detailed mark sheet by changing the date of its issuance from 26.3.1992 to 26.3.1991 so as to make himself eligible for the post. A preliminary inquiry was conducted and the plaintiff was held guilty. On the basis of the enquiry report, a notice dated 15.6.1995 was issued to him to show cause as to why his services should not be terminated. But before he could submit the reply, his services were terminated vide order dated 8.8.1995. Challenging the termination, he has filed a suit followed by appeal and vide judgment dated 8.12.1999 passed by the Additional District Judge, Rewari, termination order dated 8.8.1995 of the plaintiff was set aside. He was ordered to be reinstated. Thereafter, a charge-sheet under Rule 7 was issued by the respondent/defendant to the plaintiff on 28.9.2001. Simultaneously, an FIR was also registered against him. The plaintiff had submitted reply to the charge-sheet. Since the reply was not found satisfactory, an Enquiry Officer was appointed vide order dated 25.11.2005, but without giving any

opportunity of hearing to the plaintiff, the Enquiry Officer had submitted his final report only on the basis of preliminary enquiry report. The respondent/defendant had issued a show cause notice of proposed punishment of dismissal of the plaintiff from service on the basis of previous enquiry report of the Enquiry Officer, namely, Shri Shish Pal. The plaintiff had submitted reply to the show cause notice, but the same was not considered and he was dismissed from the service in terms of order dated 26.6.2008. The appeal against the order of dismissal was also dismissed by a non-speaking order dated 14.12.2009. Accordingly, the plaintiff has sought relief of declaration that the order of dismissal of his service is bad in the eyes of law.

The respondent/defendant contested the suit on the plea that the plaintiff was not eligible to apply for the post of S.S. Master on 11.11.1990 i.e. the date when the posts were advertised. He has passed his B.Ed qualification in the year 1992, but submitted his detailed mark-sheet by altering the date of its issuance i.e. from 26.3.1992 to 26.3.1991 so as to make himself eligible.

From the pleadings of the parties, the following issues were framed by the trial Court vide order dated 06.9.2010 :-

- “1. Whether charge-sheet served upon the plaintiff, appointment of Enquiry Officer in this regard, enquiry finding, report, enquiry proceedings, appointment of second enquiry officer to Sh. I.M. Khungar and action taken by the punishing authority without waiting for the report of the second enquiry officer and impugned order of punishment awarded on the basis of enquiry report of

learned Enquiry Officer, second show cause notice, impugned order of punishment of dismissal from service passed by defendant No.5 conveyed vide order No.13/387-95 HRM-1(5) dated 26.06.2008 and non-speaking orders in appeal dated 14.12.2009 of defendant No.2 are illegal, null and void, arbitrary, against law and facts, against service rules, against the principles of natural justice and are not binding on the plaintiff on the grounds as are mentioned in the plaint ? OPP

2. Whether the plaintiff is entitled to the re-instated in service from the date of dismissal of service with all benefits of pay and allowance and interest and all other benefits as are claimed in para B of relief clause ? OPP
3. Whether plaintiff is entitled to the decree of declaration and mandatory injunction as claimed ? OPP
4. Whether the suit is not maintainable ? OPD
5. Whether the plaintiff has no locus-standi and cause of action to file the present suit ? OPD
6. Whether this Court has no jurisdiction to try and entertain the present suit ? OPD
7. Relief.”

As per advertisement Ex.PW1/1 no application can be entertained after 5.12.1990 and the age, experience and qualification were determined as on the date for all the posts. Thereafter, posts of S.S. Masters were re-advertised and it was mentioned that those candidates, who have already applied pursuant to the earlier advertisement, were not required to apply again. The last date for submission of the applications was fixed as 8.10.1991. The plaintiff had claimed that he was eligible on that date i.e. on 8.10.1991, but a wrong finding has been recorded that the plaintiff had not

cleared his B.Ed examination till the last date of submission of the application i.e. 8.10.1991 and he has appeared in the supplementary examination. In the application form Ex.D1, which has been submitted by the plaintiff, it has been mentioned therein that he had passed his B.Ed examination in the year 1989. This application had been submitted by him on 2.12.1990. The enquiry was conducted against the plaintiff, and in the said inquiry, the plaintiff himself admitted that he had passed his B.Ed examination after the date of submission of the application for the post of S.S. Master. Accordingly, the trial Court dismissed the suit because on the date of submission of the applications, the plaintiff was not eligible to apply as he was not possessing the requisite qualifications.

Aggrieved against the judgment and decree, the plaintiff preferred an appeal. However, the appeal was also dismissed by learned District Judge, Rewari vide order dated 20.1.2014.

It is in the aforesaid circumstances, the plaintiff has preferred the Regular Second Appeal.

Learned counsel for the appellant has argued that the judgments and decrees passed by the Courts below are not only against the law, rather the very evidence as produced by the plaintiff was not taken into consideration. The Enquiry Officer had not given ample opportunities to the plaintiff to lead his entire version and in this manner the principle of natural justice had been grossly violated. After the submission of the enquiry report without recording the dissenting note, another Enquiry Officer was appointed. The plaintiff has furnished correct and true

information to the respondent and there is no over-writing or false information on the part of the plaintiff, as observed by the learned Courts below. Learned counsel for the appellant/plaintiff has relied upon **G.M. Tank vs. State of Gujarat and another 2006(3) RSJ 555** to contend that in a case registered under Prevention of Corruption Act, once the accused has been acquitted in the case and the departmental proceedings and criminal case based on identical and similar set of facts, the benefit must go to the accused in the dismissal proceedings. Reliance has also been placed on **State of Punjab and others vs. Prem Sarup 2006(2) RSJ 333** to contend that when the accused was acquitted by the Court in criminal proceedings for the charge of accepting illegal gratification, it is not open to the Department to proceed against the plaintiff on same charges all over again in departmental proceedings.

I have heard learned counsel for the appellant.

In para 11 of the judgment passed by the learned District Judge, Rewari, the following facts have been reproduced, which have been broadly admitted by the parties :-

“11. The following facts are admitted :-

- (a) Posts were advertised by the HSSSB on 11.11.1990.
- (b) The plaintiff applied on 02.12.1990.
- (c) Posts were re-advertised on 26.7.1991. Last date for submitting the applications was 10.08.1991.
- (d) The persons who had already applied against the previous advertisement were not to apply again and their cases were to be considered as per their

previous applications.

- (e) As on 10.08.1991, the applicants should have possessed the necessary qualification of B.Ed.
- (f) The plaintiff acquired qualification of B.Ed in 1992.
- (g) Interviews were held 1993 and the plaintiff was selected.
- (h) A preliminary enquiry was conducted to look into the allegations that in the application, the plaintiff gave wrong information as to the marks obtained and that in the detailed mark sheet, he made tampering.
- (i) Enquiry was conducted and on the basis of the report, the services of the plaintiff were terminated.
- (j) The order of termination was set aside vide judgment dated 08.12.1999 on the ground that the enquiry had not been conducted in accordance with rules.
- (k) The plaintiff was taken back in service vide office order dated 24.5.2000 without prejudice to the departmental proceedings that might be taken against him.
- (l) The plaintiff was charge-sheeted under Rule 7 vide order dated 28.9.2001.
- (m) Shri Shish Pal, the then Joint Director was appointed as enquiry officer.
- (n) The enquiry officer submitted his report on 19.9.2006.
- (o) A show cause notice of dismissal from service was issued to the plaintiff on 26.7.2007.
- (p) the plaintiff submitted reply dated 08.08.2007 to

the show cause notice.

- (q) Vide order dated 26.06.2008/ 09.07.2008, the plaintiff was dismissed from service.
- (r) The appeal filed by the plaintiff before the Commissioner and Director General Secondary Education, was dismissed.
- (s) The appeal filed by the plaintiff before the Hon'ble Chief Minister was dismissed.
- (t) The second appeal filed by the plaintiff before the Financial Commissioner was dismissed.”

In the present case the plaintiff had participated in the enquiry proceedings, but the plea that a second enquiry was conducted in the case is contrary to the record. The appointment of the subsequent Enquiry Officer i.e. I.M. Khungar was made by mistake and the respondent has issued a letter on 27.7.2007 withdrawing the said Enquiry Officer. Therefore, the appellant cannot take any advantage of this plea that another enquiry officer was appointed. So far as acquittal of the plaintiff in the criminal case is concerned, it is made clear that he was acquitted primarily on the ground that his termination order had been set aside vide judgment dated 8.12.1999, but the said judgment was passed on the premises that the principle of natural justice were not adhered to. In this manner, the Department was required/empowered to pass a fresh order by providing opportunities of hearing to the plaintiff. The Ex.D2 is the application filed by the plaintiff, which is a crucial document in the case. In the said application and in the relevant column, the plaintiff had mentioned that he had qualified his B.Ed. exam from M.D. University in the year 1989 securing 416 out of 900 marks,

but this information was false as the plaintiff had passed B.Ed in the year 1992. Therefore, the plea as put forward by the plaintiff that he had given the correct information that he had appeared and his result was awaited but later somebody else was harbouring grudge against him, may have made an entry in the relevant column, cannot be accepted. A finding has been recorded that in fact the original mark-sheet was issued to the plaintiff on 26.3.1992, but in order to make himself eligible for the said post, said date has been changed as 26.3.1991. By incorporating/change of the date in the mark-sheet from 26.3.1992 to 26.3.1991 the plaintiff has tried to make himself eligible for the post and it is the plaintiff, who would be benefitted for such act and not any other person. Thus, it is the plaintiff, who had succeeded in managing the date changed in the mark-sheet so as to make himself eligible for the post. There is finding of facts recorded by the Courts below that on the relevant date i.e. the last date of submission of the application forms, the plaintiff was not eligible for the post but in order to make himself eligible for the said post, he had changed the date in the mark-sheet.

The judgments referred by learned counsel for the appellant cannot be appreciated for the reason that the standard of proof in the disciplinary proceedings and in the criminal trial are all together different. But present is a glaring case where the plaintiff in order to become eligible for the post of S.S. Master had succeeded in getting interpolation in the record. Therefore, there is no ground to interfere in the concurrent findings recorded by the Courts below. No substantial questions of law are involved

in the present appeal.

The present regular second appeal is dismissed.

February 06, 2017
Vijay Asija

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No