

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 107

Regular Second Appeal No.4399 of 2017 (O & M)
Date of Decision: September 13, 2017

State of Punjab & others

..... APPELLANTS

VERSUS

Mohanjit Singh

..... RESPONDENT

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

. . .

PRESENT: - Ms. Sudeepti Sharma, Additional Advocate General,
Punjab.

. . .

Jaspal Singh, J

Delay condoned.

The defendants – appellants have preferred the instant regular second appeal against judgment & decree dated January 31, 2017 rendered by the Additional District Judge, Chandigarh, as well as judgment & decree dated November 21, 2014 passed by the Civil Judge (Junior Division), Chandigarh, whereby suit filed by the plaintiff has been decreed and appeal filed by defendants – appellants has been dismissed.

Brief facts of the case are that respondent – plaintiff filed a suit for declaration to the effect that order dated March 20, 2008/ April 07, 2008 passed by the punishing authority and order dated May 29, 2012/ June 06, 2012 are illegal, arbitrary and against the law & rules as well as for

mandatory injunction directing the defendants – appellants to release all monetary benefits withheld by virtue of aforesaid impugned orders alongwith interest @ 12% per annum from the date of accrual of the same till realization. Plaintiff was driver in Punjab Roadways. FIR No.412 dated June 03, 2001 was registered regarding an accident, at Police Station Jalandhar, in which, he was acquitted vide judgment dated April 29, 2008 by the trial court at Jalandhar. Regarding another accident occurred on October 12, 2000, FIR No.178 dated October 13, 2008 was registered and again he was acquitted by the trial court at Phagwara vide judgment dated October 15, 2003. Despite that, he was chargesheeted on October 13, 2003 and October 14, 2004 for causing loss and recovery of amount ₹ 3,54,419/- and ₹ 15,302/-, respectively. Enquiry officer was appointed and he was served upon a show cause notice dated January 15, 2008 and without appreciating his reply, a penalty of stoppage of four increments with cumulative effect was imposed upon the plaintiff vide impugned orders dated March 20, 2008 and April 07, 2008. Appeal filed by the plaintiff against the aforesaid orders was also dismissed by the appellate authority vide orders dated May 29, 2012/June 06, 2012. The orders passed by the punishing and appellate authority were challenged by him in the civil suit No.16708 dated October 13, 2012. Plaintiff alleged that proceedings against him are illegal and against instructions dated November 24, 2000 and January 24, 2001 wherein it was stipulated that no amount is to be recovered from a driver on account of MACT award. Plaintiff also alleged that punishment is illegal and against instructions dated November 18, 2011, wherein, it has been decided not to pass any punishment order in a case where a driver is acquitted in the criminal proceedings.

Defendants contested the suit by filing joint written statement. Issues were framed by the trial court. Parties led evidence in support of their claims. After hearing learned counsel for the parties and appreciating the evidence on record, suit of the plaintiff was decreed by the trial court vide judgment & decree dated November 21, 2014 setting aside the impugned orders of punishing authority and appellate authority being illegal, arbitrary and against the principles of natural justice with liberty to the defendants to conduct fresh enquiry within two months from the date of passing of decree, however, relief of mandatory injunction was declined. Defendants went up in appeal against the aforesaid decision of trial court which stood dismissed by the lower appellate court vide judgment & decree dated January 30, 2017.

Aggrieved by the judgments & decrees passed by the courts below, defendants – appellants have preferred the instant regular second appeal.

While assailing the impugned judgments & decrees, learned counsel for the appellants has vehemently contended that the courts below have erred in decreeing the suit of respondent – plaintiff and have failed to take note of the fact that plaintiff was held liable for causing accident by the MACT, Kapurthala vide award dated March 10, 2003, due to which, department had to suffer a loss of ₹ 3,67,721/-. Enquiry against the plaintiff was conducted in a fair and proper manner. Judgments passed by the criminal court were not binding on the departmental authorities while conducting enquiry. Accordingly, the suit filed by the plaintiff deserves to be dismissed and impugned judgments & decrees are liable to be set aside.

This Court has given a deep thought to the aforesaid submissions made by learned counsel for the appellants and perused the record available but does not find any legal substance in the submissions made by learned counsel for the appellants.

Plaintiff preferred suit for declaration challenging orders passed by the punishing authority as well as the appellate authority. He further sought mandatory injunction directing the defendants – appellants to release the monetary benefits, so withheld. As per order dated March 20, 2008/April 07, 2008, plaintiff was held guilty and awarded punishment of stoppage of four annual increments with cumulative effect. Appellate authority -cum- Deputy Secretary, Transport Department, Punjab dismissed the appeal of plaintiff. Enquiry was conducted by the legal officer, Punjab Roadways, Ludhiana and he submitted his report dated November 30, 2004, on the basis of which, punishment was imposed upon the respondent – plaintiff. Perusal of the enquiry report shows that though enquiry officer opined that driver was having no fault in the accident and he was acquitted by the criminal court, yet he held him guilty on the basis of award passed by the MACT. The enquiry officer was required to give his independent findings on the basis of evidence/record available on the file. He also failed to notice the fact that though criminal court acquitted the plaintiff under Section 337 IPC but held him guilty under Section 279 IPC in case FIR No.178 dated October 13, 2000, Police Station, Sadar Phagwara. Besides, no witness was called to prove the fact that accident was caused by the plaintiff due to his rash and negligent driving. Once the enquiry officer came to the opinion that fault of respondent – plaintiff could not be proved in causing the accident, then he should not have held him guilty merely on the basis of

judgment/award. Further, a perusal of the impugned order reveals that they are based on the enquiry report which itself does not depict that a fair enquiry was conducted or there was any cogent evidence or material before the enquiry officer to find the guilt of respondent – plaintiff. Undisputably, no witness was examined during departmental enquiry and report was based only on the MACT award. It is settled position of law that enquiry should be conducted in a fair manner and findings should be based on the material before it. The very fact of not examining any witness in the enquiry proceedings itself is in contravention of principles of natural justice and therefore, enquiry can be held to be conducted in a most casual and arbitrary manner, causing grave prejudice to the respondent – plaintiff, and thus, the same cannot be sustained in the eyes of law. Moreover, it was the bounden duty of enquiry officer to arrive at an independent conclusion on the basis of material before him but he based his findings on the decision rendered by the MACT.

In the light of what has been discussed above, there is no merit in the instant appeal and the same is accordingly dismissed.

September 13, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No