

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

RSA No.1286 of 1996 (O&M)

Date of decision: 3rd May, 2018

State of Punjab & another

... Appellants

Versus

Inder Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. B.S. Sewak, Addl. Advocate General, Punjab
for the appellants/State.

Mr. Ranjit Saini, Advocate for the respondent.

FATEH DEEP SINGH, J.

After suffering ignominy, the appellant State of Punjab has come up in this regular second appeal consequent upon decreeing of the suit filed by delinquent employee, plaintiff Inder Singh (now respondent), by the Court of learned Sub Judge, 2nd Class, Moga through judgment and decree dated 28.09.1993 followed by dismissal of the appeal of the present appellants through impugned judgment and decree dated 12.12.1995 by the Court of learned District Judge, Faridkot.

Heard Mr. B.S. Sewak, Additional Advocate General, Punjab appearing on behalf of the appellants/State and Mr. Ranjit Saini, Advocate representing the respondent/delinquent employee.

The undisputed facts are that the plaintiff Inder Singh was working as a Panchayat Secretary and was issued chargesheet through

letter No.S-2/88/3151 dated 13.10.1988 on the grounds that he remained absent from special meeting held by the officers in the block office and failed to reply to the show-cause notice issued by the BDPO and thus, on the allegations that he committed breach of discipline and acted negligently by his misconduct and further that he failed to furnish accounts of the Panchayat as was directed by his superior officers and even failed to submit records of the Panchayat so called upon by his superiors and remained absent without leave from 11.05.1988 to 18.10.1988 and even did not hand over charge upon his transfer. The plaintiff delinquent official replied to the charges denying the same and a regular departmental enquiry was ordered to be initiated under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (hereinafter referred to as, 'the Rules'). Upon completion of enquiry, the plaintiff was served with a show-cause notice vide endorsement No.S-2/89/6046-47 dated 02.06.1989 proposing penalty of removal from service. The plaintiff filed reply to the show-cause notice and the punishing authority after adopting due process, ordered stoppage of two increments with cumulative effect through orders bearing endorsement No.S-2/89/6516-19 dated 11.07.1989. It was this very order which was challenged by the plaintiff before the Civil Court leading to the instant appeal.

The trial Court framed following issues:

1. Whether the suit is barred by resjudicata? OPD
2. Whether the suit is not maintainable? OPD
3. Whether a valid notice u/s 80 CPC was served by the plaintiff on the defendant before filing the suit? OPP
4. Whether the plaintiff is entitled to the relief of declaration as prayed? OPP
5. Relief.

The plaintiff himself appeared as PW1 and the defendants tendered documents of enquiry file as Ex.P1.

The only and the only moot point that permeates is whether the allegations of the plaintiff that he was not given assistance of a co-worker, vitiates the enquiry and consequently the impugned orders under assail by which punishment was inflicted upon the delinquent plaintiff. On behalf of the appellants/State, reliance has been placed on **‘Dheru Ram v. The State of Punjab and another’ (1993)3 PLR 476; ‘Charat Singh v. State of Punjab’ (1990) 7 SLR 14; and ‘Ram Parshad v. State of Punjab’ (1998) 1 SCT 449** and to controvert the same on behalf of the respondent, Mr.Ranjit Saini, Advocate has sought to place reliance on **‘State of Punjab v. Rawal Singh’ 2006(4) SCT 188; ‘Dheru Ram v. The State of Punjab’ (ibid); ‘Ghanshyam Dass v. Presiding Officer,**

Labour Court, Ambala’ 1998(2) SCT 184; and ‘Bhagat Ram v. State of H.P. and others’ 1983 AIR (SC) 454.

Appreciating the submissions of the two sides, to the very query of the Court, Mr.Ranjit Saini representing the respondent/delinquent employee could not convince from the evidence or pleadings, if at any point of time, the delinquent official has ever taken up the stand that he required help of a co-worker to present his case before the enquiry officer.

Rule 8(8) of the Rules does not provide for seeking permission of the punishing authority to have the assistance of another co-employee to represent the delinquent at the enquiry and it is the sole whim and fancy of the delinquent employee to have assistance of any co-employee in representing him in the enquiry and it is not necessary either for the punishing authority or for the enquiry officer to inform the delinquent employee that he could have the services of a co-worker at the enquiry and it was the proposition of law laid down in **Charat Singh’s case** (ibid) and **Ram Parshad’s case** (ibid), and even in a Division Bench view of this Court in **Dheru Ram’s case** (ibid) their Lordships have clearly interpreted the word ‘may’ in the Sub Rule 8(8) of the Rules, holding that it was indicative of the fact that the rule is directory and its non-compliance will not have drastic effect of vitiating the enquiry proceedings. The trial Court and so the learned first appellate Court in the

impugned orders have mis-interpreted the provisions of Rule 8(8) of the Rules and even the citations relied upon by the respondent's counsel in '**State of Punjab v. Rawal Singh**' (**ibid**) are at factual disparity and the ratio laid down in **Dheru Ram's case** (**ibid**) is the one relied upon by the appellants and rather to the mind of this Court goes against the respondent and similar is the proposition laid down in **Ghanshyam Dass'a case** (**ibid**) and the law laid down in **Bhagat Ram's case** (**supra**) is on a different footing and does not comes to the rescue of the respondent.

In the light of this settled proposition of law, the findings returned by the learned trial Court as well as in the impugned judgment on issue No.4 certainly is total and gross mis-interpretation of these Rules and misconstruing the same to the detriment of the appellant-State. It is not the case where the plaintiff is an illiterate worker or had claimed assistance of co-employee to represent him at the enquiry and the findings certainly do not hold much water for the respondent as learned counsel for the respondent could not convince this Court how without asking for services of a co-worker at the enquiry there being lack of any such stand of the plaintiff in the enquiry that it was necessitated and there was refusal by the enquiry officer or the punishing authority to that effect, it would be too preposterous to assume that material prejudice has

been caused to the plaintiff by passing of the impugned orders by the authorities.

In the light of what has been detailed and discussed above, this Court certainly feels that the impugned findings are legally incorrect and needs to be set aside by way of acceptance of the present appeal. Thus, in view thereof, the present appeal stands allowed and the impugned judgments are hereby set aside.

(FATEH DEEP SINGH)
JUDGE

May 3, 2018

rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No