

RSA No.3209 of 1996 (O&M)

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

**RSA No.3209 of 1996 (O&M)
Date of Decision: 07.09.2018**

Pepsu Road Transport Corporation

... Appellant

Versus

Baljit Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Aman Sharma, Advocate
for the appellant.

Ms. Gurdeep Kaur, Advocate
for respondent No.1.

AMIT RAWAL, J. (ORAL)

The appellant-Pepsu Road Transport Corporation is aggrieved of the judgment and decree dated 28.08.1996 passed by the lower Appellate Court, whereby the suit of the respondent-plaintiff dismissed by the trial Court claiming declaration viz-a-viz termination on the basis of enquiry report, had been decreed.

The plaintiff instituted the suit for declaration challenging the termination order on the premise that he, on 22.12.1978, was appointed as a Conductor in PRTC. While on duty in Bus No.7074, he alleged to have been committed a fraud of ₹24/-. In this regard, enquiry officer was appointed and on the basis of the enquiry report, his services were terminated on 11.05.1989. The enquiry report was challenged on the premise that it was not based upon the evidence as no statement of the

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passengers was recorded. The plaintiff had been working honestly and diligently throughout the service.

The aforementioned suit was contested by the defendants by raising various preliminary objections and on merits, it was asserted that checking staff, no doubt, did not record the statement of the passengers, but the Inspectors, Het Ram, Mann Chand and Lajya Ram, on inspection, found that four passengers were travelling from Bathinda to Malout without tickets. The same very Inspectors appeared before the enquiry officer and reiterated their inspection.

On the basis of the evidence brought on record, much less, pleadings, the trial Court dismissed the suit. However, the lower Appellate Court by noticing the *ratio decidendi* culled out by the Full Bench of this Court in **“State of Haryana and others V/s Ram Chander” AIR 1976 Punjab and Haryana 381**, decreed the suit on the premise that the Inspectors had not recorded the statement of the passengers.

Learned counsel appearing on behalf of the appellant submitted that the judgment and decree of the lower Appellate Court is not sustainable in the eyes of law as the judgment relied upon by the Court below was not interpreted in a correct perspective, for, it did not support the findings of the lower Appellate court as non-recording of the statement of the passengers cannot be fatal viz-a-viz the evidence of the Inspectors/checkers, who found the passengers travelling without tickets. It is dereliction of duty on behalf of the Conductor. It was a gravest act and therefore, order of termination was legal and valid.

Learned counsel appearing on behalf of the respondent(s) submitted that despite written numerous letters, the respondent(s) has not

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contacted.

The appeal is of the year 1996 and pending adjudication since long. Accordingly, I proceed to decide the same in accordance with law.

I have heard learned counsel for the parties, appraised the paper book as well as records of the Courts below and judgment cited at bar and of the view that there is force and submissions of Mr. Aman Sharma, for, the opinion expressed by the lower Appellate Court is not in consonance with the *ratio decidendi* culled out in the judgment cited at bar, wherein it has been held that satisfaction of the enquiry officer, on the basis of the statement made by inspector/checker, would be sufficient, in the absence of the statement of the passengers. For the sake of brevity, para No.4 of the judgment reads thus:-

"4. We are, therefore, of the view that while there is no bar against the reception of hearsay evidence by domestic tribunals the extent to which such evidence may be received and used must depend on the facts and circumstances of the case and the principles of natural justice. The learned counsel for the respondent invited our attention to the decision of the Supreme Court in Jagannath Prasad Sharma v. State of Uttar Pradesh, AIR 1961 SC 1245, where the learned Judges of the Supreme Court compared the U. P. Police Regulations and the U. P. Disciplinary Proceedings (Administrative Tribunal) Rules and observed as follows:--

"There is no substantial difference between the procedures prescribed for the two forms of enquiry. The enquiry it. its true nature is quasi-judicial. It is manifest from the very nature of the enquiry that the approach to the materials placed before the enquiring body should be judicial. It is true by Regulation 490, the oral evidence is to be direct, but even under Rule 8 of the Tribunal Rules, the Tribunal is to be guided by rules of

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equity and natural justice and is not bound by formal rules of procedure relating to evidence. It was urged that whereas the Tribunal may admit on record evidence which is hearsay, the oral evidence under the Police Regulations must be direct evidence and hearsay is excluded. We do not think that any such distinction was intended. Even though the Tribunal is not bound by formal rules relating to procedure and evidence, it cannot rely on evidence which is purely hearsay, because to do so in an enquiry of this nature would be contrary to rules of equity and natural justice."

The learned counsel for the respondent wanted us to read the observations of the Supreme Court as laying down that hearsay evidence was altogether inadmissible in domestic enquiries also. We do not think that we can so read the observations of the Supreme Court. The sentence underlined by us for emphasis clearly shows that the Supreme Court was emphasising the general unreliability of hearsay evidence and the violation of the rules of natural justice involved in relying upon pure hearsay. We venture to illustrate the position as follows: If half a dozen persons go to the office of the Haryana Roadways and complain that the conductor of a certain bus collected fare from them but did not issue tickets to them and if later on the passengers are not examined as witnesses, a finding of guilt based solely upon the complaint given by the passengers would amount to a finding based on pure hearsay and would involve violation of principles of natural justice. On the other hand, where a bus is checked and it is found that tickets have not been issued to several passengers and the passengers state in the presence of the conductor that they paid the fare, the enquiry officer would be justified in acting upon the evidence of the checkers stating these facts even though the passengers themselves are not examined as witnesses. A finding of guilt arrived at by him would not be based on pure hearsay. It would be based on (1) the evidence of the checker

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that he found passengers travelling without tickets and (2) the statements made by the passengers to the checker at the time of checking. The second item of evidence alone would be hearsay but it would be hearsay of high probative value because of the circumstance that statements were made in the presence of the conductor and on the spot. In such a case, it cannot be said that the enquiry officer's findings are based on pure hearsay or hearsay of unreliable nature. We, do not, therefore, think that the decision of the Supreme Court in Jagannath Prasad Sharma's case supports the argument of the learned counsel for the respondent. The decision is in no way inconsistent with the view expressed by us. In the view we have taken, we overrule the observations to the contrary in Tarlochan Singh's case (1975 Lab IC 986) (Punj and Har). "

The aforementioned *ratio decidendi*, in my view, did not support the case of the plaintiff, therefore, the lower Appellate Court has abdicated in reversing the well-reasoned judgment and decree of the trial Court.

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the *ratio decidendi* culled out by five learned Judges of the Hon'ble Supreme Court in **"Pankajakshi (dead) through LRs and others V/s. Chandrika and others AIR 2016 SC 1213"**, wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure and decision thereof could be without framing substantial questions of law. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **"Kulwant Kaur and others V/s. Gurdial Singh Mann (dead) by LRs and others" 2001(4) SCC 262**, on

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applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back.

For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in **“Pankajakshi 's case** (supra) reads thus:-

*“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of **Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)]** cannot be sustained and is thus overruled.” [at paras 27 - 29] ”*

27. *Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue*

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of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

Keeping in view the aforementioned facts and circumstances, the judgment and decree of the lower Appellate Court is not sustainable in the eyes of law and the same is hereby set aside and that of the trial Court is restored.

The present regular second appeal is, resultantly, allowed.

07.09.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned **Yes/ No**

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Whether Reportable **Yes/ No**