IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-306-1998 (O&M)
Date of Decision:-20.04.2018.

PEPSU Road Transport Corporation Patiala and another

.....Appellants

Versus

Gian Chand

......Respondent

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

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Present: Mr. Vishal Moudgill, Advocate for the appellants.

Mr. Deepak Sonak, Advocate for the respondent.

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P.B. BAJANTHRI, J. (Oral)

1.) Respondent was subjected to disciplinary proceedings on certain alleged to have committed misconduct while working as a Conductor. Respondent had admitted the alleged charge levelled against him in the charge memo. Consequently, the competent authority proceeded to pass order while invoking rule 22 (c) read with Rule 20 and imposed the penalty of stoppage of 2 annual increments with cumulative effect and he is not entitled to anything over and above the subsistence allowance which is already paid to him during the suspension period. Feeling aggrieved by the order of the disciplinary authority dated 21.04.1987, respondent preferred a departmental appeal. While pending consideration, respondent filed a suit questioning the order of disciplinary authority on 17.01.1994. During pendency of the suit, appellate authority is stated to have disposed the respondent's appeal on 14.08.1995. Consequently, respondent amended the suit. Suit was decreed on 30.10.1996. Appellant aggrieved by the decree passed by the Trial Court filed an appeal and his appeal was rejected. Hence, the present Regular Second Appeal by the management.

2.) Learned counsel for the Management submitted that both the Courts below have erred in not considering the fact that respondent has admitted the charges levelled against him. Further imposition of penalty of withholding of 2 annual increments with cumulative effect and withholding of wages for suspension period is in order and passed in terms of Regulation 20 of P.R.T.C. (Conditions of appointment and Service Regulations) 1981 (for short 'Regulations 1981'). Therefore, there is error committed by the Courts below. It was also contended that suit was barred by limitation having regard to the date of imposition of penalty dated 21.04.1987 read with the filing of suit on 17.01.1994.

3.) Per contra learned counsel for the respondent submitted that suit was filed within the time limit for the reasons that appellate authority slept over the appellant's appeal and it was decided only as and when suit was filed and it was pending consideration on 14.08.1995. Thereafter, respondent was permitted to make necessary amendment to the suit. Therefore, question of limitation do not arise. It was further contended that where an employee has admitted charges, in that event competent authority is required to proceed in accordance with the proviso to sub-Regulation (c) of Regulation No.22 read with Regulation No.20, whereas, the disciplinary authority has imposed 2 types of penalties, namely, withholding of 2 increments with cumulative effect and so also wages for suspension period. Hence, appellants have not made out a case so as to interfere with the judgments passed by the Courts below.

4.) Heard the learned counsel for the parties.

5.) Preliminary objection in the present matter is whether suit was filed within the time limit or not? Undisputed facts are that penalty was imposed on 21.04.1987 and suit was filed on 17.01.1994 whereas appellate authority has passed orders on appeal only on 14.08.1995 i.e. during the pendency of the suit and suit was amended appropriately. In view of these facts and circumstances, question of limitation is not attracted. In respect of merit is concerned, it is to be noted that respondent has admitted the charges levelled against him. Based on the admission, disciplinary authority proceeded to pass order while imposing the penalty of stoppage of 2 increments with cumulative effect and treating the suspension period to the extent of subsistence allowance only. In other words, disciplinary authority has imposed the penalty under Regulation 20 (iii) and 5 of the 1981 Regulations, namely, withholding of increment and withholding of wages for the suspension period. Imposition of 2 penalties is impermissible and contrary to proviso to sub-Regulation (c) of Regulation 22 which reads as under:-

> *"c) In case the work-man fails to submit his explanation with the prescribed time or extended time allowed to him or where the explanation submitted by him is not found satisfactory, the employer or the manager or the person authorized by the employer or by the manager shall appoint a person to hold an enquiry and issue a notice containing the name of the enquiry officer and the date, time and place of the enquiry.*
>
> *Provided that in a case where the workman admits in writing the charges leveled against him and the employer is satisfied that such an admission is voluntary, it shall be open to the employer or the*

manager to award any one of the punishments provided in Clause 20 without holding any enquiry."

Having regard to the aforesaid statutory provision, disciplinary authority has exceeded its jurisdiction in imposing 2 penalties. Therefore, instead of remanding the matter, it is appropriate to read down second penalty of withholding of wages for the suspension period. In other words, *"he will not be paid anything over and above the subsistence allowance already paid to him during the suspension period"* is read down. The disciplinary authority is hereby directed to calculate difference of pay during the suspension period and release the arrears of pay along with interest @ 6% per annum.

6.) Appeal stands allowed in part.

(P.B. BAJANTHRI)
JUDGE

April 20, 2018.
sandeep

Whether speaking/reasoned:- Yes / No

Whether Reportable:- Yes / No.