

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-3914-2013 (O&M)

Date of Decision:-25.04.2018.

Mukesh Kumar

.....Appellant

Versus

The State of Punjab and another

.....Respondents

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

Present: Mr. Kapil Kakkar, Advocate for the appellant.

Mr. Rajbirinder S. Chahal, Additional A.G. Punjab.

P.B. BAJANTHRI, J. (Oral)

In the instant appeal, appellant has challenged the Trial as well as Appellate Court judgment dated 07.01.2011 and 12.03.2012, respectively.

2.) Appellant is stated to have been appointed as JBT Teacher on 25.01.1997 and his services have been confirmed on 5.10.2005. Departmental complaint was received against the appellant to the extent that he has obtained diploma qualification by playing fraud. In this regard, Department proceeded to initiate inquiry under the Punjab Civil Services (Punishment & Appeal) Rules, 1970 (for short the 1970 Rules). During pendency of the disciplinary proceedings, appellant is stated to have been promoted to the post of Punjabi Master on 19.04.2006. Appellant is stated to have sought for time to file his explanation/reply on the charge-sheet

dated 22.03.2006. Thereafter, disciplinary authority proceeded to impose the penalty of dismissal from service based on the preliminary Inquiry Officer's report dated 11.1.2006.

3.) Learned counsel for the appellant submitted that appellant is a regular holder of the post of JBT Teacher. Before, imposing the major penalty, it was bounden duty of the disciplinary authority to hold a regular inquiry in respect of alleged charge under the 1970 Rules. Merely for not submitting his explanation or reply on the charge-sheet, that does not empower the disciplinary authority to proceed to impose the major penalty of removal from service. It was submitted that under the Rules, 1970, there is provision for holding a *ex parte* inquiry. The disciplinary/inquiring authority has failed to resort for *ex parte* inquiry in respect of proving that appellant had obtained diploma qualification by playing fraud. It was contended that once he has been promoted to the post of Punjabi Master on 9.4.2006, appointing as well as disciplinary authority would be Director of Public Instructions. Therefore, punishment order dated 30.05.2006 issued by the Education Officer (EE), Ferozepur has no authority of law to remove the appellant who was holding the post of Punjabi Master as on 30.05.2006. Since he was not competent authority at the relevant point of time. The non-holding of inquiry as well as competency of the disciplinary authority has not been examined and apprised by the Trial and Appellate Court. When a legal question arose, it was duty of the Appellate authority to consider under the 1970 Rules.

4.) *Per contra* learned counsel for the respondents submitted that appellant has not responded to the charge-sheet by furnishing explanation

disciplinary authority proceeded to impose the penalty based on the preliminary Inquiry Officer's report. In such matters if there is no cooperation, the disciplinary authority has no other alternative except to proceed to impose the penalty based on the preliminary Inquiry Officer's report. It was contended that order of promotion to the post of Punjabi Master dated 09.04.2006 has not been given effect. Therefore, the contention of the appellant that District Education Officer has no power to impose the penalty of removal from service has no substance.

5.) Heard the learned counsel for the parties.

6.) Crux of the matter in the present appeal is whether respondents/disciplinary authority has proceeded to hold inquiry in accordance with the Rules, 1970 or not? No doubt charge-sheet was issued and appellant has not submitted his reply. Thereafter, it was bounden duty of the disciplinary authority to hold inquiry on his own or to appoint Inquiry Officer to hold *ex parte* inquiry while taking the evidence of witnesses so as to prove the charges. Therefore, disciplinary authority exceeded his jurisdiction. In other words, there is a non-compliance to the 1970 Rules. Assuming that the promotion order dated 19.04.2006 has not been given effect even otherwise disciplinary authority has erred in not following the Rules, 1970 from the stage of issuance of charge-sheet till imposition of penalty to the extent of not holding inquiry in respect of alleged charge relating to production of diploma qualification certificate which is stated to have been obtained by playing fraud on the authorities. The alleged charge is very serious in nature and so also when the intention of the disciplinary authority is to impose the major penalty, it was bounden duty of the disciplinary authority to follow the 1970 Rules in all fairness.

Therefore, Trial and Appellate Court have not considered the aforesaid issues. Consequently, both the Trial and Appellate Court judgments dated 07.01.2011 and 12.03.2012, respectively are set aside. Matter is remanded to the disciplinary authority to continue the inquiry by giving opportunity to the appellant insofar as submission of his explanation to the charge-sheet dated 22.03.2006 and proceed in accordance with the Rules, 1970. Such procedures are to be completed within a period of 6 months from the date of receipt of certified copy of this order. Since order of removal and consequential orders are set aside on technical ground appellant is deemed to be under suspension from the date of dismissal till passing of final order by the competent/disciplinary authority. In identical matter, this Court in the case of **Prem Kumar Vs. FCI and others (RSA-4970-2010)** decided on 20.12.2016 ordered for subsistence allowance. Para 10 and 11 read as under:-

*“10. The disciplinary authority is directed to comply provisions of Regulations, 1971 from the defective stage and proceed to complete the inquiry within a period of 6 months from today in accordance with Regulations, 1971. The appellant has been terminated from service on 08.11.1999. Now order is being set aside on the technicalities that the respondents have not followed the Regulations, 1971 before order of termination. Therefore, the appellant is deemed to be under suspension from 08.11.1999 till passing of a fresh order in view of the Supreme Court decision titled as **Managing Director ECIL versus B. Karunakar** reported in 1994 SCC Supl. (2) 391, wherein it is held that if the order of termination or disciplinary authority is set aside on technical ground in such circumstances, employee is deemed to be under*

suspension. Thus for the purpose of completion of disciplinary proceedings the appellant is deemed to be under suspension till date of his retirement or till passing of fresh order in disciplinary proceedings.

11. In view of the legal position the respondents are directed to pay subsistence allowance from 08.11.1999 till the date of his retirement. Subsistence allowance shall be calculated and disbursed within a period of 4 months from today.”

It was upheld by the Supreme Court in **Special Leave to Appeal (C) No.14323/2017 (Food Corporation of India and others Vs. Prem Kumar Yadav)** decided on 04.08.2017 which reads as under:-

“We find no reason to entertain this special leave petition, which is, accordingly, dismissed.

However, the petitioner is granted a period of six more months to complete the inquiry, as directed by the High Court. It is also made clear that the liability to pay the subsistence allowance would be with effect from the date of termination i.e. 8.11.1999 to the actual date of superannuation.

Pending application(s), if any, shall stand dispose of.”

The concerned respondent is hereby directed to calculate subsistence allowance during the period from 30.05.2006 till date and it be released within a period of 3 months from today.

7.) Appeal stands allowed in part.

**(P.B. BAJANTHRI)
JUDGE**

April 25, 2018.
sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.