

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

RSA No.6715 of 2016 (O&M)

Date of decision:22.05.2018

Raghubir Saran

Vs.

... Appellant

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. K.S.Khehar, Advocate
for the appellant.

AMIT RAWAL J.

C.M.No.5467-C of 2018

Prayer in the application is for placing on record termination order dated 02.07.2009 (Annexure A-1).

For the reasons stated in the application which is duly supported by an affidavit, the same is allowed and termination order dated 02.07.2009 (Annexure A-1) is taken on record.

RSA No.6715 of 2016 (O&M)

The appellant-plaintiff is in Regular Second Appeal against the judgments and decrees of both the Courts below, whereby, suit for declaration and mandatory injunction has been dismissed by trial Court, vide judgment and decree dated 01.10.2014 and affirmed by the Lower Appellate Court, vide judgment and decree dated 13.05.2016.

Succinctly, the facts which emanate from the pleadings of the parties are that plaintiff instituted the suit challenging the enquiry report on the basis of which termination order dated 02.07.2009 (Annexure A-1), had been passed serving charge-sheet of embezzlement of ₹188/-. On receipt of the charge sheet, the plaintiff requested General Manager, Haryana Roadways, Chandigarh to make available the copies of reports of checking staff and relevant documents but the same were not supplied. The Traffic Manager, Haryana Roadways was appointed as Enquiry Officer. Enquiry Officer summoned and recorded evidence of both the parties in a single hearing which prejudicially effected the defence of the plaintiff, for, the Enquiry Officer did not give the sufficient time to the plaintiff to lead evidence in defence and entire proceedings were done in undue haste. On receipt of report of the Enquiry Officer indicted the plaintiff. Defendant No.3 accepted the same and served a show cause notice dated 8.12.2006 alongwith findings of the Enquiry Officer proposing the punishment of termination of services of plaintiff. The aforementioned show cause notice was replied by the plaintiff but without consideration of its contents and affording any opportunity of personal hearing terminated the service of plaintiff, vide order dated 02.07.2000.

The plaintiff preferred statutory appeal before defendant no.2 but the same was rejected on 08.07.2010. The second appeal was also dismissed and served a legal notice under Section 80 CPC upon the defendants on 27.06.2011, therefore, necessity arose to file the

aforementioned suit.

The suit was contested by the defendants on the premise that appellant-plaintiff was given full opportunity of being heard before the authorities, therefore, there was no defiance of principles of natural justice. His services were censured on many occasions and therefore, was placed under suspension. The plaintiff was working as conductor in Haryana Roadways, Chandigarh and on 08.05.2005, he was on duty from Kalka to Ropar in Bus No.7029 and checking staff found that he received Rs.188/- from the passenger but did not issue ticket and thus, committed embezzlement of Rs.188/-. Pritam Dass, Inspector and Ram Kumar Malvi, Sub Inspector of the Checking Unit submitted their report, accordingly was charge sheeted. During enquiry, opportunities of defence as well as hearing were granted to the plaintiff as per the provisions of Haryana Civil Services (Punishment & Appeal), Rules. The plaintiff failed to file reply against the charge sheet even after the expiry of the stipulated period of 15 days. Ultimately, the Punishing Authority appointed Traffic Manager Chandigarh as Enquiry Officer to conduct an enquiry against the plaintiff. The plaintiff never demanded any documents from the defendants. The Enquiry Officer also conducted the enquiry in a most fair, reasonable and proper manner. The plaintiff did not make any request to the Enquiry Officer for supplying him the documents nor requested cross-examination of the prosecution witnesses.

On the basis of evidence, the trial Court dismissed the suit and the appeal preferred before the Lower Appellate Court also met with the

same fate.

Mr. K.S.Khehar, learned counsel appearing on behalf of the appellant-plaintiff submits that punishment order was not passed by the competent authority after taking into consideration report of inspecting unit, thus, was beyond the record as it had taken into consideration the record of past service. The service of the plaintiff was terminated without following the departmental procedure. Both the Courts below failed to notice that joint statement of Pritam Dass, Inspector and Ram Kumar Malvi, Sub Inspector of the Checking Unit could not have been recorded. The whole case proceeded on the basis of embezzlement of Rs.188/- that the plaintiff had taken a un-punched tickets of Rs.188/- from the passenger. There was hardly any convincing evidence to found guilt of the appellant. No procedure as per the Haryana Punishment and Appeal Rules 1987 had been followed, therefore, services of the plaintiff could not have been terminated.

I have heard the learned counsel for the appellant-plaintiff, appraised the judgments and decrees of the Courts below and of the view that there is no force and merit in the submissions of Mr. Khehar, for, a categorical finding of fact noticed by the Courts below had been that enquiry officer summoned the plaintiff on 26.07.2006, 23.08.2006 and 13.09.2006 for hearing and finally he was heard on 13.09.2006. Neither he availed the chance for cross-examination of the departmental witnesses, despite having participated in the departmental proceedings nor raised any objection either orally or in writing. If at all there had been any truth in the aforementioned fact, he would have made a representation before the higher authorities or

approached to the competent Court of law for non-compliance of the alleged principles of natural justice. The punishment order had been passed by the competent authority after taking into consideration the original record and not the past record. The competent authority had no prejudice against the plaintiff. The termination order is totally based upon the inspection report, though passing reference had been given that plaintiff was punished on several times on account of fraud cases for which two annual increments with cumulative effect were withheld.

As an upshot of my findings, I do not find any illegality and perversity in the judgments and decrees of the Courts below which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

May 22, 2018
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No