

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

RSA No.924 of 2017

Date of decision : 19.11.2018

BHOLA SINGH

..... APPELLANT

Versus

STATE OF PUNJAB AND ANOTHER

.... RESPONDENTS

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Ashok Kumar Khunger, Advocate
for the appellant.

B.S. WALIA, J.

[1] Appellant plaintiff has challenged judgment and decree dated 31.01.2013 passed by the learned Additional Civil Judge (Senior Division), Bathinda dismissing Civil Suit No.16 of 11.02.2011, as also judgment and decree passed by the learned Additional District Judge, Bathinda dated 16.11.2016, upholding the dismissal of the civil suit.

[2] Brief facts of the case, leading to the filing of the appeal are that while posted as Constable at Rampura during the year 1982, the appellant manhandled one Karam Singh, Chowkidar, whereupon departmental inquiry was conducted, in which the charges levelled against the appellant were held proved resulting in forfeiture of three years of service vide order dated 25.12.1983 besides reduction of appellants salary from Rs.525/- to Rs.480/- per month. Appeal filed by the appellant was dismissed vide order dated 01.12.2005. Same was challenged by the appellant by way of civil suit

which was decreed vide judgment and decree dated 31.01.2013 and the orders passed by the competent authority dated 25.12.1983 and Appellate Authority's order dated 01.12.2005 were set aside and the competent authority was directed to pass a fresh speaking order.

[3] Pursuant thereto, the competent authority passed order dated 02.11.2010, vide which three increments of the appellant-plaintiff were stopped with cumulative effect. The same was challenged by the appellant-plaintiff as being illegal, null & void, as also as against the principles of natural justice on account of being without giving personal hearing to the appellant. However, Civil Suit No.16 of 11.02.2011 was dismissed by the learned Additional Civil Judge (Senior Division), Bathinda vide judgment and decree dated 31.01.2013 while appeal filed against the same was dismissed by the learned Additional District Judge, Bathinda vide judgment and decree dated 16.11.2016. Appeal has been filed by the plaintiff, challenging the judgment and decree passed by the learned trial Court as upheld by the learned First Appellate Court *inter alia* on the ground that there was total mis-appreciation of evidence by the Courts below. The judgments passed by the Courts below were non speaking and cryptic, therefore, impugned judgments were liable to be set aside for once the order of punishment had been set aside by the Civil Court on the same set of allegations, the subsequent order was legally unsustainable and the impugned judgments were against the principles of natural justice. Despite repeated queries to the learned counsel to refer to the violation of natural justice alleged to have been committed, no answer was forthcoming.

[4] I have considered the submissions of learned counsel for the appellant and with his able assistance have gone over the record.

[5] Admittedly, departmental proceedings initiated against the appellant culminated in passing of order No.1812 dated 25.12.1983, resulting in forfeiture of three years service of the appellant plaintiff as also reduction of his salary from Rs.525/- to Rs.480/- per month. Appeal filed against the same was dismissed vide order dated 01.12.2005. Civil Suit filed by the appellant was decreed by the Civil Judge (Junior Division), Bathinda vide judgment and decree dated 16.04.2010 holding that there was no irregularity in the conduct of the inquiry. However, aforementioned Civil Suit No.271 dated 21.11.2007 was decreed on 16.04.2010 and order under challenge was set aside being illegal, while granting liberty to the competent authority to pass fresh orders on the basis of the findings of the Enquiry Officer. However, the learned Civil Judge (Junior Division), Bathinda held that no irregularity causing any prejudice to the appellant-plaintiff was committed by the Enquiry Officer while conducting inquiry and the same had been conducted as per rules and Appellant-plaintiff had been given full opportunity to meet the allegations and there was no violation of the principles of natural justice. However, the impugned order was vitiated on account of the same not having been passed by the competent authority, therefore, was unsustainable in the eyes of law. The Appointing Authority of the appellant-plaintiff Constable Bhola Singh was Senior Superintendent of Police (SSP), whereas the order had been passed by the Superintendent of Police (SP).

[6] Pursuant to the judgment and decree dated 16.04.2010, the Senior Superintendent of Police issued show cause notice (Ex. P-1) on the basis of inquiry report (Ex.D-1) and passed impugned order dated 02.11.2010, withholding three increments of the appellant-plaintiff with cumulative

effect and reducing the appellants pay from Rs.525/- to Rs.480/- per month. The judgment and decree dated 16.04.2010 had categorically held that no irregularity in the enquiry causing any prejudice to the appellant-plaintiff had been committed by the Enquiry Officer and that the enquiry had been conducted as per rules. However, the impugned order was set aside on the ground that the order had not been passed by the competent authority and while setting aside the impugned order, liberty was granted to the competent authority i.e. the Senior Superintendent of Police (SSP) to pass fresh order on the basis of the findings of the Enquiry Officer, who had already submitted the report. The judgment and decree dated 16.04.2010, passed by the learned Civil Judge (Junior Division), Bathinda dated 16.04.2010 was not appealed by the plaintiff. Once that being so, then the only illegality in the impugned order was of the same not having been passed by the competent authority and it was only to that extent that the order was set aside, while granting liberty to the competent authority, i.e. the Senior Superintendent of Police to pass fresh orders on the basis of inquiry already conducted. Thereafter, the competent authority i.e. the Senior Superintendent of Police passed fresh order. Not only has the appellant-plaintiff failed to show the violation of the principles of natural justice, leading to the passing of the impugned order but he is also estopped from challenging the same on the ground of violation of principles of natural justice on account of his acquiescence in judgment dated 16.04.2010 holding that the inquiry had been conducted by the Enquiry Officer in accordance with the principles of natural justice and that there was no infirmity in the same.

[7] It is not the case of the appellant that pursuant to the order of the learned trial Court dated 16.04.2010 setting aside the impugned order on the ground that it had not been passed by the competent authority, opportunity of hearing was not granted to the appellant-plaintiff or that he had not submitted his reply before the competent authority or that the same had not been considered by the competent authority before passing the impugned order dated 02.11.2010. In fact, the judgment and decree dated 16.04.2010 categorically held that, “so in view of the above, the Court is of the view that there has been no irregularity causing any prejudice to the plaintiff committed by the Enquiry Officer while conducting the enquiry. The same has been conducted as per rules, the plaintiff has been given full opportunity to meet out the allegations and there is no violation of any principle of natural justice. However, the impugned order suffers from patent illegality going to the root of the matter making it void *ab initio* being not passed by the competent authority and cannot be sustained in the eyes of law.”

[8] In other words, inquiry proceedings were held to be valid and in accordance with the principles of natural justice by the learned trial Court vide its judgment dated 16.04.2010. Once it was held that there is no violation of the principles of natural justice and the inquiry conducted was as per law but the impugned order in said civil suit was set aside only to the extent of the same not having been passed by the competent authority whereafter the competent authority i.e. the Senior Superintendent of Police issued show cause notice (Ex.P-1) to the appellant-plaintiff and passed the impugned order on the basis of the inquiry report, as well as the reply to the show cause notice given, no infirmity whatsoever can be found with the

impugned order as the same was passed by the competent authority. In the circumstances, it was not open to the appellant to challenge the inquiry findings in the subsequent suit for the judgment and decree dated 16.04.2010 held that the inquiry proceedings had been conducted in accordance with law and were valid. No challenge was made by the appellant-plaintiff to the aforementioned findings of the judgment and decree dated 16.04.2010 and the appellant-plaintiff acquiesced in getting the fresh order passed by the competent authority. In the circumstances, it was not open to the appellant in the subsequent suit to contend that the inquiry was vitiated on the grounds of violation of principles of natural justice or was not in accordance with law.

[9] Another aspect of the matter is that in matters of punishment imposed on the basis of departmental proceedings, Court's do not act as an Appellate Authority. In 2006(2) RSJ 14, 'Government of A.P. and others versus Mohd. Nasrullah Khan', it was held that once a domestic Tribunal on the basis of evidence comes to a particular conclusion, normally it is not open to the Tribunal and Courts to substitute their subjective opinion in place of the one arrived at by the domestic Tribunal as it is settled law that Tribunals are not required to sit in appeal over the decision of the employer unless there exists a statutory provision in that respect. In 'Divisional Controller, N.E.K.R.T.C. versus H. Amaresh', 2006(4) RSJ 57, likewise, in 'Y.P. Sarabhai versus Union of India and another', 2006(3) RSJ 386, Hon'ble the Supreme Court was pleased to hold as under:-

"9. This Court has repeatedly held that the factual finding of the Disciplinary Authority after holding a detailed enquiry and after going through elaborate evidence are not assailable in the courts unless the

breach of principles of natural justice or the violation of any rules or any material irregularity on the face of record is alleged and shown.....”

Likewise, in ‘**Reliance Energy Limited** versus **Maharashtra State Road Development Corporation Limited**’, (2007) 8 SCC 1, Hon’ble the Supreme Court was pleased to hold that in matters of judicial review, the basic test was to see as to whether there was any infirmity in the decision-making process and not in the decision itself. In other words, the decision-maker must understand correctly the law that regulates his decision making power and he must give effect to it. Otherwise, it may result in illegality. Further in ‘**Bank of India** versus **T. Jogram**’, (2007) 7 SCC 236, it was held that it was well settled law that judicial review was not against the decision but only against the decision-making process. Hon’ble Single Bench of this Court in ‘**Chander Singh Rath**i versus **State Bank of India and another**’, 2009(3) SLR 619, while taking note of the aforementioned decisions as referred to above held as under:-

“The gist of the law laid down by the Hon'ble Supreme Court of India in the judgments cited above, therefore, is that the basic test is to see whether there is any infirmity in the decision-making process and not in the decision itself. Judicial review is not against the decision. This court, while exercising writ jurisdiction, is not required to act as an appellate authority.

The jurisdiction is confined to correcting error of law or procedural error, if any, resulting in miscarriage of justice or violation of principles of natural justice. This court is not called upon to substitute its subjective opinion in place of the one arrived at by the authorities in exercise of their power. Finding of fact recorded by

the disciplinary authority, after holding a detailed inquiry and after going through elaborate evidence, is not assailable in the court unless breach of principles of natural justice or the violation of any rule or any material irregularity on the face of record is alleged and shown. If an action taken by any authority is contrary to law, improper, unreasonable, irrational, injudicious and arbitrary, a court of law can interfere with such decision by exercising the power of judicial review. Under the circumstances, the petitioner is required to show that some procedural error has resulted in miscarriage of justice or there has been violation of principles of natural justice. The petitioner is required to establish defect in decision making process.”

Thus, in the light of the position as noted above, it is crystal clear that the impugned orders were passed strictly in accordance with law. There is no violation of principles of natural justice. At least none whatsoever has been pointed out by learned counsel for the appellant or for that matter, apparent on the face of the record. Besides the plea with regard to there being violation of principles of natural justice was settled conclusively by the judgment and decree dated 16.04.2010, in which it was held that the inquiry had been conducted in accordance with the principles of natural justice and did not suffer from any infirmity. The impugned order was set aside only on the ground of the same not having been passed by the competent authority. In the circumstances, when the appellant did not challenge the judgment and decree dated 16.04.2010 to the extent of holding that the inquiry proceedings were in accordance with law and did not suffer from any infirmity, then in that situation, in subsequent suit filed by the appellant, it is not open to the appellant to take up the plea that there was

violation of principles of natural justice on the ground that the inquiry had not been conducted in accordance with law. Be as it may, the appellant has not been able to show any infirmity in the inquiry conducted. Once it was held that there is no violation of the principles of natural justice and the inquiry conducted and the impugned order in the said judgment was set aside only to the extent of the same not having been passed by the competent authority whereafter the competent authority i.e. the Senior Superintendent of Police issued show cause notice (Ex.P-1) to the appellant-plaintiff and passed the impugned order on the basis of the inquiry report, as well as the reply to the show cause notice given, no infirmity whatsoever can be found with the impugned order as the same was passed by the competent authority. No substantial question of law arises in the facts and circumstances of the case. Accordingly, finding no infirmity with the impugned judgment and decree passed by the learned trial Court as upheld by the learned first Appellate Court, the Regular Second Appeal is *dismissed in limine*. However, no orders as to costs.

(B.S. WALIA)
JUDGE

NOVEMBER 19, 2018
'rajneesh'

Whether speaking/reasoned	:	Yes/No.
Whether reportable	:	Yes/No