

IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH

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**CM-1311-12-C-2019 &
RSA-582-2019**

Date of decision: 24.01.2019

GULAB SINGH

...APPELLANT

VS.

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Sunil K. Nehra, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree passed by the Additional District Judge, Ambala dated 29.11.2018 whereby the judgment and decree dated 14.10.2015 passed by the Civil Judge (Junior Division), Ambala, whereby the suit of the appellant-plaintiff challenging the charge-sheet dated 30.04.2010 issued to him being based upon mala-fide was accepted, has been set aside and the suit of the appellant-plaintiff dismissed.

2. It is the contention of the learned counsel for the appellant that the trial Court, after considering the evidence which has been led by the appellant, came to a conclusion that the charge-sheet, which has been issued to the appellant-plaintiff, could not sustain as the charges were not found to be proved against him. He further contends that a specific averment of the appellant-plaintiff was that the charge-sheet dated 30.04.2010 has been

served upon the appellant because of the mala-fides of Zile Singh, the then District Education Officer, Ambala, who was impleaded as a respondent. He contends that the trial Court had come to a conclusion, after the evidence of the parties, that the charges, which have been served upon the appellant-plaintiff, could not be meted out from the records and on the basis of the evidence, has come to a conclusion that it was not a bona-fide act on the part of the District Education Officer who has served the said charge-sheet and thus, has rightly proceeded to set aside the charge-sheet dated 30.04.2010. He further contends that the Lower Appellate Court has proceeded on a total wrong assumption as if a show cause notice has been served upon the appellant-plaintiff. It is on that premise that the Appellate Court has proceeded to set aside the well-reasoned order passed by the trial Court. The other ground, which has been taken by the Lower Appellate Court, is that the appellant-plaintiff has not disclosed the factum of appointment of an Enquiry Officer, thereafter, the enquiry report and the reply, which has been filed by him to the show cause notice served upon him and because of the non-disclosure of these facts and the concealment of the material, during the pendency of the trial, did not permit the appellant-plaintiff to claim the relief, as has been sought, which, the counsel for the appellant-plaintiff asserts, cannot be attributed to the appellant-plaintiff as he had filed the suit on 20.10.2010 and all these events are subsequent thereto. These events should have been brought to the notice of the Court, if any, by the respondents-defendants, which they chose not to. For the fault of the respondents, the appellant-plaintiff cannot be held responsible. He, thus, contends that the judgment and decree, as passed by the Lower Appellate Court, setting aside the judgment and decree passed by the trial

Court dated 14.10.2015 and dismissing the suit of the appellant-plaintiff, is unsustainable and deserves to be set aside.

3. I have considered the submissions made by the learned counsel for the appellant and with his assistance, have gone through the judgments passed by the Courts below.

4. This Court agrees with the contention of the learned counsel for the appellant that the appellant could not have disclosed the factum of issuance of the show cause notice at the time of filing of the civil suit and the events, which have taken place subsequent to the issuance of the charge-sheet as he had approached the trial Court by filing the civil suit within a period of six months from the date of issuance of the charge-sheet. That apart, the Lower Appellate Court although has proceeded on a different tangent which may not be consistent with the pleadings by asserting that the show cause notice, which was issued, was a subject matter of challenge in the civil suit, however, this error appears to be an inadvertent mistake as the dates and other aspects, which have been referred to with regard to the show cause notice mentioned, corroborate with that of the charge-sheet.

5. What has been asserted by the learned counsel for the appellant primarily comes down to the issue as to the jurisdiction of the Civil Court in entertaining a civil suit challenging the issuance of a charge-sheet. The principle on law is well known and established that the charge-sheet can be challenged either on the ground of the same having been issued by an incompetent authority or on the basis of the mala-fides. The appellant-plaintiff has pleaded mala-fides and on that basis, had impleaded Zile Singh, the then District Education Officer, Ambala as a party respondent. As per the pleadings, the Ex. MLA, in connivance with the District Education

Officer, got issued a charge-sheet to the appellant-plaintiff with an intention to humiliate and mentally and physically torture him. Firstly, the Ex. MLA has not been impleaded as a party to the civil suit. This alone is a good ground for not granting the relief, as prayed for by the appellate-plaintiff. However, even going by the findings, as recorded by the trial Court, the said Court has not come to a conclusion that the charge-sheet was issued to the appellant-plaintiff on the basis of the mala-fides. The trial Court has committed a jurisdictional error in going through the evidence, which has been led by the parties with reference and regard to the charge-sheet i.e. correctness or otherwise thereof, which is beyond the scope of the Civil Court and, therefore, the finding recorded on that score also being beyond jurisdiction cannot sustain and is, hereby, set aside.

6. The ground of mala-fide not having been established for issuance of charge-sheet, the next ground is the competence of the authority to issue the charge-sheet. It is an admitted fact that the charge-sheet has been issued by the competent authority, if that be so, no interference was called for by the civil court as the settled law/principles as referred to above.

7. In view of the above, finding no merit in the present appeal, the same stands dismissed.

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In view of the dismissal of the main appeal, these applications have been rendered infructuous and the same are disposed of as such.

January 24, 2019*pj***(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No