

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

RSA No.2355 of 1996(O&M)

Date of decision: 19.7.2019

State of Punjab and anotherAppellants

VERSUS

Mangat RaiRespondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. A.A. Pathak, Addl. A.G. Punjab for the appellants.

Mr. Manmeet S. Rana, Advocate for the respondent.

REKHA MITTAL, J.

Challenge in the present appeal has been directed against judgment and decree dated 14.02.1996 passed by the Additional District Judge, Jalandhar whereby appeal against judgment and decree dated 08.05.1992 passed by the trial Court dismissing suit of the respondent/plaintiff was allowed, impugned judgment and decree was set aside and suit filed by the respondent/plaintiff for declaration was decreed to the effect that order dated 31.08.1988 passed by the General Manager, Punjab Roadways is illegal, unenforceable and the respondent shall be entitle to all the benefits with respect to his pay/wages as if order dated 31.08.1988 was not passed.

The respondent/plaintiff Mangat Rai, conductor in Punjab Roadways Jalandhar, was given punishment of stoppage of one increment with cumulative effect and pay over and above the subsistence allowance for the suspension period was forfeited vide order dated 31.08.1988. The

respondent/plaintiff was charge-sheeted on the allegations that on 15.04.1988, when he was on duty as Conductor on bus No.2563 en-route Jalandhar to Shimla, he had not issued ticket to one passenger travelling from Jalandhar to Ludhiana, thus, committed embezzlement to the tune of Rs.7.50p. After completing procedural formalities, regular departmental inquiry was conducted and the Inquiry Officer submitted a report holding the respondent guilty of Article(s) of charge. A copy of the inquiry report was supplied and show cause notice was issued as to why delinquent should not be removed from service. The respondent submitted reply to the show cause notice and eventually impugned order dated 31.08.1988 imposing penalty of stoppage of one increment with cumulative effect was passed by the competent authority.

The trial Court framed issues, noticed in para 4 of the judgment of said Court. The parties were permitted to adduce evidence in support of their respective contentions. Having heard counsel for the parties in the light of materials on record, the trial Court answered issue No.1 against the respondent/plaintiff and consequently suit filed by the respondent/plaintiff was dismissed. As has been noticed hereinbefore, the first Appellate Court accepted the appeal preferred by respondent, set aside the judgment and decree passed by the trial Court and decreed the suit, in the terms indicated hereinbefore.

Counsel for the appellant would argue that the Appellate Court has reversed findings of the trial Court on issue No.1 for the reasons assigned in para 9, 11 and 12 of the judgment though the Appellate Court in para 10 of the judgment has accepted that Civil Court cannot sit in appeal over findings of the Inquiry Officer. It is vehemently argued that reasons recorded in para 9 of the judgment are alien to the pleadings and

evidence adduced by the respondent/plaintiff and as such the same cannot stand the test of judicial scrutiny. He would further argue that the impugned order has also been set aside on the premise that order rejecting reply to show cause notice is not a speaking order and forfeiture of pay over and above subsistence allowance is vitiated as the respondent was not given any notice or an opportunity of being heard in this regard, in view of the provisions of Rule 7.3 of Punjab Civil Services Rules and by relying upon judgment **Shri Nand Kishore Vs. The State of Punjab and others, 1983 (1) SLR 207**. According to counsel, order impugned is a speaking order and the punishing authority by taking a lenient view in the matter imposed punishment of stoppage of only one increment with cumulative effect vis-à-vis the proposed punishment of removal from service.

Counsel representing the respondent is not in a position to support reasoning assigned by the first Appellate Court in para 9 of the judgment for want of necessary pleadings and evidence much less a plea raised by the employee that a prejudice has been caused to him due to the same. However, he has supported findings of the first Appellate Court recorded in para 11 and 12 with regard to impugned order being non-speaking and forfeiture of pay and allowances over and above subsistence allowance being in violation of the principles of natural justice as no notice was served upon delinquent before causing him financial loss.

I have heard counsel for the parties, perused the paper-book and records.

So far as findings recorded by the first Appellate Court in para 9 of the judgment, the same cannot be allowed to sustain being beyond pleadings and evidence. The Appellate Court, for the reasons best known, tried to make out a new case in its zeal to find fault in the inquiry

proceedings and impugned order. In this view of the matter, reasons that weighed in the mind of Appellate Court in view of its observations recorded in para 9 of the judgment are the result of misreading of pleadings and evidence, thus, suffer from perversity.

This brings the Court to findings of the Appellate Court that punishing authority has not passed a speaking order while dealing with reply to show cause notice for imposing proposed penalty of removal. Perusal of reply to show cause notice would reveal that the respondent did not raise an issue to point out any irregularities or illegalities in inquiry proceedings or report submitted by the Inquiry Officer. On the contrary, the respondent/plaintiff just reiterated the facts which were pleaded by him in reply to the charge-sheet as a defence plea. The factual dispute raised by the respondent/plaintiff in reply to the charge-sheet in order to controvert the allegations raised against him was the subject matter of proceedings conducted by the Inquiry Officer. Counsel for the respondent has failed to cite any law or precedent that if a delinquent employee in reply to show cause notice for imposing penalty merely reiterates his defence plea raised in reply to the charge-sheet, the punishing authority is required to re-examine the said issue and pass a speaking order. The Appellate Court without examining contents of reply and stand taken by the delinquent in reply to articles of charge had proceeded to set aside the impugned order by saying that reply to show cause notice has not been disposed of by passing a speaking order. As a matter of fact, in reply to show cause notice, the respondent neither pointed out any legal flaw, lacuna and irregularity in the inquiry proceedings nor he raised any such plea that imposing of penalty of removal from service is not commensurate to the gravity of charges framed against him or a lenient view is required to be

taken in the circumstances obtaining in his case. As such, order impugned cannot be faulted with by holding that the same is not a speaking order. That being so, findings of the first Appellate Court with regard to impugned order being faulty for want of reasons are not based upon correct appreciation of materials on record and cannot be allowed to sustain.

This brings the Court to forfeiture of pay and allowances over and above subsistence allowance. Counsel for the respondent has failed to point out any provision in Rule 7.3 that mandates a notice to be served to the delinquent in the given circumstances because the present is not a case of dismissal or removal or pre-mature retirement from service. The judgment relied upon by the Appellate Court in **Shri Nand Kishore's case** (supra) is based upon judgment of Hon'ble the Supreme Court in **B.D. Gupta Vs. State of Haryana, 1972 SLR 845**. In **B.D. Gupta's case** (supra), the official concerned was fully exonerated of the charges leveled against him and in those circumstances, Hon'ble the Supreme Court by relying upon its earlier decision **M. Gopala Krishna Naidu Vs. State of Madhya Pradesh, 1967 SLR 800** had held that justice and fair play demanded that the Government should have given the appellant a reasonable opportunity to show cause why an order affecting his pay and emoluments to his prejudice should not be made. As in the case at hand, findings of the first Appellate Court to set aside order imposing penalty of stoppage of one increment with cumulative effect are set aside in view of the discussion made hereinbefore, as a natural corollary, the respondent/plaintiff is not fully exonerated of the charges levelled against him. In the given circumstances, the respondent/plaintiff cannot derive any advantage to his contention from the judgment in **Shri Nand Kishore's case** (supra) by this Court or judgment of Hon'ble the Supreme Court in

B.D. Gupta's case (supra). On the contrary, judgment of Hon'ble the Supreme Court **State of Assam and another Vs. Raghava Rajagopalachari, 1972 SLR 44**, referred to in **B.D. Gupta's case** (supra) would be applicable in favour of the appellants. As a result, judgment of first Appellate Court setting aside order forfeiting pay over and above subsistence allowance is set aside.

In view of what has been discussed hereinbefore, the appeal is allowed. Judgment and decree passed by the first Appellate Court is set aside. As a natural consequence, judgment and decree passed by the trial Court is restored. The suit filed by the respondent/plaintiff is dismissed with costs throughout.

JULY 19, 2019

'D. Gulati'

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned

:

yes/no

Whether reportable

:

yes/no