

**IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH
107**

**CM-17334-C-2018
& RSA-726-2000**

Date of decision: 24.01.2019

THE STATE OF HARYANA AND OTHERS

...APPELLANTS

VS.

JAGDISH PRASHAD

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Pradeep Prakash Chahar, DAG, Haryana,
for the appellants.

Mr. Shamsheer Singh Mor, Advocate,
for the applicant-respondent.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM-17334-C-2018

Prayer in this application is for early hearing of the appeal.

Notice of the application was issued to the Advocate General, Haryana on 22.11.2018. It was made clear that on the next date of hearing, the main case will be heard along with the application and accordingly, the present application is allowed. The main case is taken on Board.

RSA-726-2000

Challenge in this appeal is to the judgment and decree passed by the learned Additional District Judge, Narnaul dated 15.09.1999, whereby the appeal preferred by the respondent-plaintiff challenging the judgment and decree passed by the Civil Judge (Senior Division), Narnaul

dated 24.11.1998 dismissing his suit for declaration to the effect that the order dated 17.09.1991 passed by the Incharge Sub Depot, Haryana Roadways, Narnaul, order dated 17.07.1992 and order dated 26.10.1993, vide which his services were terminated being null and void and that the respondent-plaintiff was held entitled to the reinstatement along with back wages and consequential benefits, has been allowed and the suit of the respondent-plaintiff has been decreed.

It is the contention of the learned counsel for the appellants that the civil suit is not maintainable in the light of the fact that the respondent would fall within the definition of 'workman' and, therefore, had a remedy under the Industrial Disputes Act, 1947. He, thus, contends that the suit itself should have been dismissed on this score being not maintainable. In support of his contention, he relies upon the judgment of this Court in RSA No. 1464 of 1992 (O&M) titled as **Sonepat Urban Cooperative Bank Ltd. vs. Tapan Kumar (Deceased) through LRs**, decided on 24.03.2017 as also a judgment of the Supreme Court in **The Rajasthan State Road Transport Corporation vs. Krishna Kant**, (1995) 5 SCC 75. Apart from this, he asserts that the findings, as recorded by the Appellate Court with regard to the factum that the respondent-plaintiff has not been given any opportunity to defend himself before the Enquiry Officer, are contrary to the pleadings and the evidence on record. He, thus, contends that the appeal, as preferred by the State challenging the judgment dated 15.09.1999 passed by the learned Additional District Judge, Narnaul, deserves to be allowed and the suit of the respondent-plaintiff dismissed.

On the other hand, counsel for the respondent asserts that the trial Court, on the basis of the pleadings, had framed the issues on

23.08.1996, wherein Issue No. 5 was whether the Civil Court has no jurisdiction to try and decide the present suit? and Issue No. 8 was whether the suit was not maintainable to the present form? Both these issues were decided against the appellants being not pressed and no arguments whatsoever were advanced on these issues. The findings, as recorded on these issues, were never challenged by the appellants before the Appellate Court. He states that no cross-objections have been filed nor has the counsel for the State pressed the issues before the Appellate Court and, therefore, the assertion of the counsel for the appellants cannot be accepted rather in para-17 of the said judgment, the learned Lower Appellate Court has affirmed the findings, as recorded by the trial Court on these issues. He, thus, contends that the plea, which has now been sought to be raised by the appellants, cannot be gone into.

On merits, counsel for the respondent states that in the summary of allegations Ex. D2 dated 17.09.1991, which was served along with the charge-sheet of the same date, it has been stated that the respondent was absent from duty from 01.05.1991 to 30.06.1992. He contends that it is difficult to believe as to how the appellants became aware of the fact that he would not join his duty up to 30.06.1992. He, therefore, contends that the records in the enquiry proceedings are mere formality and the same have been inserted just to fill up the lacuna. He further contends that after recording of the statement of the respondent-plaintiff, no opportunity was given to him to lead further evidence. There is not even a mention that the Presenting Officer had closed the evidence of the prosecution. The respondent-plaintiff has, therefore, not been granted an opportunity of being heard and the principles of natural justice have been violated apart from

violating the statutory Rules which mandate an employee being made aware of his rights and also giving him an opportunity to defend himself effectively. The finding, as recorded by the learned Lower Appellate Court, has been supported by the counsel. He, thus, contends that the appeal being devoid of merit deserves to be dismissed.

I have considered the submissions made by the learned counsel for the parties and with their assistance, have gone through the impugned judgments passed by the Courts below as well as the evidence, which has been referred to by the counsel for the parties.

A perusal of the charge-sheet dated 17.09.1991 Ex. D2 indeed reflects two dates of absence from duty of the respondent-plaintiff i.e. from 01.05.1991 to 30.06.1992. If the charge-sheet is dated 17.09.1991, it is not understandable as to how the appellants came to know about the period for which the respondent-plaintiff would remain absent. During the enquiry also, nothing has come on record which would indicate that the respondent-plaintiff has been given an opportunity to lead his evidence or that the evidence has been closed of the respondent-plaintiff at his statement. The enquiry report, which is on record, does not indicate that the statement was given by the respondent-plaintiff closing his evidence rather a perusal of the enquiry report indicates that the official of the department had produced the records and thereafter, an opportunity was given to the respondent-plaintiff to cross-examine him proceeded by the statement of the respondent and then the final report without even indicating as to whether any opportunity has been given to him to lead evidence or that the respondent had closed his evidence by a statement to that effect.

In view of the above, the statutory Rules having not been fully

complied with during the enquiry proceedings, the enquiry itself cannot be said to be in accordance with law and the statutory Rules and thus, cannot sustain. It goes without saying that all the consequential proceedings arising thereto would itself fall from the realm of it being legal.

As regards the contention of the learned counsel for the appellants that the suit itself was not maintainable in the light of the judgments in the cases of Sonepat Urban Cooperative Bank Ltd. (supra) and The Rajasthan State Road Transport Corporation (supra), is concerned, the said issues have been dealt with by the trial Court being Issues No. 5 and 8, in which the findings have been recorded against the appellants as these issues were not pressed and no arguments whatsoever were advanced. No cross appeal has been preferred by the appellants against the judgment and decree passed by the trial Court dated 24.11.1998 nor has any cross-objection been filed rather the said issues have not even been pressed before the Appellate Court as is apparent from the judgment passed by the Appellate Court dated 15.09.1999. The Appellate Court has also affirmed the finding returned by the trial Court on these issues. The plea, thus, as sought to be raised by the counsel for the appellants, cannot be accepted and is hereby, rejected.

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

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

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No