

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

**RSA No.2496 of 2004 (O&M)
Date of Order: 27.02.2019**

Gurmeet Singh

..Appellant

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sukdip Singh Brar, Advocate,
for the appellant.

Mr. N.K.Banka, DAG, Punjab.

Ms. Deepali Puri, Advocate,
for respondent no.3-PUNSUP

ANIL KSHETARPAL, J(Oral)

Plaintiff-appellant is in the regular second appeal against the concurrent findings of fact arrived at by both the courts below while dismissing the suit filed by the plaintiff (ex-employee) challenging the order of punishment passed after a regular departmental enquiry upheld in appeal by the appellate authority.

Plaintiff joined as Sub Inspector in Punjab Food and Supplies Department on 02.05.1973. While he was on deputation with the Punjab State Civil Supplies Corporation Limited (hereinafter referred to as 'the Corporation'), there were certain charges against the plaintiff which resulted into initiation of departmental enquiry in the aforesaid charges. After regular enquiry, charges were held to be proved and consequently he was ordered to be dismissed from service. Appeal filed by him before the appellate authority also failed. Thereafter, he filed the present suit. It may

be noted that in a separate suit filed by the Corporation, recovery of the loss caused to the Corporation was sought to be recovered. The aforesaid suit was dismissed by the learned trial court upheld in appeal by the first appellate court.

Hence, the question arises that what is the effect of the aforesaid judgment in the present proceedings.

This court has heard learned counsels for the parties at sufficient length and with their able assistance gone through the judgments passed by the courts below and the record.

Learned counsel for the appellant submitted that once the suit filed by the Corporation with whom plaintiff-appellant was on deputation on same very charges has been dismissed, therefore, the departmental enquiry and consequent punishment ought to have been held to be illegal. While elaborating, he submitted that once plaintiff-appellant has not been held liable to pay the amount of the alleged loss, therefore, the action of the employer to terminate the services of the plaintiff-appellant on the same ground is not justified and sustainable.

This court has considered the submissions.

No doubt, on first blush the argument of learned counsel for the appellant appears to be attractive, however, on deeper scrutiny, this court do not find substance.

First of all, the employer i.e. Punjab State is not party to the previous suit and the appeal. Hence, the aforesaid judgment is not binding on State of Punjab i.e. the employer.

Scope of the present suit and the previous suit which was filed by the Corporation, with whom plaintiff-appellant was on deputation, is

quite different. In the aforesaid suit, the authority had filed a suit for recovery of the loss. The court decided the case on the basis of preponderance of evidence which was produced before it. Whereas in the present case the Civil Court is called upon to adjudicate upon the validity and the correctness of the order passed by the authority after a departmental enquiry arising from disciplinary proceedings. The scope of such suit challenging the order of disciplinary authority is very limited. Still further the relevancy of judgments is governed by Sections 40, 41, 42 and 43 of the Evidence Act, 1872.

Section 41 provides that the judgments passed in probate, matrimonial, admiralty or insolvency jurisdiction are relevant. Section 42 provides that judgments, orders or decrees other than those mentioned in section 41, are relevant if they relate to matters of a public nature relevant to the enquiry. Whereas Section 43 provides that judgments, orders or decrees, other than those mentioned in sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some other provision of this Act .

Learned counsel for the appellant submitted that the fact in issue in the previous suit as well as in the present suit is same. This court finds that Section 43 of the Evidence Act provides that unless the existence of the judgments, orders or decrees is a fact in issue only then that would be relevant. The language of Section 43 of the Evidence Act is specific and it cannot be read in a manner as suggested by learned counsel for the appellant. Still further, this aspect can be examined from another angle. Section 11 of the Code of Civil Procedure deals with rule of resjudicata.

The rule of resjudicata can be invoked only when the issue which arises in a

subsequent suit was directly and substantially in issue in the previous suit between the same parties. In the present case, neither the parties are same nor the question of correctness of disciplinary proceedings and the order passed thereon were directly or substantially in issue. The rule of resjudicata cannot be extended to cover the issues which were not directly subject matter of dispute in the previous proceedings.

In view thereof, this court does not find any good ground to interfere with the concurrent findings of fact arrived at by the courts below.

The regular second appeal is dismissed.

February 27, 2019
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(ANIL KSHETARPAL)
JUDGE

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