

**C.M. NOS.11130-11131 C OF 2019 &
R.S.A. NO.4060 OF 2019**

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

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**C.M. NOS.11130-11131 C OF 2019 &
R.S.A. NO.4060 OF 2019**

DATE OF DECISION: AUGUST 30, 2019

The Director General, Food and Supplies Department, Haryana, Chandigarh
and others

.....Appellants

VERSUS

Roshan Lal Moudgil

....Respondent

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Ravi Pratap Singh, AAG, Haryana,
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No.11130 C of 2019

Prayer in this application is for condonation of delay of 46 days
in filing the appeal.

For the reasons mentioned in the application, which are duly
supported by an affidavit of the District Food Civil Supplies & Consumer
Affairs Controller, Kaithal, the application is allowed and delay of 46 days
in filing the appeal stands condoned.

C.M. No.11131 C of 2019 & R.S.A. No.4060 of 2019

Challenge in this appeal is to the judgment and decree dated
29.03.2019 passed by the District Judge, Kaithal, vide which the appeal
preferred by the respondent against the judgment and decree dated
04.01.2019 passed by the Additional Civil Judge (Senior Division), Kaithal,

whereby the suit of the respondent-plaintiff, seeking declaration to the effect that the charge sheet dated 26.02.2009 alongwith order dated 28.10.2013 passed by the Director, Food and Supplies, Haryana and order dated 10.02.2015 passed by the Additional Chief Secretary to Government of Haryana, Food and Supplies Department are illegal, null and void and a decree for permanent injunction restraining the respondent from recovering the amount of ₹12,49,791/- from the respondent was dismissed, stands decreed by setting-aside the judgment and decree dated 04.01.2019 and other orders.

2. It is the contention of learned counsel for the appellants that the respondent was working as an Inspector, Food and Supplies Controller. There was loss of 15 bales, which was attributed to the respondent-plaintiff, because of which the Government suffered a loss of ₹29,06,491/-. Out of this, the loss, which was attributed to the respondent, was 43%, which comes to ₹12,49,791/-. It is for recovery of this amount that the order of punishment was passed by the Director, appeal against which was dismissed by the Appellate Authority, which is being challenged by the respondent.

3. Learned counsel for the appellants submits that the judgment and decree as passed by the lower Appellate Court is not sustainable as it has failed to appreciate that although the Enquiry Officer has exonerated the respondent but there was a detailed dissenting note put by the punishing authority. The said dissenting note alongwith the enquiry report was duly served upon the respondent, to which he had filed his reply. The said reply had been duly considered and on consideration thereof, it was found that the said explanation was not acceptable, leading to imposition of punishment of

recovery of ₹12,49,791/- against the respondent. He contends that learned trial Court, while passing the judgment dated 04.01.2019, has appreciated the evidence produced by the parties and on appreciation thereof, has accepted the stand of the appellants and upheld the order of punishment to be in accordance with law, dismissed the civil suit. His submission is that the findings, which were well reasoned and based upon the pleadings and the evidence, should not have been interfered with by the Appellate Court, especially when no illegality has been found during the enquiry proceedings.

4. He, however, on a categoric question put by this Court, very fairly conceded that after the issuance of show cause notice and on receipt of the reply from the respondent, the punishing authority, which had given personal hearing to the said respondent, had been transferred and ultimately the successor in office proceeded to pass an order of punishment. He tried to explain the said action of the successor by asserting that since the personal hearing had already been given to the respondent, he was not required to be again called for any personal hearing by the punishing authority. He further contends that the mandate of the rules having been fulfilled, which required personal hearing to be given to the delinquent employee, it cannot be said that the statutory rules have been violated. On this basis, he tries to justify the order of punishment as imposed by the punishing authority i.e. the Director, Food and Supplies, Haryana.

5. I have considered the submissions made by learned counsel for the appellants and with his assistance have gone through the records of the case including the judgments passed by the Courts below.

6. The facts are not in dispute and, therefore, need not be again

referred to. The question which requires to be determined and decided by this Court is whether as per the mandate of the rule, can one punishing authority give personal hearing to the delinquent employee and thereafter on his transfer, his successor in office, without giving the said employee a fresh personal hearing, can pass the order of punishment?

7. The fact, as is apparent on record and not in dispute, is that personal hearing was admittedly granted to the delinquent employee (respondent herein) by the punishing authority but before passing of the order of punishment, the said person, who was holding the office of Director, Food and Supplies, Haryana, was transferred, because of which another person stepped into his shoes. This successor in office proceeded to pass an order of punishment on the basis of records. This, being an admitted fact, it can safely be said that no further personal hearing was given to the respondent-delinquent employee by the punishing authority, which ultimately passed the order of punishment. Therefore, the very purpose of giving personal hearing to an employee has been rendered nonest and frustrated meaning thereby that the rule has not been complied with.

8. Personal hearing given to a delinquent employee is not merely a formality and it cannot be said to be of such a nature, which would be treated as an eye wash only. The reason why personal hearing is given in the rules is for complying with the principles of natural justice, which mandate a person to be heard before taking any action against him. The very intent and purpose of the rule is for seeking clarification from an employee who is likely to be punished and to give him an opportunity to explain his stand. The principle having been violated, the requirement and mandate of the statutory rules cannot be said to have been fulfilled.

9. If that be so, the order of punishment dated 16.12.2014 as passed against the respondent cannot be said to be in accordance with law. The effect thereof is that the order of the punishing Authority cannot be said to be sustainable, especially when the said authority failed to appreciate this aspect. Therefore, the judgment and decree dated 29.03.2019 as passed by the learned District Judge, Kaithal, being in consonance with law do not call for any interference by this Court.
10. In view of the above, finding no merit in the present appeal, the same stands dismissed.

August 30, 2019
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(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No