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

RSA-4423-2019 (O&M)
Date of Decision : 28.11.2019

Pawan Kumar Gulati ...... Appellant

Versus

State of Haryana and others ...... Respondents

CORAM : HON'BLE MR. JUSTICE RAMENDRA JAIN

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Present : Mr. Arvind Mittal, Advocate
for the appellant.

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RAMENDRA JAIN, J. (Oral)

Through this regular second appeal, appellant-plaintiff has laid challenge to the judgment and decree dated 10.05.2019 of the lower appellate court, dismissing his appeal, thereby affirming the judgment and decree dated 05.07.2018 of the trial court, whereby his suit to declare orders dated 23.12.2010 and 05.07.2011, issued by Excise and Taxation Commissioner, Haryana, Panchkula, for stoppage of his one increment and treating his suspension period from 12.11.2008 to 29.01.2010 as leave of kind due respectively, was dismissed.

Briefly, on 04.07.2006, appellant-plaintiff was posted as taxation inspector at Ambala under the control of Deputy Excise and Taxation Commissioner (ST). On that day, he collected cash amount of Rs.86,330/- as tax from different persons. He, however, instead of depositing the same in the account of department, handed over the same to his colleague Mr. S.S.Kalra, Taxation Inspector, who further handed over the said amount to Sh. Jagdish Chand, peon, directing him to deposit the same in bank. According to said peon Jagdish Chand, the aforesaid amount was stolen from his custody by someone near the bank. In this way, the Excise and Taxation Department, Haryana suffered a loss of Rs.86,330/-.

For this lapse, appellant-plaintiff was charge-sheeted and after holding inquiry, he was held guilty.

Pursuant thereto, competent authority ordered for stoppage of one increment of the appellant-plaintiff without cumulative effect, while converting the proceedings against him from Rule 7 to Rule 8. Suspension period of appellant-plaintiff was ordered to be treated as leave of kind due by the Excise and Taxation Commissioner, Haryana.

Being aggrieved, appellant filed a suit for declaration, challenging the orders dated 23.12.2010 and 05.07.2011, whereby his one increment was ordered to be stopped and his suspension period was treated as leave of the kind due respectively.

The trial court, after holding trial, dismissed the suit with costs vide judgment and decree dated 05.07.2018.

Feeling aggrieved, he approached the lower appellate court, but remained unsuccessful as his appeal was also dismissed vide judgment and decree dated 10.05.2019.

Learned counsel for appellant contends that both the courts below illegally interpreted the instructions dated 18.12.1997 (Ex.D4) narrowly. The aforesaid instructions never prescribed that the taxation Inspector, who collected the tax, would himself deposit the same in the bank. From the plain reading of the above instructions, it is apparent that any taxation inspector, posted in the collection centre, may deposit the collected tax in the bank. Both the courts below also failed to appreciate that the person to whom appellant had handed over the said cash amount, could also deposit same in bank. Therefore, there was no lapse on the part of plaintiff-appellant.

Having given my thoughtful consideration to the submissions, this court finds the instant appeal merits dismissal for the reasons to follow.

The main defence of appellant to wriggle out from the aforesaid instructions dated 18.12.1997 is that any taxation inspector could deposit the tax in bank. According to him, on the relevant date, he suddenly fell ill. Therefore, he handed over the said cash amount to Mr. S.S.Kalra, Taxation Inspector. He did not ever violate the aforesaid instructions.

However, the appellant-plaintiff neither produced any medical record showing his alleged sudden illness, before the inquiry officer nor both the Courts below for the reasons best known to him. Thus, in the absence of any such medical record, it is apparent that appellant shirked from his duty and responsibility of depositing tax, collected by him, in bank himself and illegally handed over the same to Mr. S.S.Kalra, who also in utter violation of said instructions dated 18.12.1997, handed over the same to a peon, who was not at all authorized to deposit it in the bank, which finally, was stolen. In this way, appellant-plaintiff, while on duty, acting negligently, caused a loss of Rs.86,330/- to the State Exchequer. Thus, this Court is not inclined to differ with the concurrent findings of the learned courts below based on appreciation of evidence.

No question of law much less substantial has been raised in this appeal. Hence the same is held not maintainable.

Dismissed.

(RAMENDRA JAIN)
JUDGE

28.11.2019
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Whether speaking/reasoned Yes/No
Whether Reportable Yes/No