

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

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Regular Second Appeal No.3153 of 2013 (O&M)
Date of Decision: October 14th, 2019

Surinder Singh

...Appellant

Versus

The Registrar Cooperative Society Punjab, Chandigarh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Vikas Suri, Advocate
for the appellant.

Mr. T.S. Lehal, Advocate
for respondents No.2 and 3.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree dated 08.09.2007 passed by the Additional Civil Judge (Senior Division), Pathankot, whereby the suit for declaration preferred by the appellant-plaintiff to the effect that the order dated 09.04.1997 dismissing the appellant-plaintiff from permanent employment of the Punjab State Handloom Weavers Apex Cooperative Society Limited-defendant No.2 is illegal, null and void and liable to be set aside with consequential release of arrears of salary along with incidental service benefit along with interest and costs, stands dismissed, appeal against which preferred by the appellant-plaintiff has also been dismissed by the learned Additional District Judge, Pathankot, vide judgment and decree dated 12.12.2012.

2. It is the contention of learned counsel for the appellant that the Courts below have merely proceeded on the assumption as if the appellant-plaintiff has admitted all the liabilities and has not been able to

rebut any of the facts in the cross-examination. He contends that the prayer

of the appellant-plaintiff during the inquiry proceedings for providing him the assistance of a counsel so that he could effectively defend himself during the inquiry proceedings has been declined by the Inquiry Officer. He, thus, contends that the basis principle of defence available to an employee in a departmental inquiry having been denied to him would go into the root of the issue and the inquiry proceedings as well as the consequential orders on the basis of the inquiry report stood vitiated and deserve to be set aside. His contention is that the Courts below have proceeded on wrong assumption that the appellant-plaintiff has admitted the factum of deposit of an amount of shortage in instalment at the rate of ₹10,000/- each but had failed to honour his commitment. He states that the cross-examination, when looked into, would in fact not indicate an iota of such an admission on the part of appellant-plaintiff. In any case, he asserts that the shortage, if any, which has come through the godown, was not because of the fault of the appellant-plaintiff and was because of the reason that there was flooding resulting in the damage to the crop, for which he cannot be held liable. The factum of there being damage caused because of flooding is apparent from the fact that the claim for insurance was put forth by respondent-defendant No.3 for a part of share for Pathankot Depot. He contends that the shortage of stock amounting to ₹77,330.59 paise, which was found in the store in Pathankot and has been stated to have been admitted by the appellant-plaintiff, was the amount which was unpaid by the Insurance Company with regard to the claim of the Pathankot Depot and that position was clarified by the appellant-plaintiff but the Courts have proceeded to take it as an admission on his part with regard to the shortage of stock. Learned counsel for the appellant-plaintiff further asserts that

Mr. V.K. Sharma was the Presenting Officer and he himself has appeared as a witness to substantiate the allegation of shortage of stock in the case of the appellant-plaintiff and, therefore, the statutory rules have been violated. He, therefore, submits that the appellant-plaintiff has been made responsible for no fault of his and thus, the judgments and decree as passed by the Courts below cannot sustain and deserve to be set aside.

3. On the other hand, learned counsel for respondents No.2 and 3 has asserted that even if the assertion of the counsel for the appellant is accepted to be correct, the prejudice, if any, which has been caused to the appellant-plaintiff has to be highlighted as there is no clear violation of any of the statutory rules/instructions governing the disciplinary proceedings. No prejudice whatsoever has been caused to the appellant in his defence before the Inquiry Officer. As regards the contention of the counsel for the appellant that his request for appointment of a counsel to assist him in the departmental inquiry is concerned, he asserts that there is no averment or allegation that the Presenting Officer on behalf of the respondents-defendants was a trained law graduate and, therefore, the rejection of the said prayer by the Inquiry Officer cannot be said to be in any manner violative of the statutory rules. He, therefore, asserts that the judgments and decree as passed by the Courts below being based upon settled principles of law with regard to the limited jurisdiction of the Civil Court cannot be faulted with.

4. I have considered the submissions made by learned counsel for the parties and with their assistance, have gone through the records of the case.

5. The facts are no in dispute and, therefore, need not be reiterated

except for the assertion of the counsel for the appellant that there were floods, which had occurred because of which loss has been caused to respondent No.3, for which the said loss has been attributed to the appellant-plaintiff for which a departmental inquiry was held and in the departmental inquiry, what has been sought to be pointed out by the counsel for the appellant is the non-compliance of the statutory rules governing the disciplinary proceedings initiated against the appellant. The basic contention which has been raised is the denial to the appellant-plaintiff of the right of his defence because of rejection of his prayer for permitting the counsel to assist him in the departmental proceedings. This plea of the counsel for the appellant cannot be accepted in the light of lack of any pleadings or evidence which would indicate that the Presenting Officer was a trained law graduate. Assuming the Presenting Officer would have been a trained law graduate, the prayer as made by the counsel for the appellant would have bearing upon the quality of his defence when confronted with and compared with that of the Presenting Officer. There is no statutory rule, which mandates acceptance of a prayer by an employee for appointment of a counsel to assist him in departmental proceedings. In the absence of the said statutory rule, the said contention of the counsel for the appellant cannot be accepted.

6. As regards the contention that the Presenting Officer has himself appeared as a witness and has proved the shortage of stock against the appellant-plaintiff, again it is a matter of fact that the evidence which has been presented by Shri V.K. Sharma is only based upon the documents, which the counsel for the appellant states, are his own record.

That apart, no prejudice has been found to be caused to the

appellant-plaintiff by such an action on the part of the Presenting Officer. It may be pointed out that either before the Appellate Authority or before the Courts below, such a plea has not been taken by the appellant-plaintiff. The factum of the cross-examination having been declined to the appellant-plaintiff also is not reflected from the record available.

7. As regards the contention of the counsel for the appellant with regard to the aspect of there being violation of the statutory rules i.e. the principles of natural justice to defend himself having been found to be not substantiated from any evidence on record with the limited jurisdiction of the Civil Court, which has been found to be exercised by the Courts below in accordance with the parameters as laid down in various judgments passed by the Hon'ble Supreme Court and this Court, no fault can be found with the judgments and decree under challenge.

8. There are concurrent findings recorded by the Courts below, which do not call for any interference by this Court in exercise of its powers in the second appeal.

9. The judgments and decree as passed by the Courts below being in accordance with law, therefore, do not call for any interference.

10. In view of the above, the present appeal being devoid of merit, stands dismissed.

11. In the light of the dismissal of the appeal, all pending applications stand disposed of as infructuous.

October 14th, 2019

Puneet

**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No