

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

211

Regular Second Appeal No.3884 of 2014 (O&M)
Date of Decision: September 23rd, 2019

Tirath Singh Mallah

...Appellant

Versus

Pepsu Road Transport Corporation, Patiala and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

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

Mr. Anupam Singla, Advocate
for the respondents.

AUGUSTINE GEORGE MASIH, J.

CM No.8988-C of 2014

Prayer in this application is for condonation of delay of 12 days
in re-filing the appeal.

For the reasons mentioned in the application, which is duly
supported by an affidavit of Clerk of the counsel, the same is allowed.

Delay of 12 days in re-filing the appeal stands condoned.

RSA No.3884 of 2014

Challenge in this appeal is to the judgment and decree
dated 23.02.2013 passed by the Additional Civil Judge (Senior Division),
Patiala, whereby the suit of the appellant-plaintiff for declaration to the
effect that the order dated 09.04.2003 through which the appeal filed by the
appellant-plaintiff against the order dated 09.10.2002 was rejected and the
order dated 09.10.2002 of punishment through which two annual increments
with cumulative effect have been stopped, are illegal, wrong, void, against
the principle of natural justice and thus, not binding upon the appellant with
an injunction for entitlement of the appellant-plaintiff to two increments

with arrears and interest at the rate of 18% per annum, stands dismissed, appeal against which preferred by the appellant has also been dismissed by the District Judge, Patiala, on 04.01.2014.

2. It is the contention of learned counsel for the appellant that the order of punishment which has been passed by the Chairman of Pepsu Road Transport Corporation is in violation of the principle of natural justice as the said principle has been violated during the departmental inquiry which was held against the appellant. He contends that the request which has been made by the appellant-plaintiff for change of the Inquiry Officer being non-technical and was rejected by the Chairman without realizing that the issue involved in the present case was technical in nature as the appellant-plaintiff was working as a Service Engineer and the inquiry which has been initiated against him was for the breakdown of Bus No.9768 destined from Faridkot to Patiala-Shimla route on 21.09.2000, which was not rectified within the stipulated time, because of which the respondent-Corporation missed 292 kilometres as per the target, resulting in financial loss of ₹3,985/-. This, it was alleged, had happened because of negligence and carelessness in performance of his duties by the appellant, not taking advise of the subordinate staff and working with his own will, leading to creation of hindrance and obstacles in the working of the Corporation. The Inquiry Officer, who was appointed, was Deputy Controller, Finance and Accounts and, therefore, had no knowledge about the issue involved in the departmental inquiry. He, thus, contends that prejudice has been caused to the appellant.

3. That apart, he asserts that the evidence which has been produced by the respondents-defendants before the Court is merely the

departmental proceedings and the documents, which would not be enough to counter the pleadings of the appellant that there has been violation of the statutory rules. Counsel has also submitted that no action has been taken against the General Manager, who had overall control, whereas the appellant-plaintiff has been singled out for taking action, thus, violating Article 14 of the Constitution of India. He asserts that during the inquiry proceedings, appellant-plaintiff has not been given sufficient opportunity to lead his evidence and to cross-examine the witnesses. Effort has also been made by the counsel for the appellant to make submissions that the findings, which have been recorded by the Inquiry Officer against the appellant-plaintiff in the inquiry report, are based on conjectures and surmises and, thus, cannot be relied upon while imposing the punishment. His further submission is that the punishment, which has been imposed upon him i.e. stoppage of two increments with cumulative effect, is disproportionate to the misconduct which has been attributed and proved against him. Prayer has, thus, been made for setting aside the impugned judgments and for decreeing the suit of the appellant-plaintiff.

4. I have considered the submissions made by learned counsel for the appellant and with his assistance, have gone through the impugned judgments as well as the evidence which has been produced by the counsel for the appellant at the time of arguments but do not find myself in agreement with him.

5. The basic contention raised by the counsel for the appellant is that the principle of natural justice has been violated during the inquiry proceedings which were held against him, firstly because of non-acceptance of the request of the appellant-plaintiff for changing the Inquiry Officer,

who was Deputy Controller of Finance and Accounts, being non-technical, which has prejudiced his claim. This assertion is not acceptable as there is nothing technical in the issue, which is involved in the present inquiry, where not only conduct of the appellant-plaintiff has to be seen but it has to be ascertained as to whether the appellant-plaintiff has been diligent and prompt in taking steps for repair of the broken down bus.

6. That apart, during the inquiry proceedings, where he joined on 21.09.2001, a preliminary statement was got recorded by him, which the appellant duly signed. In the cross-examination before the trial Court, he admitted that his requests have been accepted whenever he sought time to cross-examine the witnesses and has also admitted that he had participated in the inquiry proceedings, although an assertion has been made that after a particular period of time, the appellant after making two requests for adjournment, did not join the inquiry proceedings and was proceeded against *ex parte*. Admission has also been made by the appellant in his cross-examination that a show cause notice was issued to him on 11.06.2002 by the Chairman, to which he filed a reply on 28.06.2002. Personal hearing was also given to him by the Chairman on 17.09.2002 prior to passing of the order dated 09.10.2002 imposing punishment of stoppage of two increments with cumulative effect. In the appeal before the Board of Directors, again he has been given personal hearing.

In the light of the pleadings and the evidence which have been brought on record, especially with reference to the admissions made by the appellant-plaintiff in his cross-examination before the trial Court, it cannot be said that principle of natural justice has been violated in any manner or any prejudice has been caused to the appellant-plaintiff.

7. Further the assertion of the counsel for the appellant that no action has been taken against the General Manager, who is the overall Incharge and responsible for the running of the depot, suffice it to say that the repair and maintenance work of the buses in the depot was under the direct control of the appellant-plaintiff, who was the Service Engineer and he having failed to fulfill his responsibility and duty, has rightly been proceeded against. There is no question of violation of the principles of equality as enshrined in Article 14 of the Constitution of India primarily because of the nature of duties and responsibilities attached with the post of Incharge and the Service Engineer, when seen in the context of the nature of misconduct and the reason for taking action against the appellant-plaintiff. The breakdown of the bus, rectification of the same and making it serviceable again, was the sole responsibility of the appellant-plaintiff, which he had failed to fulfill.

8. It may be added here that the Civil Court has limited jurisdiction while dealing with cases, where departmental inquiry has been held against an employee. The Civil Court does not sit as an Appellate Authority against the findings of the Inquiry Officer, order of Punishing Authority and the order of the Appellate Authority. The jurisdiction to interfere is limited to the extent of there being any violation of the statutory rules/instructions or there being violation of the principles of natural justice. Interference can also be made by the Civil Court in case the findings recorded by the Inquiry Officer are based on no evidence, which is not the position in the present case.

9. As regards the contention of counsel for the appellant that the punishment which has been imposed upon the appellant-plaintiff is

disproportionate to the misconduct which has been attributed to him and as has been proved, suffice it to say the Civil Court does not have the jurisdiction to interfere on the quantum of punishment, where no illegality has been found either in the departmental proceedings or in the passing the order of the punishing as well as the Appellate Authority. The approach, therefore, of the Courts below has been within the parameters as have been laid down by the various judicial pronouncements, which cannot be faulted with.

10. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

11. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the appeal, the same stands dismissed.

September 23rd, 2019

(AUGUSTINE GEORGE MASIH)

Puneet

JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No