

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

RSA 5179 of 2003 (O&M)

Date of Decision: December 20, 2021

1.

State of Haryana and others ...Appellants.

Versus

Jaswant Singh ...Respondent

2. Cross Objections No. 10-C of 2004 (O&M)

State of Haryana and others ...Appellants

Versus

Jaswant Singh
... Respondent/cross objector

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Ms. Ambika Luthra, Addl. A.G. Haryana
for the appellants.

Mr. Ruhani Chadha, Advocate
for the respondent/cross objector.

FATEH DEEP SINGH, J. (Oral)

The above detailed two matters one regular second
appeal of the State of Haryana and others filed by the

appellants and second being cross objections filed by the respondent/cross objector having arisen out of common judgment and decree dated 25.07.2003 of the Court of Additional District Judge Kurukshetra are being taken up and disposed off together.

Upon hearing Ms. Ambika Luthra, Addl. A.G. Haryana for the appellants and Mr. Ruhani Chadha, Advocate for the respondent/cross objector and perusal of records.

Learned counsel for the respondent/cross objector has placed reliance upon judgments passed in CWP No. 17033 of 1995 titled as **Agoori Lal Vs. State of Haryana and** another and CWP No. 21742 of 2015 **Banke Lal Vs. Punjab and Haryana High Court, Chandigarh and others**

Though plaintiff Jaswant Singh now respondent/cross objector at the time of filing of the suit was working as a conductor in Haryana Roadways Kurukshetra, sub-depot Pehowa, i.e. the then defendants. It is during the

course of his duties, the annual confidential report (ACR) of the plaintiff for the year 1992-93 which was conveyed to him vide letter No. 10754/EC dated 19.11.1993 showed adverse remarks which he challenged through a suit for declaration etc., seeking to set aside these adverse remarks in the 'ACR'. The primary ground of this invocation is that he was working satisfactorily and there is no adverse report against him except the one in question which shows it to be "Average". It is further contented that the plaintiff filed a departmental appeal which outcome was not to his satisfaction and, thus, terming the adverse remarks to be illegal, null and void sought setting aside of the same.

The defendants in their response denied the allegations of the plaintiff claiming that the work and conduct of the plaintiff was not satisfactory and had earned innumerable penalties and there were so many complaints against him and on three occasions, once his service is censored, on second occasion he was warned and on third occasion he was fined on

account of his unsatisfactory work and claimed that appeal filed by the employee too was dismissed by the appellate authority.

The defendants have taken a plea that because of adverse remarks the plaintiff was not entitled to higher pay scales as claimed by him w.e.f. 01.01.94.

From the pleadings of the parties, the trial Court framed the following issues:-

- “1. Whether letter No. 10754/EC dated 19.11.1993 whereby adverse remarks of average in the A.C.R. of 1992-93 were conveyed to plaintiff is illegal, null and void and not binding upon the plaintiff? OPP*
- 2. Whether plaintiff is entitled for grant of higher standard scale w.e.f. 01.01.1994 alongwith interest at the rate of 18% per annum? OPP.*
- 3. Whether suit is not maintainable in its present from? OPD.*

4. Whether plaintiff has no cause of action?

OPD.

5. Whether civil court has no jurisdiction to entertain the suit? OPD.

6. Whether suit is barred by limitation? OPD.

7. Whether suit has not been properly valued for the purposes of court fees and jurisdiction? OPD.

8. Whether civil court at Kurukshetra has no jurisdiction to entertain the suit. OPD.

9. Relief”.

The plaintiff examined himself as PW1 and proved the following documents:-

Ex.P1 A.C.R. for the year 1992-93

Ex.P2 Reply/representation against the A.C.R.

Ex.P3 Legal Notice

Ex.P4 to P6 Receipts

Ex.P7 to P9 Photocopy of instructions regarding A.C.Rs.

Ex.P11 Copy of letter dated 08.02.1994

Ex.P12 Annexure regarding grant of higher standard
scale.

On the other hand, defendants examined Sh. B.D.
Poonia, Traffic Manager, Haryana Roadways, Ambala Depot as
DW1 and Shri Gurdeep Singh, Clerk, Haryana Roadways,
Kurukshetra as DW2 and proved the following documents:-

Ex. D1 Copy of ACR for the year 1992-93

Ex. D2 Report of police regarding embezzlement

Ex.D3 Charge-sheet (copy)

Ex.D4 Copy of allegation

Ex. D5 Another report regarding embezzlement of funds,

Ex.D6 Show cause notice (copy)

Ex.D7 Copy of order dated 08.01.1993

Ex.D8 Report regarding embezzlement of funds/amount

Ex.D9 Copy of allegations

Ex.D10 Copy of allegations

- Ex.D11 Reply of the plaintiff
- Ex.D12 Copy of order dated 01.05.92
- Ex.D13 Report made by the checking staff
- Ex.D14 Copy of charge-sheet dated 5.3.93,
- Ex.D15 Copy of allegations
- Ex.D16 Copy of reminder
- Ex.D17 Copy of show cause notice
- Ex.D18 Reply of the plaintiff
- Ex.D19 Copy of order dated 20.9.1993
- Ex.D20 Copy of letter dated 17.5.1995

The Court of learned Civil Judge (Senior Division) Kurukshetra decreed the suit of the plaintiff by not only expunging adverse ACR remarks but also directed grant of higher standard pay scales w.e.f. 01.01.94. The findings were challenged by the defendants and Court of learned Additional District Judge Kurukshetra vide impugned findings dated 25.07.2003 by upholding findings by the trial Court dismissed

the appeal.

In the light of admitted legal proposition as has been laid down in '**Kirodi (since deceased) through his L.R. Vs. Ram Parkash and others**' Civil Appeal No. 4988 of 2019; SLP(C) No. 11527 of 2019 decided on 10.05.2019, the Court is not supposed to frame substantial question of law in view of the provisions enshrined under Section 41 of the Punjab Courts Act, 1918 which has its application to the States of Punjab and Haryana.

Appreciating the submissions of the two sides, the very ACR Ex. P1 shows that in Coloum No.1 as to integrity it is stated to be "**doubtful**" and in column No. 2 pertaining to any allegations, it is found mentioned that "**there are embezzlement cases**" against him, true translation of which is also reflected in the representation Ex.P-2, from which, it is clearly illustrative that not only integrity of the plaintiff is under cloud but also is facing allegations of embezzlement. Letter

bearing No. 1/34/93-4 PR(FD) dated 08.02.1994 issued by the
Financial Commissioner and Secretary to Government of
Haryana, Finance Department provides as under:-

*(iii) Every employee of group 'C' or 'D' category who
has completed twenty years or more of regular
satisfactory service before 01.01.1994 but has got
only one promotion or promotional scale/higher time
scale/selection grade in his service career will be
allowed with effect from 01.01.1994 in place of his
present pay scale the first higher standard scale
specified in column 3 or the enclosed Annexure with
respect to the pay scale of the post applicable from
First January, 1986, an employee who complete such
regular satisfactory service of twenty years after
01.01.1994 but has got only one promotion or
promotional scale/higher time scale/selection
grade/higher standard scale in his service career will*

*be allowed the aforesaid first higher standard scale
with effect from first day of the month following the
month in which he complete such service”.*

The plaintiff has been shown to have been served with charge sheet dated 14.09.92 Ex.D3, show cause notice dated 19.10.92 Ex.D-6 and the most important document is Ex.D-7 admission in writing dated 08.01.93 by the plaintiff admitting all the allegations levelled against him in the charge sheet leaves no scope to doubt that all was not well with the conduct of the plaintiff and furthermore the charges issued by way of Ex. D-10 shows that on 21.03.1992 letter of allegations of embezzlement was issued and which has been duly accepted and admitted by the plaintiff in his written reply to this letter Ex. D-11 and further another allegations of embezzlement has come about in letter served by the plaintiff dated 01.05.92 Ex. D-12 and so were the documents Ex. D14 to D18 and penalties imposed on 26.09.1993 vide letter dated Ex. D-19.

Thus, there is sufficient evidence on the record by way of documents led by the defendants to establish in no uncertain terms the allegations of misconduct and embezzlement against the plaintiff. The lower trial Court while adjudicating on issue No. 1 and 2 has fell into an error when there is due admission by the trial Court in its judgment in para No. 13 that the evidence of the defendants which remained unrebutted on the file. It is clear that work and conduct of the plaintiff in the ACR for the year 1992-93 was not satisfactory how it had the audacity to decree the suit of the plaintiff leaves many things to doubt on the Court. The Court accepts the fact that there were many complaints of embezzlement which were correctly recorded based on sufficient evidence.

It needs to be reiterated here that Courts are not Courts of appeal in deciding orders passed by the administrative authorities especially in such like matters and are only to adjudicate if there has been sufficient evidence and application

of mind by the authorities fulfilling the pre-requisites of principles of administrative justice how the trial Court accepted the fact that all these allegations had tried to hold him to be an average employee and there were no reasons to rate him as a man of doubtful integrity. Similarly, the appellate Court in the impugned findings dated 25.07.2003 has grossly misconstrued the evidence and has gone astray and acting as if it was a administrative authority of the plaintiff had tried to impose its own findings rather than adjudicating the legal worth of the judgment before it under assail. None of the ratios cited by the respondents side come to much aid of the plaintiff employee on account of factual disparity.

The two Courts below have not only misinterpreted the law and misconstrued the evidence of the department which has remained totally un rebutted throughout. It needs to be reiterated here that it is the prerogative of the employer to adjudge the employee if he is worth to be kept in service and

when there are serious allegations not only of financial irregularity by way of embezzlement but his integrity is also doubtful leads no scope to doubt that such deadwood needs to be thrown out and cleared off from such organizations so as to regain public confidence which is found eroding in such departments being run by the State.

In the light of what has been detailed and discussed above both the judgments of the trial Court and the first appellate Court being wholly illegal misinterpretation of evidence and law are set aside by way of acceptance of the instant appeal and the cross objections of the plaintiff/objector stands dismissed.

December 20, 2021
amit rana

(FATEH DEEP SINGH)
JUDGE

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