IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

201

RSA-4403-2001 (O&M)
Date of decision: 20.05.2022

Dakshni Haryana Bijli Vitran Nigam Limited and ors. .....Appellants

Versus

Sham Sunder Singhal and another .....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Ms. Aparna Singhal, Advocate
for the Appellants.

Mr. Ravinder Rana, Advocate for
Mr. Anil Rana, Advocate
for respondent No.1.

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MANJARI NEHRU KAUL, J. (ORAL)

The trial Court decreed the suit for declaration with consequential relief of permanent injunction which was instituted by the respondent/plaintiff vide judgment and decree dated 30.10.1999. The lower appellate Court thereafter affirmed the findings recorded by the trial Court vide its order dated 21.07.2001.

The instant appeal has been preferred by the appellants/defendants against the concurrent judgments of the Courts below.

The parties to the *lis* hereinafter shall be referred to by their original status in the suit.

The case of the plaintiff as pleaded may be noticed in a nutshell.

The plaintiff was working as Head Store Keeper, Central Store, HSEB, Ballabhgarh since April, 1985. On 23.07.1987, on being placed under suspension, his headquarter was fixed at Hisar. On 27.07.1987, the plaintiff was telephonically relieved by the defendants and asked to join at his new headquarters i.e. Hisar on 28.07.1987. Hence, in compliance of the telephonic message, he joined at Hisar on the following day itself, without handing over the charge of the store to anyone as no successor stood posted in his place. He also handed over the keys of the store to C.R. Dahiya, XEN on 31.07.1987, on return from Hisar. The plaintiff was allowed to hand over the charge to some other person only with effect from 04.08.1987. Thereafter, the process of handing over the charge of the store items continued till October, 1987. During this period, the plaintiff alleged that on account of the acts and actions of two inventors on 09.09.1987, he was greatly prejudiced. Resultantly, the process of handing over the charge by the plaintiff to his successor was estopped and he was forced out of the Central Store, Ballabhgarh. As per the report prepared by the inventors in his presence, he had handed over almost 95% of the store items to his successor upto the end of October, 1987 and at that time no surplus or shortage of any items came to light. However, on 02.01.1989, the plaintiff was served a show cause notice as to why his two increments with cumulative effect be not stopped and recovery of Rs.1,52,855/- not effected from him. The said show cause notice was issued after a period of 17 months vide which he was relieved and show cause notice was served upon him without supplying him the list of witnesses and the inventory documents. As per the show cause notice along with the aforementioned shortage of items worth Rs.1,52,855/- surplus items in the sum of Rs.67,759/- were also shown. The plaintiff duly submitted his reply wherein he denied about both the shortage of items as well as items being in surplus. On the basis of the reply and the report of the inventors and the XEN, a penalty of one increment without cumulative effect apart from recovery of Rs.1,07,872/- was imposed upon him. The departmental appeal filed by the plaintiff was dismissed. The plaintiff then preferred a writ petition which was disposed of by restraining the defendants from recovering the impugned amount except an amount of Rs.6,580/- which the plaintiff was ordered to pay. The plaintiff was also given the liberty to approach the Civil Court to challenge the impugned order. While disposing of the writ petition, a stay of two years was granted. The plaintiff in compliance of the orders passed in the writ petition deposited the amount of Rs.6,580/- and also filed the suit in question.

On being put to notice, the defendants while filing their written statement submitted that the plaintiff had been placed under suspension as he handed over charge of the store after almost eight months of being relieved. It was further submitted that after affording adequate opportunity to the plaintiff to hand over the charge of the store as well as the store keys to his successor which he failed to do, the defendants were left with no other option but to engage the services of two gazetted officers for the preparing the inventory qua the stocks. It was then that the following shortage of items as well as some items being surplus came to light:

Sr. No.	Name of Material	Cost
1.	New T.F. Oil (EHV) 993 Ltrs.	Rs.13,902-00
2.	M.S. Anle Iron 50x50x6 MM 697.94 Mtrs.	Rs.19,542-00
3.	P.G. Lamps (Small) 134 Nos.	Rs.1,340-00
4.	P.G. Clamps (Off Sizes) 7250 Nos.	Rs.72,580-00
5.	Stub Setting Tamplate 169.690 Kg.	Rs.509-00
	Total	Rs.1,07,873-00

Surplus items found:

Sr. No.	Name of Material	Cost
1.	Cut out 15 Amp 259 Nos.	Rs.259-00
2.	- do - 16 Amp (40 Nos.)	Rs.160-00
3.	P.G. Clamps (Small) 121 Nos.	Rs.1310-00
4.	P.G. Lamps (45WG) 3 Nos.	Rs.30-00
5.	P.G. Clamps W/o Bolts & Nuts (6600 Nos.)	Rs.66000-00
	Total	Rs.67,759-00

On the basis of the pleadings and other evidence on record, both the Courts concurrently decreed the suit of the plaintiff. While deciding issue No.1 i.e. "Whether orders dated 23.04.1991 of defendant No.2, order dated 26.07.1991 of defendant No.1 and order dated 10.05.1991 of defendant No.3 are illegal, null and void and liable to be set aside?", the trial Court directed that only a recovery of Rs.509/- qua order dated 23.04.1991 and another recovery of Rs.6,580/- from the plaintiff qua the shortage of GSS P.G. Clamps be effected along with withholding of one increment. Defendants No.1 to 3 were also restrained to recover the amount imposed vide order dated 23.04.1991 except Rs.509/-.

Learned counsel for the defendants while reiterating the submissions made before the Courts below has primarily challenged the impugned judgment and decree on the following grounds:-

(i) That due to the misconduct and negligence on the part of the plaintiff, the defendants incurred monetary loss on account of shortage as well as surplus of some store items and hence recovery be effected from him for the losses incurred.

(ii) That since the penalty imposed of withholding one increment without cumulative effect was a minor penalty, it could be imposed without even holding an inquiry if the negligence on the part of an employee stood revealed.

Learned counsel appearing for the plaintiff while opposing the submissions made by the counsel opposite, submits that as far as stoppage of one increment with cumulative effect was concerned, he would not press qua the same, however, the order for recovery without inquiry was un-sustainable and violative of the principles of natural justice.

I have heard learned counsel for the parties and perused the relevant material on record.

Before proceeding further, it would be apposite to mention that an amount of Rs.6,580/- and another amount of Rs.509/- which was ordered to be deposited by this Court in the writ petition filed by the plaintiff, already stands deposited by him. Learned counsel for the defendants has greatly stressed that a minor penalty of recovery could be imposed even without holding an inquiry as had admittedly been done in the case in hand. However, this Court does not find any merit in the aforesaid submissions. Even in case of a minor penalty, if a delinquent employee denies the allegations/charges levelled against him, he must be given an opportunity to be heard and be allowed to tender an explanation with respect to the same. This is the minimum requirement of the principles of natural justice, which have to be mandatorily adhered to. The Hon'ble Supreme Court in ***Civil Appeal No.12774 of 1996 titled as 'O.K. Bhardwaj Vs. Union of India and***

others' decided on 04.10.1996 has held as follows:-

> *"2. The High Court has recorded its opinion on two questions : (i) that the punishment imposing stoppage of three increments with cumulative effect is not a major penalty but a minor penalty; (ii) in the case of minor penalties, "it is not necessary to give opportunity to the employee to give explanation and it is also not necessary to hear him before awarding the penalty" : a detailed departmental enquiry is also not contemplating in a case in which minor penalty is to be awarded.*
> *3. While we agree with the first proposition of the High Court having regard to the rule position which expressly says that "withholding increments of pay with or without cumulative effect" is a minor penalty, we find it not possible to agree with the second proposition. Even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with."*

It would be pertinent to notice here that the trial Court on the basis of documentary evidence led, rightly concluded that except for 658 P.G. Clamps worth Rs.6,580/- and stub setting templates worth Rs.509/- there was no other shortage and as already observed earlier the aforementioned sums of money stand deposited which is not even disputed by the learned counsel for the defendants.

The concurrent findings arrived at by the Courts below come across as well reasoned ones and do not thus warrant any interference.

The instant appeal stands dismissed.

20.05.2022 **(MANJARI NEHRU KAUL)**
Vinay **JUDGE**

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