

124 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2434-2022 (O&M)
Decided on : 19.12.2022

State of Haryana and others

..... Appellants

Versus

Zile Singh

..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Rohit Arya, DAG, Haryana.

Manjari Nehru Kaul, J.(Oral)

CM-8348-C-2022

Application is allowed as prayed for and the delay of 125 days in re-filing the appeal is condoned.

Main case

The defendants are in Regular Second Appeal impugning the concurrent findings recorded against the defendants vide judgments and decree dated 15.05.2018 passed by the trial court and dated 22.01.2020 passed by the Lower Appellate Court.

Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The pleaded case of the plaintiff may be noticed as thus; plaintiff joined Haryana Roadways as a driver on 08.04.1996. A charge-sheet bearing No.2946/PMA dated 06.11.1998 was served upon the plaintiff on the charges that on 19.09.1998 plaintiff while on duty, was driving one

bus No.HR-01PA-1078. On account of rash and negligent driving, his bus hit a man, who died on the spot. Consequently, FIR No.109 dated 19.09.1998 under Sections 279/304-A IPC was registered against the plaintiff. The plaintiff submitted his reply to the chargesheet, however, without considering the same, the defendants initiated an inquiry against him and issued a show cause notice to him. Still further, without considering his reply to the show cause notice, defendant No.3 vide order dated 17.08.1999 passed the impugned order for stoppage of two annual increments with cumulative effect against the plaintiff. The allegations levelled in the aforesaid FIR, that the accident in question had occurred on account of rash and negligent driving of the plaintiff, proved to be unsubstantiated during investigation as a result of which said FIR was ordered to be cancelled vide memo dated 06.05.1999. Further more, the cancellation report filed by the investigating agency was accepted by the Court concerned. The plaintiff averred that the departmental inquiry conducted against him was not in consonance with the principles of natural justice as not only charges were not proved against the plaintiff but also no eyewitness deposed against him during the inquiry. Further, during the inquiry the plaintiff was not granted any opportunity to lead any evidence in support of his case. Though the order passed by defendant No.3 dated 17.08.1999 was challenged in an appeal preferred by the plaintiff, however, the plaintiff learnt about his appeal having been rejected vide order dated 06.08.2001 by Addl. Upper Transport Controller, Ambala only three months prior to the institution of the suit in question. Thereafter, the plaintiff served a legal notice dated 18.02.2016 upon the defendants, however, the

defendants did not reply to the same. Hence, the plaintiff was left with no other alternate remedy but to file the present suit.

In the written statement, defendants admitted that the FIR No.109 dated 19.09.1998 registered against the plaintiff after the accident in question, had not only been cancelled by the police but even the cancellation report filed was accepted by the Court concerned. However, it was averred that in the regular departmental inquiry initiated against the plaintiff he was found guilty as he failed to produce any cogent evidence in his favour. Thus, the penalty of stoppage of two annual increments with cumulative effect was passed which in turn was upheld by the Appellate Authority.

On the basis of material on record and evidence led, both the Courts below decreed the suit of plaintiff and declared the order dated 17.08.1999 passed by defendant No.3 and order dated 06.08.2001 passed by defendant No.2 as null and void and set it aside. The plaintiff was further held entitled to the arrears of salary, however, only for a period of 38 months, prior to the date of filing of the suit, along with interest @ 6% per annum.

Learned counsel for the defendants-State has vehemently argued that the Courts below failed to appreciate that the suit of the plaintiff was hopelessly time barred as the order under challenge was passed on 17.08.1999 and further the appeal preferred by the plaintiff before the Addl. Upper Transport Controller, Ambala was dismissed on 06.08.2001, whereas on the other hand, the suit in question had been filed much beyond the period of limitation, in the year 2016 after almost 15 years. Learned counsel

has submitted that therefore the suit filed by the plaintiff was liable to be dismissed on this ground alone. Learned counsel has further argued that since orders dated 17.08.1999 and 06.08.2001 had been passed in accordance with law and principles of natural justice after serving a show cause notice upon the plaintiff and affording him an opportunity of personal hearing, therefore, the jurisdiction of the Civil Court could not be invoked.

Heard learned counsel and perused the relevant material available on record.

Though learned counsel for the State vehemently argued that the suit filed by the plaintiff was time barred, however, this Court does not find any merit in the same for the reasons to follow:

Firstly, there is an admission made by DW-1 Tawinder Singh, Clerk from the office of defendant No.3, to the effect that admittedly there was no record qua the order dated 06.08.2001 passed by the Appellate Authority having been ever communicated to the plaintiff. Since it is the specific plea of the plaintiff that he learnt about the impugned orders only three months prior to the filing of the suit in question, therefore, in the circumstances, the suit of the plaintiff cannot be said to be beyond limitation.

Secondly, punishment of stoppage of two annual increments vide order dated 17.08.1999 is a recurring cause of action to the plaintiff as he had suffered

continuous loss on account of the above-mentioned stoppage.

Still further, though it was argued by learned counsel that the principles of natural justice had been followed while passing the orders dated 17.08.1999 and 06.08.2001, however, this Court finds no force in his submissions. Admittedly, the only witness examined during the departmental inquiry was one Ujjagar Singh, who as per Ex.D-5 was admittedly neither a witness to the accident in question nor was he present anywhere near the place of accident. In the circumstances, when the only evidence on the basis of which the impugned order dated 17.08.1999 had been passed was the testimony of hearsay witness i.e. Ujjagar Singh, it ran contrary to the submissions made by the learned counsel for the State that principles of natural justice had been followed during the departmental inquiry.

On being pointedly asked, learned counsel for the defendants failed to bring to the notice of this Court anything on record to show that the conclusions arrived at by the Courts below were either contrary to record or suffered from any material illegality.

In the circumstances, this Court does not find any error in the judgments and decree passed by the Courts below, which would warrant any interference. Accordingly, the appeal stands dismissed.

19.12.2022
sonia

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned:
Whether reportable :

Yes/No
Yes/No