

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(271)

CM-4677-C-2022 in/and
RSA-3410-2003

Date of Decision : January 24, 2023

State of Haryana

.. Appellant

Versus

Karan Singh

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Vibha Tewari, Assistant Advocate General, Haryana,
for the non-applicant/appellant.

Mr. Aditya Yadav, Advocate, for the applicant/respondent.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-4677-C-2022

This is an application under Section 151 of the CPC for vacation of interim stay granted in the Regular Second Appeal filed by the appellant-State vide order dated 29.07.2003 by the Coordinate Bench of this Court.

On oral request of learned counsel for the parties, present RSA is taken up for hearing today.

Application is disposed of with the following order passed in Regular Second Appeal.

RSA-3410-2003

In the present Regular Second Appeal, the judgment of the lower Appellate Court dated 21.04.2003 is under challenge by which, judgment and decree passed by the trial Court dated 26.10.2002 has been set

aside by which the trial Court had dismissed the suit filed by the respondent-plaintiff.

Certain facts needs to be mentioned in the present appeal so as to appreciate the controversy in the correct prospective.

The respondent-plaintiff was working as a Conductor and on 06.02.1990, the bus being operated by the plaintiff as a Conductor was checked by the Inspector and it was found that 22 passengers travelling in the bus were without ticket. It further transpires that the plaintiff had taken Rs.1 each from the passengers but did not issue them tickets though the fare of the route was Rs.1 and 50 paise. Keeping in view the said allegation, the plaintiff was placed under suspension on 16.02.1990 and a charge-sheet was also issued to the respondent-plaintiff on the said date. Reply to the charge-sheet was filed and punishing authority not being satisfied with the reply, ordered departmental proceedings to be conducted against the respondent-plaintiff. After conducting the enquiry, the Enquiry Officer proved the charges and a show cause notice was issued to the respondent-plaintiff on 08.01.1997 proposing as to why action be not taken against him keeping in view the finding of the Enquiry Officer.

Reply to the show cause notice was filed by the respondent-plaintiff and thereafter, respondent-plaintiff appeared before the punishing authority in person to explain his position. On 05.03.1998, the respondent-plaintiff was imposed the punishment of dismissal from service keeping in view the allegations proved against him. Against which order of punishment, he preferred an appeal, which was also dismissed on 07.01.1999. Thereafter, a suit was filed by the respondent-plaintiff for declaration that the order dated 05.03.1998 dismissing him from service as

well as the order dated 07.01.1999 rejecting his appeal be declared null and void.

The said suit was dismissed by the trial Court on 26.10.2002 keeping in view the evidence, which had come on record holding that once there is an enquiry conducted as per law and the charges have been proved against the respondent-plaintiff, the Civil Court cannot sit in appeal qua the punishment imposed so as to re-appreciate the evidence and to come on a different conclusion as arrived at by the Enquiry Officer.

Against the order and decree passed by the trial Court dated 26.10.2002, an appeal was preferred by the respondent-plaintiff, which appeal came to be allowed by the lower Appellate Court on the ground that as the passengers, who were supposedly not been issued the tickets by the respondent-plaintiff was never examined by the Enquiry Officer or even before the trial Court, the charges of embezzlement cannot be proved and the judgment and decree of the trial Court dated 26.10.2002 was set aside and the suit filed by the plaintiff was allowed and the respondent-plaintiff was directed to be reinstated in service along with back wages and other consequential benefits. The said order passed by the lower Appellate Court dated 21.04.2003 is under challenge in the present Regular Second Appeal.

Learned counsel for the appellant argues that the reason given by the lower Appellate Court to accept the suit filed by the respondent-plaintiff is that the passengers were not examined during the enquiry proceedings, hence, it cannot be said that there is a valid evidence on record to hold the respondent-plaintiff guilty of embezzlement whereas, as per the settled principle of law, the passengers are not required to be examined and

as per the judgment of the Hon'ble Supreme Court of India in *State of*

Haryana and another vs. Rattan Singh, 1977 Punjab Law Reporter 492, non-examination of the passengers during the disciplinary proceedings has been held to be of no consequence so as to vitiate the enquiry proceedings.

Learned counsel for the appellant submits that the said judgment has been followed again by a Coordinate Bench of this Court while passing order in *CWP No.7550 of 1987 titled as Jarnail Singh vs. Director State Transport Punjab, Chandigarh and others, decided on 04.09.2008* so as to hold that non-examination of the passengers will not vitiate the enquiry proceedings in case there is a sufficient evidence, which has come on record.

Learned counsel for the respondent-plaintiff submits that as per the law laid down by the Coordinate Bench of this Court in *RSA No.3273 of 1999 titled as State of Haryana and others vs. Bikar Singh and others, decided on September 2001*, once the statement of passengers, who were stated to have not been issued tickets, has not been recorded during the disciplinary proceedings, it has to be treated that it is a case of no evidence, hence, the judgment of the Coordinate Bench of this Court in *Jarnail Singh's case (supra)* as well as the judgment of the Hon'ble Supreme Court of India in *Rattan Singh's case (supra)*, will not be applicable in the present case and the present appeal filed by the State may kindly be dismissed.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It is not anyone's case that no witness was examined during the enquiry proceedings so as to arrive at a conclusion that the respondent-plaintiff had embezzled any amount. The official Inspector, who had inspected the bus on a relevant day appeared before the Enquiry Officer and

had given the statement in favour of the allegations, which was recorded. Once, the said statement had gone un-rebutted and the same was believed by the Enquiry Officer, it cannot be said that there is no evidence on record to prove the allegations. The domestic enquiry is to proceed on preponderance of probabilities as a strict proof, which is required in the criminal case, is not applicable in the departmental proceedings.

Once, it has already come on record before the trial Court that enquiry report was based upon the statement of the witnesses examined including the Inspector, who had checked the bus on a relevant day, it cannot be said that the enquiry is based upon no evidence.

Further, learned counsel for the respondent conceded that there is no challenge to the enquiry report before the trial Court. Once, there is no challenge to the enquiry report and the order of dismissal was based upon the said enquiry report, the lower Appellate Court exceeded its jurisdiction to hold the enquiry report as bad which was never under challenge at any given point of time.

Even otherwise, the law that non-examination of passengers during the departmental proceedings will not vitiate the enquiry proceedings is settled by the Hon'ble Supreme Court of India in ***Rattan Singh's case (supra)***. The said law has been followed by this Court in ***Jarnail Singh's case (supra)***. The relevant paragraph of the judgment of ***Jarnail Singh's case (supra)*** following the judgment of the Hon'ble Supreme Court of India in ***Rattan Singh's case (supra)*** is as under:-

“ 7. On giving a deep and thoughtful consideration to the rival contentions, the view I am disposed to take is that the contentions raised by the learned counsel for the petitioner are

unsustainable for the reasons to be recorded hereinafter.

8. In the impugned award, it has been observed by the Presiding Officer of the Labour Court that "at any rate, the checking of the bus by flying squad is admitted by the workman in reply to the chargesheet and the workman himself suggested to Prithvi Raj and Sarwan Singh in the cross-examination that eight passengers were apprehended by the checking staff without tickets." This observation leave no scope for doubt that the petitioner himself had admitted that eight passengers were apprehended by the checking staff without tickets. Thus, there was no need to examine such passengers. It has been further observed that "in the cross-examination directed at Inspector Sarwan Singh of the flying squad, it was suggested by the workman that the passengers who were found travelling without tickets had been charged by the conductor of the bus, which had broken down. The suggestion was refuted by the Inspector who said "No this is incorrect, we confronted the conductor (the workman) with those passengers to his satisfaction." In view of these observations, the argument of learned counsel for the petitioner pales into insignificance. The matter does not rest here. In re: Rattan Singh (supra), a bus conductor of a State Transport undertaking was charge-sheeted for not collecting fares from certain passengers. The statements of passengers were not recorded. The Apex Court ruled as under:-

"that it is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the [Indian Evidence Act](#) may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the [Indian Evidence Act](#). The

essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. It cannot hold that merely because statements of passengers were not recorded the order that followed was invalid. Likewise, the re- evaluation of the evidence on the strength of co-conductor's testimony is a matter not for the court but for the administrative tribunal."

9. It can be reasonably culled out from these observations that the impugned award cannot be held unsustainable merely because the statements of the passengers were not recorded. Further in re: Nirmal Singh (supra), it has been held that there is no need to produce passengers. The statement of Inspector who checked the passenger and cash of the conductor relevant to be relied upon. In re: [Haryana State Electricity Board, Panchkula and another v. Presiding Officer, Labour Court, Faridabad and another \(supra\)](#), it has been observed that "the findings of fact recorded by the Tribunal cannot be challenged in writ jurisdiction on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding being within the exclusive jurisdiction of the Tribunal, the same could not be agitated before High Court in writ jurisdiction." Thus in view of these observations, it does not lie in the mouth of the petitioner to contend that the relevant and material evidence produced before the Labour Court was insufficient or inadequate to sustain the impugned finding. In re: Kirpal Singh (supra), it has been observed as under:-

"It is one thing to say that the assistance of a co-

workman was denied and altogether different thing to say that the co- workman be called and the enquiry may be ensued only thereafter. Further, this point was not raised before the Labour Court. While dealing with issue No.1 which is with regard to enquiry being proper or vitiated for some reason, it has been held that the workman in fact in his statement did not make any grievance with regard to the conduct of enquiry nor did he say anything which could possibly suggest that he was not allowed fair and reasonable opportunity either to cross examine the witnesses who appeared against him or in leading defence to prove his own case. If this point was taken in the pleadings before the Labour Court and evidence was led, it was possible for the management to rebut the same and prove that in fact assistance of a co-workman was never denied to the petitioner and that the presence of the co-workman was not to be secured by it. In view of the fact that this matter was not agitated before the Labour Court and in fact no question whatsoever was raised against the conduct of the enquiry, it shall not be just and equitable at this stage to go into this point and set aside the order of dismissal of petitioner from service.

The next point raised by the learned counsel based on Full Bench Judgment of this Court in "The State of Haryana and others versus Ram Chander", A.I.R. 1976 Punjab & Haryana 381 is that the passengers who had boarded the bus and were not issued the tickets as alleged against the petitioner were admittedly not examined before the Enquiry Officer and the evidence of the Inspectors alone was not enough to prove the charges levelled against him. The evidence of Inspectors is said to be hear-say evidence and, therefore, inadmissible and unreliable. I am afraid this contention of the learned counsel on the basis of law laid down in "State of Haryana and another versus Rattan Singh", 1977 Punjab Law Reporter 492 and Sarup Singh, Ex-Conductor Versus The State of Punjab and others", 1989 (7) Services Law Reporter 328 has to be

repelled."

Keeping in view the above said settled principle of law, it can be clearly held that the judgment of the lower Appellate Court is contrary to not only the facts but also on law and hence, cannot be sustained in the eyes of law. As well as reliance being placed by the respondent-plaintiff upon the judgment in ***Bikar Singh's case (supra)***, no benefit of the same can be given for the reason that the same is contrary to the judgment of the Hon'ble Supreme Court of India in ***Rattan Singh's case (supra)*** and the judgment in ***Rattan Singh's case (supra)*** was available for consideration when the order was passed by the Coordinate Bench of this Court in ***Bikar Singh's case (supra)***, hence, the judgment which does not take into consideration the relevant law on the issue settled, no benefit of the same can be given.

Keeping in view of the above, the judgment of the lower Appellate Court dated 21.04.2003 is set aside being contrary to the facts on record as well as settled principle of law and the judgment of the trial Court dated 26.10.2002 is upheld. Resultantly, the suit filed by the respondent-plaintiff is dismissed.

The present Regular Second Appeal is disposed of in above terms.

January 24, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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