

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(105)

CM-1670-C-2023 in/and
RSA-2430-1993 (O&M)
Date of Decision : April 19, 2023

Bhagatbir Singh

.. Appellant

Versus

State of Punjab

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. C.S. Jattana, Advocate, Advocate, for the appellant.

Mr. Gurvinder Singh, Assistant Advocate General, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-1670-C-2023

Present application has been filed for preponing the date of hearing of the main appeal, which now stands adjourned to 03.10.2023.

Notice of the application to the counsel opposite.

Mr. Gurvinder Singh, Assistant Advocate General, Punjab, accepts notice on behalf of the respondent-State and raises no objection for the grant of prayer as raised in the present application.

Keeping in view the above, the application is allowed and the main appeal is taken up for hearing today itself.

CM-1650-C-2020

Present application has been filed for bringing on record the additional evidence in terms of the affidavit of one of the person namely Harjap Singh son of Sh. Gurcharan Singh, who was also retrenched along with the appellant-plaintiff by the same order dated 03.08.1989.

Notice of the application was given to the State counsel. No reply has been filed.

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

Learned counsel for the applicant-appellant submits that the affidavit given by Harjap Singh may be brought on record by way of additional evidence as he has given an affidavit that after being dismissed from service on 03.08.1989, within a period of two weeks thereafter, he was reinstated in service.

As no reply has been filed controverting the prayer of the applicant, the application is allowed. Annexure A-1 is taken on record for all intents and purposes for deciding the present appeal.

RSA-2430-1993

Present Regular Second Appeal has been filed challenging the judgment and decree of the lower Appellate Court dated 01.06.1993 by which, the judgment and decree of the trial Court dated 17.12.1992 was set aside and consequently the suit filed by the appellant-plaintiff was dismissed.

Certain facts needs to be mentioned herein for the ready reference.

The appellant-plaintiff Bhagatbir Singh was appointed as a Conductor on 05.08.1983. Nothing has come on record that he was appointed on regular basis as even after the appointment, it has come on record that there were notional breaks and the said appointment was not continuous.

While working as a conductor, the appellant absented himself and due to the said absence, he was charge-sheeted and was placed under suspension on 29.12.1987. An Enquiry Officer was appointed to conduct the departmental proceedings and upon proving of the charge of absence, punishment of stoppage of one increment was imposed upon the appellant-plaintiff along with no further payment for the period of suspension.

By the same order dated 03.08.1989, the appellant-plaintiff along with four others was relieved from service on the ground that keeping in view the order passed by the Competent Court of law, certain senior Conductors, whose services were terminated, were to be reinstated. Along with the appellant-plaintiff, Harjap Singh, Iqbal Singh and Jaswant Singh were relieved from service being the junior most.

Being aggrieved against the order of punishment as well as the order of relieving him from service, the appellant-plaintiff filed a civil suit challenging the punishment imposed upon him vide order dated 03.08.1989 as well as the order of the same dated 03.08.1989 by which he was relieved from service on account that his services were no longer required.

The trial Court keeping in view the facts and evidence which came on record held that as no proper opportunity to defend was given to the appellant-plaintiff, the imposition of punishment as well as terminating

his services was bad in law and the suit was decreed vide judgment and decree dated 17.12.1992.

Feeling aggrieved against the said judgment and decree, State preferred an appeal before the lower Appellate Court, which came to be decided on 01.06.1993. The lower Appellate Court came to the conclusion that in the present case, before imposing the punishment of stoppage of one increment, a charge-sheet was served upon the appellant-plaintiff and reply was obtained and thereafter, enquiry was conducted and show cause notice was also issued to the appellant-plaintiff and it was only thereafter the punishment was imposed upon him, hence, the reason given by the trial Court that no proper opportunity was given to defend, was incorrect.

With regard to the relieving of the appellant-plaintiff from service, the lower Appellate Court held that not only the services of the appellant-plaintiff were dispensed with for the want of vacancy but even the services of three other employees, who were the junior most, were also dispensed with hence, it is not a case of termination of services of the appellant-plaintiff by imposing the punishment but it is a case of relieving on the account of the fact that there was no available vacancy to accommodate the appellant-plaintiff. Hence, the present Regular Second Appeal.

Learned counsel for the appellant-plaintiff submits that the lower Appellate Court set aside the judgment of the trial Court without any valid justification, hence, once the trial Court, after appreciating the facts and evidence on record, came to the conclusion that no proper opportunity was given to the appellant-plaintiff to defend himself, there was no occasion

with the lower Appellate Court to record a different finding on the basis of the same facts and evidence. Hence, the judgment and decree of the lower Appellate Court is liable to be set aside.

Learned State counsel submits that once it has already come on record that due opportunity was given to appellant-plaintiff to defend himself with regard to the disciplinary proceedings held against him, which fact has already been noticed by the lower Appellate Court, hence, the judgment of the trial Court was perverse and was rightly set aside.

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

In the present case, it is a conceded position that a charge-sheet was issued to the appellant-plaintiff. It is also a conceded position that the departmental enquiry was held. In the departmental enquiry, the charges were proved and the punishment of stoppage of one increment was imposed. Nothing has been pointed out by the learned counsel for the appellant as to what evidence has come on record to prove that proper opportunity to defend was not extended to the appellant-plaintiff while conducting the departmental proceedings.

Once, the charge-sheet was issued and the enquiry was conducted and the enquiry report proved the allegations of absence qua the appellant-plaintiff and the order of punishment was only passed after giving a show cause notice, the findings recorded by the lower Appellate Court that due opportunity was given to the appellant-plaintiff to defend himself, is perfectly as per the evidence as well as facts on record, hence needs no interference by this Court.

Learned counsel for the appellant submits that keeping in view Annexure A-1, which has been brought on record by way of additional evidence, one of the candidate, whose services were also dispensed with for the want of vacancy, was reinstated in service later on, which is clear from his affidavit.

Though, an affidavit has been given by the said person but nothing has come on record as to what was the basis of reinstatement or the said employee was given a fresh appointment and under what circumstances order of reinstatement of the said employee is not on record to prove the facts. Nothing has come on record that the appellant-plaintiff was senior to the said employee to claim the same benefit even if it is assumed for the sake of argument that Harjap Singh, whose services were also dispensed with along with the appellant-plaintiff, was reinstated. In the absence of any evidence to the said effect on record, no finding can be recorded that any employee junior to the appellant-plaintiff was reinstated after his services were dispensed with.

Keeping in view the above, no ground is made out for the interference by this Court in the present Regular Second Appeal and the same is accordingly dismissed.

April 19, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes