

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

203

RSA-539-1993 (O& M)
Date of Decision :06.01.2023

The State of Punjab

...Appellant

Versus

Gurbahcan Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Shivani Sharma, DAG, Punjab.

Mr. Anurag Chopra, Advocate and
Mr. Saurabh Jain Advocate for the respondent.

* * *

Harsimran Singh Sethi, J. (Oral)

Present regular second appeal has been filed for setting aside the order dated 06.02.1990 passed by the trial Court as well as order dated 27.08.1992 passed by the lower Appellate Court by which, respondent-plaintiff was held entitled for reinstatement in service after setting aside the order dated 27.05.1987 by which, his services were terminated.

Learned counsel for the appellant-State argues that the plaintiff-respondent was appointed on temporary basis on 13.02.1987 and his services were terminated on 27.05.1987 within a period of three months of his joining by order simpliciter hence, an enquiry against the temporary employee, which is not envisaged under the rules governing the service, was not liable to be conducted hence, orders passed by the trial Court as well as lower Appellate Court in the facts and circumstances of the present case where the termination was based upon allegations of misconduct, are liable

to set aside.

Learned counsel for the respondent-plaintiff submits that though, the services of the respondent-plaintiff were terminated within a period of three months of his joining but once the order by which the services of the plaintiff-respondent were terminated was based upon allegations of misconduct, without proving the said misconduct and without giving a due opportunity of hearing to the respondent-plaintiff, the order terminating the services of the plaintiff-respondent was liable to be set aside as the same was stigmatic in nature and could not have been passed keeping in view the settled principle of law.

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

It is a conceded position that order dated 27.05.1987, which was passed by the General Manager, Punjab Roadways terminating the services of the respondent-plaintiff clearly stated that the same has been passed keeping in view the alleged embezzlement of Rs.6 by respondent-plaintiff, which was found during checking hence, once the basis of the termination was the alleged misconduct, it was incumbent upon the respondents to hold an enquiry in view the allegations and only in case the allegations are proved, the respondents could have taken appropriate steps.

In the present case, despite the fact that reason behind termination was misconduct, which was also depicted in the order of termination itself and that too without holding any enquiry in view of the allegations, the findings of the trial Court as well as lower Appellate Court that the said order of termination of service of respondent-plaintiff is contrary to the settled principle of law is correct, keeping in view the settled

principle of law cited in the judgment of the Court below itself.

Further, despite the fact that the respondent-plaintiff was a temporary employee but once the allegations of embezzlement was made in the order of termination, the said order cannot be termed as order simpliciter but has to be treated punitive in nature.

As per the settled principle of law settled by the Hon'ble Supreme Court of India in Chander Parkash vs. State of U.P, motive has to be seen in case the same is clear from the impugned order as to whether the order passed is an order simpliciter or the same is based upon any misconduct and in case the Court finds that the order is based upon a misconduct, the same cannot be treated as order simpliciter and is liable to be set aside. Relevant paragraphs of the judgement are as under:-

“27. The important principles which are deducible on the concept of "motive" and "foundation", concerning a probationer, are that a probationer has no right to hold the post and his services can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post in question. If for the determination of suitability of the probationer for the post in question or for his further retention in service or for confirmation, an enquiry is held and it is on the basis of that enquiry that a decision is taken to terminate his service, the order will not be punitive in nature. But, if there are allegations of misconduct and an enquiry is held to find out the truth of that misconduct and an order terminating the service is passed on the basis of that enquiry, the order would be punitive in nature as the enquiry was held not for assessing the general suitability of the employee for the post in question,

but to find out the truth of allegations of misconduct against that employee. In this situation, the order would be founded on misconduct and it will not be a mere matter of "motive".

28. "Motive" is the moving power which impels action for a definite result, or to put it differently, "motive" is that which incites or stimulates a person to do an act. An order terminating the services of an employee is an act done by the employer. What is that factor which impelled the employer to take this action. If it was the factor of general unsuitability of the employee for the post held by him, the action would be upheld in law. If, however, there were allegations of serious misconduct against the employee and a preliminary enquiry is held behind his back to ascertain the truth of those allegations and a termination order is passed thereafter, the order, having regard to other circumstances, would be founded on the allegations of misconduct which were found to be true in the preliminary enquiry."

Keeping in view the settled principle of law, it is clear that once even in the order, it was mentioned that the petitioner had embezzled an amount, the said order cannot be treated as order simpliciter but the said order was punitive in nature hence, the respondents were under an obligation to hold an enquiry as the order is stigmatic in nature. The respondent-plaintiff was being removed on the basis of the embezzlement without holding any enquiry and proving the said charges.

Further, learned counsel for the appellant-State has not been able to point out any infirmity in the findings of the trial Court as well as lower Appellate Court qua the evidence which has already come on record.

Learned counsel for the appellant-State has not been able to prove that any of the finding of the Court below is perverse on facts or contrary to the settled principle of law.

Learned counsel for the appellant-State has informed this Court that during the pendency of the present appeal, respondent-plaintiff has already attained the age of superannuation in the year 2017 and has availed his retiral benefits though, the same is being disputed by the learned counsel for the respondent-plaintiff.

Keeping in view the same, in case any representation is filed by the respondent-plaintiff seeking any benefit qua the service rendered by him for which, he is entitled for after his retirement, the appellant-State is directed to pass an appropriate speaking order within a period of three months from the receipt of said representation and in case after the decision, the respondent-plaintiff is found entitled for any benefit, the same be extended to him within a period of four weeks thereafter and in case relief has already been extended to the respondent-plaintiff, the same be also mentioned in the speaking order to be passed by the appellant-State.

Present regular second appeal stands dismissed with direction.

January 06, 2023

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(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No