

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

102

CM No.6191-C of 2022 in/and
RSA No.84 of 1993 (O&M)
Date of Decision: 17.03.2023

Sohan Lal

....Appellant

Versus

State of Punjab and another

....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Kanwarpal Singh Mahajan, Advocate
for the appellant.

Mr. Gurvinder Singh, Assistant Advocate General, Punjab.

Harsimran Singh Sethi, J. (Oral)

CM No.6191-C of 2022

The present application has been filed for fixing
RSA No.84 of 1993 for an early actual date of hearing.

Notice of the application to the counsel opposite.

Mr. Gurvinder Singh, Assistant Advocate General, Punjab,
who is present in the Court accepts notice and raises no objection for the
grant of the prayer as made in the present application.

In view of the above, the application is allowed and RSA
No.84 of 1993 is taken up for hearing today.

RSA No.84 of 1993 (O&M)

The present Regular Second Appeal has been filed
challenging the judgment and decree dated 07.08.1992 of the lower
Appellate Court by which, the judgment and decree of the trial Court

dated 15.09.1990 has been set aside and the suit filed by the appellant-plaintiff has been dismissed.

Certain facts need to be mentioned for the correct appreciation of the controversy in hand.

The respondent-plaintiff was appointed as Conductor in the Punjab Roadways in the year 1977 and during the course of his employment, certain disciplinary proceedings were initiated and the orders of punishment i.e. stoppage of increments were passed, details of which have already been given in para 3 of the judgment and decree dated 15.09.1990 of the trial Court. The said orders were not challenged by the respondent-plaintiff but the suit was filed with a prayer that the respondent-plaintiff shall be entitled to fixation of his salary keeping in view his length of service and all the increments, which benefits have not been allowed in his favour, be granted along with consequential relief.

The respondents appeared and brought to the notice of the Court that the conduct of the plaintiff was such that he had been punished eight times and his increments have been stopped by way of punishment, which orders were never been challenged by him hence, the claim of the plaintiff to grant increments, which have been stopped by way of punishment and that too without there being any challenge to the order of punishment is liable to be rejected.

The trial Court allowed the suit filed by the appellant-plaintiff on the ground that though the increments have been stopped by passing appropriate orders but as those orders are not in consonance with law, the said orders cannot be given effect to and by declaring the said

orders as illegal despite their being no challenge, a direction was issued to the respondent-State to grant the increments to the appellant-plaintiff, which were stopped along with consequential benefits.

Feeling aggrieved against the judgment and decree of the trial Court dated 15.09.1990, the appeal was preferred, which appeal was allowed by the lower Appellate Court on the ground that once by proper office orders, the increments were stopped by way of punishment and that too, starting the orders from the year 1977 till 1983 and those orders were not under challenge and Civil Suit was filed in the year 1990, the trial Court exceeded the jurisdiction to set aside the said orders, which were not even under challenge especially when, the limitation period to challenge those orders had already expired by the time the Civil Suit was filed. The said judgment and decree of the lower Appellate Court by which the judgment and decree of the trial Court dated 15.09.1990 was set aside and the suit of the plaintiff was dismissed, is under challenge in the present Regular Second Appeal.

Learned counsel for the appellant argues that the judgment of the trial Court was based upon the evidence and once the increments were stopped by passing the impugned orders, and those impugned orders have held to be bad, no interference was called for by the lower appellate Court in the judgment and decree dated 15.09.1990 of the trial Court. Hence, the said judgment and decree of the lower Appellate Court dated 07.08.1992 may be set aside and judgment of the trial Court be upheld.

Learned State counsel, on the other hand, argues that once specific orders were passed withholding the increments of the appellant-

plaintiff by way of punishment and those orders were never challenged within the time frame and limitation period provided, the trial Court exceeded his jurisdiction to declare those orders as illegal or arbitrary. Hence, the judgment of the lower Appellate Court is perfectly valid and legal and may be maintained.

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

It is a conceded position that the punishment was imposed upon the appellant-plaintiff during his service career by passing written orders, details of which have already been mentioned in para 3 of the judgment and decree of the trial Court. It is also a conceded fact that the said orders were never challenged by the appellant-plaintiff at any given point of time. The last order imposing punishment upon the appellant-plaintiff is dated 10.03.1983 whereas the suit was filed on 31.03.1990 and that too, without there being any challenge to the said orders of punishment. Once the orders of punishment had attained finality and were not under challenge, the trial Court exceeded his jurisdiction to declare the said orders of punishment as illegal and void. Hence, the judgment of the lower Appellate Court rectifying the said mistake of the trial Court cannot be faulted with.

Further, argument raised by the learned counsel for the appellant-plaintiff was getting lesser salary than his juniors, which is impermissible. The said argument has already been dealt with by the lower Appellate Court that the appellant-plaintiff was getting lesser salary because his increments were stopped by way of punishment, which cannot

be treated as arbitrary action and the lesser salary being drawn by the appellant was due to his own conduct and the punishment imposed upon him. The said finding of the lower Appellate Court is in consonance with the factual aspect as well as the evidence, which has come on record.

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

Any misc. application pending is also disposed of.

February 17, 2023
jt

(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking? *Yes/No*
Whether reportable? *Yes/No*