

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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1. RSA-2432-1992
Date of decision: 29.08.2023

KEWAL SINGH ..Appellant

Versus

STATE OF PUNJAB ..Respondent

2. RSA-61-1993

FAQIR CHAND (DECEASED) THROUGH LRS ..Appellant

Versus

STATE OF PUNJAB ..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vardan Seth, Advocate
for the appellant (in RSA-2432-1992)

Mr. R.S. Chauhan, Advocate
& Ms. Deepika Chauhan, Advocate
for the appellant (in RSA-61-1993).

Mr. Ajit Singh Natt, AAG, Punjab.

ANIL KSHETARPAL, J(Oral)

1. These two connected appeals have come up for final disposal.
2. The learned counsel representing the parties are *ad idem* that these two connected appeals can conveniently be disposed of by a common order.
3. The appellants have filed two separate connected suits to challenge the correctness of the order removing them from service vide order dated 09.05.1985. The order was passed by the disciplinary authority after serving the charge sheet, receipt of inquiry report and a show cause notice.

4. The appellants were working as helpers for the Punjab Roadways. It is alleged that they stole 44 old '*pattas*' (heavy iron pieces) and sold them in the shop that was run by Sh. Rajan Sharma. Subsequently, the fact of stealing came to the notice of the management, which resulted in the registration of the FIR. The police recovered the aforesaid stolen '*pattas*' from the shop of Sh. Rajan Sharma, who was a scrap dealer. In the disciplinary proceedings, the charge sheet was issued to the appellants but no reply was submitted. The inquiry officer was nominated. During the inquiry, the management examined Sh. Raghubir Chand, Mechanic, Sh. Tarlok Singh, Inspector and Sh. Shanker Dass. The appellants filed an application for stay of the domestic inquiry on the ground that a criminal case is pending with the identical allegations, which was rejected by the inquiry officer. Ultimately, the charges were proved and the report was submitted to the disciplinary authority who issued the show cause notice but the appellants did not file any reply, ultimately, the disciplinary authority ordered the removal of the appellants.

5. In both the civil suits, the trial Court decreed the suit only on the ground that the appellants were not provided with the assistance of a co-worker. However, the First Appellate Court after examining Rule 8(8) of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (hereinafter referred to as the '1970 Rules'), held that failure to provide the assistance of a co-worker is a mere irregularity which does not go to the roots of the case. Thus, the appeals filed by the department were allowed.

6. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

7. The learned counsel representing both the appellants in the separate appeals contends that there is a violation of sub-rule 8 of Rule 8 of the 1970 Rules and, therefore, the domestic inquiry was vitiated.

8. The learned counsel representing the legal representatives of late Sh. Faqir Chand in RSA-61-1993 submits that late Sh. Faqir Chand has died and the Court should take a liberal view of the matter.

9. This Court has considered the submissions of the learned counsel representing the parties.

10. Sub-Rule 8 of Rule 8 of the '1970 Rules' is extracted as under:-

*“(8) The Government employee may take the assistance of any other Government employee **[or a retired Government employee]*** to present the case on his behalf, but may not engage a legal practitioner, or the punishing authority having regard to the circumstances of the case, so permits.”*

11. It is not disputed by the learned counsel representing the appellants in both the appeals that the appellants never made any request to the inquiry officer for grant of assistance of a co-worker. Sub-rule 8 only enables the government employee to take assistance of other government employee or retired government employee, however, this is dependent upon the request, if any, made by the charge sheeted officer. In fact, the trial Court failed to read the aforementioned Rule in a proper manner. In absence of request on the part of the charge sheeted employee, the inquiry officer is not bound to provide assistance of a co-worker to them.

12. As regards the submissions of Sh. R.S. Chauhan, Advocate, it may be noted that in the present case, it has been proved that the appellant had stolen the property of his employer.

13. In such circumstances, it would not be appropriate to decide the case only on the basis of emotional arguments.
14. Hence, no ground to interfere is made out.
15. Dismissed accordingly.
16. All the pending miscellaneous applications, if any, are also disposed of.

August 29th, 2023
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(ANIL KSHETARPAL)
JUDGE

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