

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.293 of 1992(O&M)

Date of Order:02.11.2023

Bhim Sain (Deceased) through LRs

.Appellant

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Puneet Kumar Bansal, Advocate, for the appellant.
Mr. Vikas Arora, AAG, Punjab

ANIL KSHETARPAL, J

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh, is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in Pankajakshi (Dead) through LRs vs. Chandrika and others, (2016) 6 SCC 157.

2. The correctness of the concurrent findings of fact arrived at by the courts below is assailed by the plaintiff in this regular second appeal.

3. After the disciplinary inquiry into the allegations of unauthorized absence for a period of 48 days, the appellant was dismissed from service on 07.10.1985, which was the subject matter of challenge in a civil suit.

4. Both the courts on appreciation of the evidence have found that there was no major error in the procedure followed for holding a departmental inquiry and the ultimate order of punishment.

5. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book along with the requisitioned record.

6. The appellant has also filed an application for permission to lead additional evidence in order to produce a copy of the order passed in the case of another employee, namely, Sh. Surjit Singh. It has been alleged that the appellant has been discriminated as in the case of similar absence of another employee, the authority took a lenient view and ordered the grant of pensionary benefits.

7. In this case, before the impugned order of punishment was passed, the appellant was punished on as many as seven different occasions. On three different occasions, he was punished with a major penalty, whereas on other four occasions, he was punished with a minor penalty. In the case of Sh. Surjit Singh, the position is not identical. In each and every case, the disciplinary authority or the appellate authority is wholly entitled to form a separate view considering the circumstances of every case. Hence, the plea of discrimination as claimed is not made out.

8. The learned counsel representing the appellant has submitted that the disciplinary authority i.e. the Superintendent of Police was biased as on previous occasions also, the appellant was ordered to be dismissed by the same officer which in appeal was set aside by the appellate authority. He submits that the appellant prayed for the change of the disciplinary authority, however, no order was passed. He further submits that the Inquiry Officer and the disciplinary authority were different and therefore before forming an opinion, the appellant was required to be given a show cause notice. He further submits that the disciplinary authority has not considered that the appellant is incorrigible or unfit. Even his length of service has not been considered before ordering punishment. While criticizing the order dated 07.10.1985, the learned counsel representing the appellant submits that the

order in question is a non-speaking order.

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

10. The appellant was found absent from duty for a continuous period of 48 days. Previously also the appellant was in the habit of remaining absent from his duty. The disciplinary authority further found that while on duty the appellant had consumed liquor. After a show cause notice was issued to the appellant, Sh. Jagjit Singh, Inspector, was appointed as an Inquiry Officer. All the witnesses produced by the department supported the charges so made. The appellant did not participate in the departmental inquiry despite the repeated intimations. Ultimately, the Inquiry Officer submitted a report to the disciplinary authority. A show cause notice was issued to the appellant while giving an opportunity to file reply. The appellant filed the reply which was duly considered by the disciplinary authority before passing the order. The copy of the order has been annexed as Annexure A-2 with C.M.No.2300-C-2023. This court has read the order in extenso.

11. It is evident from the reading of the order that the disciplinary authority has found that the appellant habitually remains absent. It was found that he was not fit to be retained in service. On as many as seven previous occasions, the appellant had to be punished for various misconducts. In these circumstances, there is no substance in the argument of the learned counsel that the disciplinary authority has not considered his conduct, discipline and consistency. His continuous absence shows serious lack of discipline for the job he was assigned.

12. With respect to the argument that the disciplinary authority was

biased while passing the order, it may be noted that the disciplinary authority has only passed an order of previous occasion for a different charge. That itself cannot be a ground to assume that the disciplinary authority was biased against the appellant.

13. The impugned order has been passed based on appreciation of all the facts. Moreover, two courts have already concluded that the order of punishment has been passed after following the procedure laid down in the service rules.

14. The scope of interference in the second appeal under Section 41 of the Punjab Courts Act is limited.

15. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

16. Dismissed.

17. All the pending miscellaneous applications, if any, are also disposed of.

November 02, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO