

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 912 of 1993

**Reserved On: 28.08.2023
Pronounced On: 15.09.2023**

Chaman Lal

... Appellant(s)

Versus

State of Punjab

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Sarwan Sehgal, Advocate
for the appellant(s).

Mr. Ajit Singh Natt, Assistant Advocate General,
Punjab, for the respondent.

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 v. Chandrika and Others (2016) 6 SCC 157*.

2. This is the plaintiff's second appeal against the judgment passed by the First Appellate Court while reversing the judgment and decree passed by the trial Court.

3. The plaintiff's suit for the grant of decree of declaration that the order dated 25.05.1987 removing him from service is illegal, null and void was decreed by the trial Court, however, in appeal, the same was reversed by the First Appellate Court.

4. In order to comprehend the issue involved in the present case,

the relevant facts, in brief, are required to be noticed. The appellant, after

Regular Second Appeal No. 912 of 1993

having been appointed as a Clerk on 01.12.1976, was promoted as an Assistant on 25.02.1985. However, after the issuance of a show cause notice and receipt of reply, on 02.01.1987, a memorandum of charge sheet was served upon the appellant with the following allegations:

- i) The appellant has embezzled an amount of ₹1,000/-;
- ii) He has levelled the false allegations against Mr.B.L.Chawla, former Accounts Officer;
- iii) He kept the officers in dark.

5. Sh.C.L.Garg, Deputy Labour Commissioner, Punjab, was appointed as an Inquiry Officer. After the detailed inquiry, it was reported that all the three charges are proved against the appellant. The appellant was served with a show cause notice, however, he did not file any reply thereto. Considering the gravity of the charges and the report of the Inquiry Officer, the Welfare Commissioner removed the appellant from service of the Board. He is stated to have filed an appeal, but no decision thereon was received. The appellant, after serving a notice under Section 80 of the Code of Civil Procedure, 1980 (hereinafter referred to as “CPC”), has filed a suit on 19.12.1987. A detailed written statement was filed by the State of Punjab. The Court of first instance, on examining the pleadings, culled out the following issues:-

- “1. Whether the plaintiff is entitled to the declaration prayed for? OPP
2. Whether a valid notice u/s 80 CPC was served on the defendant? OPP
3. Whether the suit is not maintainable in the present form? OPD

4. *Relief.”*

6. In order to prove the case, the plaintiff himself appeared as PW.1 and produced various documents. On the other hand, the defendants examined Sh.C.L.Garg, Inquiry Officer and Sh.Dalbir Singh and produced various documents. The trial Court decreed the suit while observing that there is no evidence against the appellant to prove that he has withdrawn a sum of ₹1,000/- and has embezzled the same. However, the First Appellate Court, on re-appreciation of the evidence, by a detailed and elaborate judgment, reversed the judgment of the trial Court.

7. Heard the learned counsel representing the parties at length and with their able assistance, perused the paper-book.

8. The learned counsel representing the appellant submits that an opportunity of personal hearing was not given by the Disciplinary Authority before passing the impugned order and the Welfare Commissioner (Disciplinary Authority) has passed a non-speaking order, therefore, the judgment of the First Appellate Court is liable to be reversed.

9. On the other hand, the learned State counsel has submitted that the findings of facts have been arrived at by the First Appellate Court and in the absence of the illegality which goes to the root of the case, this Court should not interfere.

10. This Court has considered the submissions and perused the paper-book along with the requisitioned record.

11. A perusal of the record proves that after the receipt of the report of the Inquiry Officer, a show cause notice was issued on 05.05.1987, which was sent to the appellant on 11.05.1987 by a registered post. However, the

Regular Second Appeal No. 912 of 1993

appellant did not file any reply thereto. After complying with the requirements of the service rules, the Disciplinary Authority (the Welfare Commissioner, Punjab) has ordered the removal of the appellant from his service. There is no substance in the argument of the learned counsel representing the appellant as the appellant never filed any reply nor he sought an opportunity of hearing. Moreover, the learned counsel has failed to draw the attention of the Court to any provision in the service rules which mandates personal hearing even if the appellant does not file a reply to the show cause notice which was sent along with the inquiry report. In this case, all the three charges were reported to have been proved against the appellant. The trial Court has erred while observing that it is a case of no evidence. In fact, the department has examined various witnesses in the inquiry including Sh.Kamlesh Kumar. Moreover, the scope of interference by the Civil Courts in such matter is very limited. In the absence of an error in the procedure, which results in denial of an opportunity to the employee, the Court is not expected to sit in an appeal over the decision of the Disciplinary Authority. In this case, the appellant has failed to draw the attention of the Court to the procedural error which has resulted in denial of an opportunity to the appellant.

12. Keeping in view the aforesaid facts and discussion, finding no merits, the present appeal is dismissed.

(Anil Kshetarpal)
Judge

September 15, 2023

“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No