

CM-15365-C-2019 in
CM-15501-C-2019 in/and
RSA-193-1991

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(240)

CM-15365-C-2019 in
CM-15501-C-2019 in/and
RSA-193-1991
Date of Decision : 01.03.2023

Madan Lal

...Appellant

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rohit Mittal, Advocate for the appellant.

Mr. Gurvinder Singh, Assistant Advocate General, Punjab.

Harsimran Singh Sethi J. (Oral)

CM-15365-C-2019 in/and CM-15501-C-2019 in RSA-193-1991

Present application i.e. CM-15365-C-2019 has been filed seeking condonation of delay of 5375 days in filing the application i.e. CM-15501-C-2019 for recalling the order dated 31.01.2005.

Notice of the applications was given to the State.

Learned counsel for the respondents raises no objection for the grant of prayer as made in the present applications though, there is a substantial delay of 5375 days in filing the application for recalling the order dated 31.01.2005.

Keeping in view the facts mentioned in the applications, which are duly supported by affidavits, the same are allowed. Delay of 5375 days

in filing the application for recalling the order dated 31.01.2005 is condoned and RSA No. 193 of 1991 is restored to its original number and status.

Learned counsel for the parties submit that as the present RSA relates to the year 1991 and is pending for the last 33 years, the same be taken up for hearing today, if possible.

The said request of the learned counsel is accepted and the RSA No. 193 of 1991 is taken up for consideration.

RSA No. 193 of 1991

The present regular second appeal has been filed by the appellant-plaintiff challenging the judgment and decree of the trial court dated 02.06.1989 by which the suit filed by the appellant-plaintiff challenging the order dated 17.02.1984 by which, he was dismissed from service, was dismissed by the trial court as well as the judgment and decree of the lower appellate court dated 23.07.1990 by which order, the lower appellate court in an appeal preferred by the appellant-plaintiff upheld the decree passed by the trial court dated 02.06.1989.

Learned counsel for the appellant-plaintiff argues that the judgments of the courts below are perverse as there is no evidence on record to hold the appellant-plaintiff guilty of the allegations of embezzlement as, while working on the post of Conductor, there was no mis-conduct committed by the appellant-plaintiff. Learned counsel for the appellant-plaintiff submits that no passenger to whom the ticket was not issued despite charging money, has been examined during the enquiry proceedings and could not be relied upon for passing the impugned order of termination

dated 17.02.1984.

Keeping in view the evidence, which has come on record, the courts below have recorded finding with regard to the validity of the enquiry proceedings. It has already come on record that the charge-sheet was served upon the appellant-plaintiff and appellant-plaintiff appeared before the Enquiry Officer, wherein, he had cross-examined the witnesses also. Further, nothing has come on record to show that on any account, the said enquiry proceedings were vitiated. No perversity has been pointed out by the learned counsel for the appellant so as to require interaction by the court in the second appeal.

Even otherwise, as per the settled principle of law, the civil court is not required to sit over as an appellate authority over the judgment of the punishing authority qua disciplinary proceedings. Once, a finding of fact has been recorded qua the validity of the enquiry proceedings, which fact has not been dislodged by the learned counsel for the appellant-plaintiff while addressing the arguments in the present appeal, it cannot be said that the findings recorded by the courts below are perverse to the facts or the evidence on record.

The argument being raised by the learned counsel for the appellant-plaintiff that only the Inspectors, who had checked the Bus in question and had made a report against the appellant-plaintiff qua the embezzlement of the amount, have been examined but no passenger was examined, which vitiate the enquiry proceedings, the said argument cannot be accepted keeping in view the settled principle of law settled by the

Hon'ble Supreme Court of India in ***State of Haryana and another Vs. Rattan Singh***, 1977 Punjab Law Reporter 492, wherein, it has been held that non-examination of the passengers in the departmental proceedings, will not vitiate the same. Relevant paragraphs 4 and 5 of the said judgment are as under :-

“4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hear say evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fair play is the basis and if preversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residum' rule to which counsel for the respondent referred, based upon certain passages from American jurisprudence does not go to that extent nor does the passage from Halbsbury insist on such rigid requirement. The simple point is, was there some

evidence or was there no evidence – not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the flying squad, is some evidence which has relevance to the charge levelled against the respondent. Therefore we are unable to hold that the order is invalid on that ground.

5. Reliance was placed, as earlier stated, on the non-compliance with the departmental instructions that statements of passengers should be recorded by inspector. These are instructions of prudence, not rules that bind or vitiate in the violation. In this case, the Inspector tried to get the statements but the passengers declined, the psychology of the latter in such circumstances being understandable, although may not be approved. We cannot hold that merely because statements of passengers were not recorded the order that followed was invalid. Likewise, the re-evaluation of the evidence on the strength of co-conductor's testimony is matter not for the court but for the administrative tribunal. In conclusion, we do not think the courts below were right in over-turning the finding of the domestic tribunal.”

That being so, the argument being raised by the learned counsel for the appellant-plaintiff is contrary to the settled principle of law settled by the Hon'ble Supreme Court of India in ***Rattan Singh's case (supra)*** herein cannot be accepted.

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No other argument has been raised in support of the present appeal.

Keeping in view the above, as no perversity could be pointed out by the learned counsel for the appellant-plaintiff in the present regular second appeal, no interference is called for by this court in the judgment and decree of the trial court dated 02.06.1988 as well as judgment and decree of the lower appellate court dated 23.07.1990.

Dismissed.

March 01, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No