

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(207)

RSA No. 1534 of 1994

Date of Decision : 28.02.2023

State of Punjab

...Appellant

Versus

Lachhman Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Gurvinder Singh, Assistant Advocate General, Punjab.

Mr. Keshav Pratap Singh, Advocate for the respondent.

Harsimran Singh Sethi J. (Oral)

In the present regular second appeal, the challenge is to the judgments and decrees of the courts below dated 07.05.1993 and 09.12.1993 vide which the civil suit filed by the respondent-plaintiff qua the order of punishment dated 31.05.1989 by which, he was removed from service on being convicted by a competent court of law under Section 304-II IPC, was allowed by recording a finding that the said punishment has been imposed upon the respondent-plaintiff without ascertaining the fact as to whether, the conduct of the respondent-plaintiff, which led to the conviction, can allow him to continue in service or not.

Certain facts need to be mentioned here so as to appreciate the controversy in the correct perspective.

The respondent-plaintiff was appointed as JBT Teacher in the year 1965 and was working as such with the Education Department, Punjab.

In March, 1980 when the respondent-plaintiff was posted in Govt. Primary School Mohaddin, Tehsil Sirhind, District Patiala, he was involved in a criminal case relating to the death of a person. Respondent-plaintiff was convicted by the competent court of law by the Additional Sessions Judge, Patiala vide judgment dated 06.08.1980 under Section 302 of the IPC. The said conviction was challenged by the respondent-plaintiff. Though, the conviction of the respondent-plaintiff was maintained by the High Court but the same was only maintained under Section 304-II of the IPC and he was sentenced to undergo rigorous imprisonment for a period of seven years, which punishment was further reduced to four years of rigorous imprisonment by the Hon'ble Supreme Court of India in an appeal preferred by the respondent-plaintiff. While undergoing the sentence, keeping in view the application made, during the pendency of the criminal appeal, the respondent-plaintiff was released on bail and he sought re-instatement in service. A show cause notice was issued to the respondent-plaintiff by the Department on 03.03.1988 to show cause as to why, on being convicted by the competent court of law, which conviction has also been upheld by the High Court, the respondent-plaintiff be not dismissed from service. Reply to the said show cause notice was filed by the respondent-plaintiff, wherein, he conceded the fact that he has been convicted under Section 304-II of the IPC but as the same does not reflect on the morals, he cannot be dismissed from service.

After considering the reply filed by the respondent-plaintiff, the department passed an order on 31.05.1989 dismissing him from service by recording that the conduct of the respondent-plaintiff, which has led to his

conviction, is such that he cannot be retained in the Govt. service by invoking powers under Rule 13 (i) of the Punjab Civil Service (Punishment and Appeal) Rules, 1970. The said order was challenged by the respondent-plaintiff before the civil court on the ground that the order of removal from service has been passed without there being any application of mind on the aspect that whether the conduct of the respondent-plaintiff was such which made him unfit to be retained in service.

Keeping in view the evidence, which came on record, the trial court recorded a finding that keeping in view the settled principle of law, it was incumbent upon the authority concerned to record a finding that the conduct of the employee was such, which had led to his conviction, which made the said employee unfit to be retained in service and as no such finding was recorded by the competent authority in the order dismissing him from service, the dismissal of the respondent-plaintiff from service merely on the basis of the conviction is contrary to the settled principle of law. The order of dismissal dated 31.05.1989 was set-aside by the trial court with the direction to reinstate the respondent-plaintiff in service.

Feeling aggrieved against the said judgment and decree of the trial court dated 07.05.1993, appeal was filed by the appellants-defendants before the lower appellate court, which came to be decided on 09.12.1993. The judgment and decree of the trial court was upheld by the lower appellate court hence, the present regular second appeal.

While issuing notice of motion, the operation of the judgments and decrees of the courts below was stayed.

I have heard learned counsel for the parties and have gone

through the record with their able assistance.

Learned counsel for the appellants-defendants submits that the finding recorded by the trial court that there was no consideration given to the conduct of respondent-plaintiff, which had led to his conviction while passing the impugned order is against the facts on record and the said finding is perverse. Learned counsel submits that due show cause notice was given to the respondent-plaintiff before taking any action on the basis of the conviction, which was suffered by the respondent-plaintiff and the authorities concerned after due application of mind found that the conduct of the respondent-plaintiff, which had led to the conviction was such, which does not make him suitable to be retained in service hence, without actually going through the order passed, the finding recorded by the trial court, which finding has been upheld by the lower appellate court without even reading the impugned order hence, the judgments of the courts below are liable to be set-aside and the suit filed by the respondent-plaintiff may kindly be dismissed.

Learned counsel for the respondent-plaintiff submits that mere conviction in a criminal case does not entail the dismissal from service or does not give jurisdiction to the employer concerned to pass any order unless and until the said conviction reflects on the moral of the employee concerned and while passing an order, the authorities come to the conclusion and record that the said conduct reflects upon the moral of the convict so as to make him/her unsuitable to be retained in service.

Learned counsel for the respondent-plaintiff submits that in the present case, the impugned order of dismissal has been passed merely on the

basis of the conviction without even going through the judgment of the criminal court where the conduct of the respondent-plaintiff has been noticed, which has led to his conviction hence, the judgments of the courts below are perfectly valid and legal and may kindly be upheld and the regular second appeal filed by the appellants-defendants may kindly be dismissed. Learned counsel further submits that some of the employees, who were convicted, were allowed to continue in service whereas, the action was being taken against the respondent-plaintiff was taken by a pick and choose method, which itself make the impugned order of removal illegal and is liable to be set-aside.

Keeping in view the argument, which has been raised by both the counsel, conceded position which emerge in this case is that the action has been taken against the respondent-plaintiff on the basis of conviction in criminal proceedings, which conviction of the respondent-plaintiff has already attained finality. The dispute is whether the department while passing the impugned order of dismissal dated 31.05.1989, gave due opportunity to the respondent-plaintiff to represent his case and whether, the conduct of the respondent-plaintiff, which led to his conviction, has been noticed or not. As per the record, it is a conceded position that a show cause notice was issued to the respondent-plaintiff proposing action against him after his conviction had attained finality, which notice was duly received by the respondent-plaintiff and was also replied to on 21.03.1988. That being so, before taking action, the respondent-plaintiff was put to the notice and it cannot be said that there was any violation of the rules of natural justice while passing the order of dismissal dated 31.05.1989.

The trial court while allowing the suit, recorded a finding that without adverting to the conduct of the respondent-plaintiff, which led to his conviction, the order of dismissal was passed straightway only on the basis of the conviction, which action of the department was contrary to the settled principle of law.

Before proceeding further, the impugned order dated 31.05.1989, which is already on record shows that the authority concerned has recorded all the facts in the order and thereafter, the opinion of the authority finds mentioned with regard to the fitness of the respondent-plaintiff to be retained or not. The authority has recorded the following findings in the impugned order :-

“Whereas, I have gone through the case very carefully and judicially and have come to the conclusion that the conduct of Sh. Lachhman Singh is not worth for keeping him in Govt. Service and also since he has been awarded imprisonment for a period of seven years by the competent court, therefore, by the virtue of power conferred by rule 13.1 of the Punjab Civil Services (Punishment & Appeal) Rule, 1970, the undersigned hereby ordered to remove Sh. Lachhman Singh, JBT Teacher G.P.S. Mohadian (Patiala) from service with immediate effect.”

A bare perusal of the above finding would show that the competent authority has recorded that the conduct of the respondent-plaintiff, which had led to his conviction, was not such that he could be retained in Govt. service. This shows that the conduct of the respondent-plaintiff has been kept in mind before passing an order whether the same allows the respondent-plaintiff to continue in service or not. Detailed reasons are not to be given after the conviction of an employee has already

attained finality. In the present case, the conduct, which has led to the conviction, has been kept in mind and the factum of the same has also been recorded in the impugned order, therefore, it is clear that the findings, which have been recorded by the courts below are perverse to the actual order passed dismissing the respondent-plaintiff from service hence, the same cannot be sustained in the eyes of law.

Further, learned counsel for the respondent-plaintiff submits that the authorities concerned should have also given a reason why the said conduct makes the respondent-plaintiff unfit to be retained in service, which is missing in the order. Though, the conduct, which has led to the conviction, is already stated by the criminal court, the same needs not to be repeated. In the present case, the respondent-plaintiff is a JBT Teacher, who is to teach the students and has to be a role model for them to succeed in life and where a teacher himself, who has to be a role model, is convicted of an offence under Section 304-II of the IPC by killing somebody and the employer thinks that the same will not be prudent to retain the said employee in service and the retention of such employee in service can harm the future of the children, whom he will teach, said opinion of the employer cannot be treated to be an arbitrary and illegal.

In the present case, the conduct of a teacher has been evaluated keeping in view the conviction of the said teacher by the competent court of law, which has attained finality hence, the courts below failed to appreciate these material facts, which were already on record while recording a finding hence, the said findings can be easily termed as perverse and hence, cannot be sustained.

Learned counsel for the respondent-plaintiff relies upon the judgment of this Court in CWP No. 9270 of 2014 titled as ***Tarsem Singh Vs. State of Punjab and another***, decided on 26.02.2020, where an order of termination passed on the basis of the conviction was held to be bad. The order passed by this court in ***Tarsem Singh's case (supra)***, cannot come to the rescue of the respondent-plaintiff for the reason that in the said case, the order simplicitor was passed on the basis of the conviction without relating to the same as to whether the said employee is fit to be retained keeping in view the fact, which has led to the conviction. In the present case, the authorities had recorded a finding that the conduct of the respondent-plaintiff is not good enough to be retained in service hence, no benefit of judgment in ***Tarsem Singh's case (supra)***, can be allowed in favour of the respondent-plaintiff.

Learned counsel for the respondent-plaintiff submits that though the challenge before the civil court was with regard to the order terminating the service of the respondent-plaintiff vide order dated 31.05.1989 but after the registration of an FIR, the respondent-plaintiff was kept under suspension till he was dismissed from service and during the suspension, he was not paid the suspension allowance, which was allowed in favour of the respondent-plaintiff hence, the judgment of the courts below qua the payment of the said suspension allowance may kindly be maintained.

Learned counsel for the appellants-defendants does not dispute the fact that the respondent-plaintiff was under suspension from the date of registration of an FIR till he was dismissed from service and nothing has

come on record about the payment of the same hence, qua the release of payment of the suspension allowance to the respondent-plaintiff during the period of suspension, the said claim as allowed by the courts below is being maintained.

No other argument was raised by either side.

Keeping in view the above, as far as the challenge to the order of removal from service from 31.05.1989, the civil suit filed by the respondent-plaintiff is dismissed and the findings recorded by the courts below qua the said order are set-aside being perverse. The claim of the respondent-plaintiff qua the payment of suspension allowances during the period of suspension, is upheld. The respondent-plaintiff will be held entitled for the suspension allowances and he is to be paid the same as held by the courts below.

The present regular second appeal is partly allowed in above terms. Decree sheet be prepared accordingly.

February 28, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No