

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(202)

RSA-1508-2000 (O&M)

Date of Decision : January 23, 2023

Ved Parkash Gupta

.. Appellant

Versus

Haryana State and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Harsh Aggarwal, Advocate, for the appellant.

Ms. Vibha Tewari, Assistant Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-2320-C-2000

This is an application under Section 5 of the Limitation Act for condonation of delay of 273 days in filing the appeal.

Keeping in view the facts mentioned in the application, which is duly supported by an affidavit, the application is allowed and delay of 273 days in filing the appeal is condoned.

RSA-1508-2000

In the present Regular Second Appeal, the order of the Lower Appellate Court dated 11.12.1998 is under challenge by which the case was remanded back for the fresh inquiry.

Certain facts needs to be enumerated for consideration of this Regular Second Appeal. The charge sheet was issued to the appellant on various allegations and after the enquiry, an order of punishment was passed

on 27.01.1986, by which the appellant who was working as a Clerk in the

office of Deputy Commissioner was dismissed from service. Against the said order, the appellant filed an appeal before the Commissioner and the Commissioner vide order dated 04.12.1987 modified the order dated 27.01.1986 and the punishment of dismissal was modified with that of reduction of pay to the initial stage and that the appellant will not be entitled for any salary over and above his suspension allowance already paid and further, for the period he remained out of service in pursuance to the order dated 27.01.1986, he will not be entitled for any salary. The said order dated 04.12.1987 was further challenged by the appellant by filing a revision petition before the Financial Commissioner, which revision petition was decided on 20.08.1993 and the order passed by the Commissioner dated 04.12.1987 was upheld.

The said orders of punishment were challenged by the appellant by filing a civil suit, which civil suit was decreed in favour of the appellant-plaintiff holding that the order passed by the Deputy Commissioner dated 27.01.1986 dismissing the appellant from service as well as the order passed by the Commissioner i.e. Appellate Authority dated 04.12.1987 modifying the punishment of dismissal with that of reduction of pay and the order passed by the Revisional Authority dated 20.08.1993 are null and void and the appellant is entitled for the full salary for the period in question for which he remained out of service along with all the consequential benefits.

Against the said order of the trial Court dated 17.09.1997, State preferred an appeal and the appeal was partly accepted and the order of the trial Court declaring the order of punishment passed by the punishing authority dated 27.01.1986, order passed by the Commissioner i.e.

Appellate Authority dated 04.12.1987 and the order passed by the

Revisional Authority dated 20.08.1993 were held to be bad but the matter was remanded back to the punishing authority to pass a fresh order on the disciplinary proceedings from the stage where three enquiry reports were furnished to the appellant.

The present appeal has been filed by the appellant challenging the said order of the Lower Appellate Court by which the judgment and decree of the trial Court has been modified so as to allow the Department to pass fresh order on the disciplinary proceedings.

Learned counsel for the appellant argues that after the filing of the present Regular Second Appeal in the year 2000, the appellant worked with the respondent-Department and retired in the year 2017. Learned counsel for the appellant submits that as the appellant has already retired from service, no useful purpose will be served in remanding the case back to the punishing authority to pass a fresh order on the punishment, hence, once the order of Commissioner dated 04.12.1987 has already modified the order of punishment of dismissal from service inflicted on 27.01.1986 by reducing the punishment to that of reduction of the pay of the appellant-plaintiff to the initial stage, the revisional authority i.e. Financial Commissioner may kindly be directed to decide the revision afresh as to whether, keeping in view the Rule 4.12 of the Punjab Civil Services Rules, while reducing the pay to the initial stage, the Commissioner was required to furnish the time period also for the said punishment or not and the prayer of the appellant-plaintiff in the suit may only be restricted to challenge the order of the revisional authority dated 20.08.1993 only.

Learned State counsel submits that as the appellant-plaintiff, keeping in view the statement made before this Court, has only restricted

the claim qua the challenge to the order passed by the revisional authority dated 20.08.1993, State has no objection in case the remand ordered by the Court below is modified qua the challenge to the order dated 20.08.1993 so as to direct the revisional authority to pass a fresh order on the review petition filed by the appellant-plaintiff for the grant of benefit, if any admissible under Rule 4.12 of the Punjab Civil Services Rules.

Keeping in view the facts mentioned hereinbefore, as the parties are agreeable that after the decision of the lower Appellate Court, the appellant was reinstated in service and had worked with respondents for a period of 17 years before retirement and no useful purpose will be achieved in re-opening of the disciplinary proceedings again, keeping in view the facts and circumstances stated hereinbefore, the order passed by the lower Appellate Court is modified to the extent that only the order dated 20.08.1993 be treated to have been set aside as challenge to the recovery order has already been withdrawn by the appellant-plaintiff with liberty to pass a fresh order on the revision filed by the appellant qua the claim being raised under Rule 4.12 of the Punjab Civil Services Rules as applicable to Haryana.

The present Regular Second Appeal is disposed of in above agreed terms by the parties.

CM-2321-C-2000 and CM-9188-C-2001

As the main appeal has been disposed of, present applications also stand disposed of.

January 23, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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