

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

322

RSA-837-2002 (O&M)

Date of decision: 29.11.2023

Satender Pal

....Appellant

Versus

State of Haryana and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present:- Mr. Jagdeep Singh, Advocate for
Mr. K.S. Dadwal, Advocate for the appellant

Mr. Jagdish Manchanda, Addl. AG Haryana

AMAN CHAUDHARY, J.

1. Challenge in the present regular second appeal is to the judgment and decree dated 03.11.2001 passed by learned Additional District Judge, Faridabad setting aside the judgment and decree dated 30.08.2000 passed by learned Civil Judge (Jr. Division), whereby the suit for declaration and mandatory injunction was decreed in favour of the plaintiff-appellant.
2. The facts in a nutshell are that the plaintiff-appellant was working as Tehsil Welfare Officer, when a complaint alleging demanding of money from clients was instituted and after a preliminary report, he was placed under suspension w.e.f. 29.09.1994, while being granted only subsistence allowance. Thereby, vide order dated 29.05.1995, he was reinstated with the condition that the

decision regarding appellant's pay and allowances was to be made after the conclusion of departmental enquiry. When the allegations against him stood proved, punishment of censure/warning was imposed vide orders dated 17.11.1995 and 04.12.1995. Further, it was directed on 10.01.1996 that his suspension period will be regularised towards leave of the kind due but he would not be entitled to any payment except for the subsistence allowance already given. When the claim for balance amount was rejected, the suit was filed for declaration and mandatory injunction.

3. The defendants contested the suit via written statement on the preliminary ground that it was not maintainable as no appeal was filed. On merits, it was stated that since allegations stood proved against the plaintiff, the punishment was given under Rule 7.3 of Punjab Civil Service Rules (hereinafter referred to as the "Rules").

4. The trial Court decreed the suit in favour of the plaintiff-appellant by observing that though the punishment orders dated 17.11.1995 and 04.12.1995 were valid under Rule 8 of the Rules but the defendants had no power to modify them and decline all the benefits.

5. Aggrieved therewith, the defendant-respondents filed an appeal before the learned appellate Court, which came to be allowed by finding the trial Court's observations to be erroneous and against the law. It was held that since the reinstatement order mentioned that the suspension period will be decided after the departmental proceedings, to which no challenge was made and Rule 8 was not in respect of allowance and reinstatement but Rule 7.3, the defendants rightly passed the impugned orders as the plaintiff was not exonerated in the proceedings.

6. Learned counsel for the appellant submits that since the plaintiff was simply given a warning/censure, he was entitled to salary for the period of suspension instead of mere payment of subsistence allowance and the learned trial Court had rightly allowed the suit, however, the lower appellate Court wrongly upset the findings, without appreciating the rule position.

7. On the other hand, learned State counsel refers to Rule 7.3 of the Rules to submit that since the plaintiff-appellant was not exonerated, he was only entitled to subsistence allowance, which was admittedly paid to him initially 50% and thereafter, increased to 75% as per the rules. Not only this, the period of suspension was also taken into account towards pension as the plaintiff-appellant had also retired.

8. Heard the learned counsel on either side and perused the record.

9. It is discernible from the facts of the case that the appellant was suspended after a complaint alleging demand of money was made. While the matter was being investigated, he was reinstated with the condition that the fate of suspension period would be decided afterwards. The enquiry was conducted strictly in conformity to the procedure in which the appellant was afforded all reasonable opportunities to defend his case. The charges were consequently established and duly proved but after due consideration only censure/warning was awarded, which order was never challenged by the delinquent-plaintiff, meaning thereby had accepted the same and thus even the charge having been proved against him to be correct finding recorded by the disciplinary authority.

10. Further as regards the above period, the defendants even allowed the suspension period to be regularised towards leave of the kind due and directed that

he was entitled only to subsistence allowance as already paid, in view of the provision of Rule 7.3 *ibid*.

11. Hon'ble the Supreme Court in **Managing Director, Uttar Pradesh Sahkari Gram Vikas Bank Limited v. Chandra Bhan Singh**, 2020(1) S.C.T. 312, a case wherein one increment was withheld along with censure, observed and held that, "The punishment meted out to the first respondent has not been effaced. It is only the quantum of punishment which has been reduced. Reduction of punishment is completely different from exoneration of the charge. So long as the punishment remains the question of full payment of salary for the period of suspension or salary for the period from dismissal till reinstatement does not arise. The principle of "no work no pay" shall also apply."

12. Notably the decision of grant of pay and allowance or denial thereof being dependent upon the disciplinary proceedings that ensued against the plaintiff but having not finally culminated in his exoneration, the authorities in wake of the provision of law and the law laid down, were fully justified in denying the relief as a consequence thereof and there being nothing shown regarding entitlement of the plaintiff in spite of the aforesaid factual scenario, no flaw even in law can be found in the view that has been taken by the lower appellate Court. Thus, the plea raised on behalf of the appellant does not have any legs to stand on.

13. Regarding the scope of interference at the hands of this Court while exercising jurisdiction at the stage of second appeal, Hon'ble the Supreme Court in **Randhir Kaur vs. Prithvi Pal Singh**, (2019) 17 SCC 71, observed and held that, "A perusal of the aforesaid judgments would show that the jurisdiction in second appeal is not to interfere with the findings of fact on the ground that

findings are erroneous, however, gross or inexcusable the error may seem to be. The findings of fact will also include the findings on the basis of documentary evidence. The jurisdiction to interfere in the second appeal is only where there is an error in law or procedure and not merely an error on a question of fact... In view of the above, we find that the High Court could not interfere with the findings of fact recorded after appreciation of evidence merely because the High Court thought that another view would be a better view...”

14. In **Satyender vs. Saroj**, 2022 SCC OnLine SC 1026, Hon’ble the Supreme Court has held that, “Be that as it may, though the requirement of formulation of a substantial question of law was not necessary, yet Section 41 of the Punjab Courts Act, requires that only such decisions are to be considered in second appeal which are contrary to law or to some custom or usage having the force of law or the court below have failed to determine some material issue of law or custom or usage having the force of law. Therefore, what is important is still a “question of law”. In other words, second appeal is not a forum where court has to re-examine or re-appreciate questions of fact settled by the Trial Court and the Appellate Court”.

15. Nothing glaring could be pointed out by the learned counsel for the appellant to reach the conclusion that any jurisdictional error or illegality has occurred. The lower appellate Court has re-evaluated the fact situation of the case in its true nature as well as examined the evidence and the legal position in the perspective it ought to have been and only thereafter had it returned its plausible and just finding by reversing that of the trial Court, it being erroneous.

16. As an upshot, the present regular second appeal having no question of law involved as also there being no infirmity or illegality in the judgment passed by lower Appellate Court, is hereby dismissed.

(AMAN CHAUDHARY)
JUDGE

November 29, 2023
M.Kamra

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