

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

398

RSA-184-1998 (O&M)
Date of decision: 14.12.2023

Punjab State and Anr.

....Appellants

Versus

Bua Dass

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Manipal Singh Atwal, DAG Punjab

AMAN CHAUDHARY, J.

1. Challenge in the present regular second appeal is to the concurrent findings of facts returned by the Courts below in favour of the plaintiff-respondent in a suit filed for declaration and permanent injunction. For the sake of convenience, parties shall be referred as per their original status.
2. Summarily, the facts of the case are that the plaintiff-respondent, while posted as an Inspector at Fatehgarh Churian, District Gurdaspur was incharge of a godown storing food grains. He found a shortage in the stock for the year 1983-84 and thereby immediately reported the same, before his transfer to another station, to the higher authorities as well as the new incoming Inspector. Thereafter, on 26.09.1989, he was chargesheeted for shortage of 20 qtls. 86 kgs. and found guilty during the enquiry. Consequent to which, he was awarded punishment for recovery of Rs.3762.10 as well as stoppage of three annual increments with cumulative effect, challenging which the suit was filed.

3. The contest by the defendants was primarily on the ground that the suit was not maintainable for want of service of notice under Section 80 CPC while also alleging the claim to be premature as there existed an alternate remedy of appeal, which was already pending. The enquiry was conducted under Punjab Civil Service(Punishment and Appeal) Rules, 1980.

4. The trial Court after framing the issues and hearing the arguments decreed the suit vide judgment and decree dated 08.08.1995 in favour of the plaintiff and held that the right to make the representation at the second stage, i.e. after filing of enquiry report to the punishing authority, was denied to him and the same would amount to violation of the principles of nature justice.

5. Aggrieved against the above, the defendant-appellants filed an appeal before the learned appellate Court, which came to be dismissed while holding that the delinquent official is entitled to a copy of such report, so as to make a representation against it. However, since the copy of the same was not supplied to the respondent nor any show cause notice was served upon him, the findings of the trial Court were affirmed.

6. Hence, the present regular second appeal.

7. Learned State counsel submits that the plaintiff-respondent had preferred an appeal against the punishment order and without awaiting for its outcome, had filed the suit. Thus, the same being premature, was not maintainable. Further that the enquiry was conducted in accordance with the provisions of the rules and the Courts below wrongly reached the conclusion otherwise.

8. Heard learned State counsel and record perused.

9. Notably, the plaintiff-respondent, being Incharge of the godown, as

an Inspector, where the stock of foodgrains was allegedly found deficient, the matter was reported promptly to concerned authorities, right before his transfer but an enquiry was conducted after a gap of 5 years.

10. The explicit findings recorded by the trial Court were that “There is nothing on record to show that after the receipt of the findings of the enquiry officer, any show cause notice was issued to the plaintiff or an opportunity of hearing was afforded to the plaintiff. Even in the impugned order there is no mention that any show cause notice was issued or delinquent employee was personally heard.” The lower appellate Court also in the same stead affirmed the aforesaid finding of fact that the punishing authority had violated the principle of natural justice.

11. The argument of the suit being premature, as an appeal filed by the plaintiff was already pending, is not tenable as the punishment of recovery is an order having an adverse effect and he thus had a right in law to make a challenge to it before the Civil Court, which had the jurisdiction to entertain the same. It was incumbent upon the enquiry officer to have supplied a copy of the report being presented against the plaintiff, for him to make a fair representation to the punishing authority, before it was to pass an order thereon. Hon’ble The Supreme Court of India in **ECIL vs. B. Karunakar**, (1993) 4 SCC 727, held that, “Hence it has to be held that when the Inquiry Officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the Inquiry Officer's report before the disciplinary authority arrives at its conclusion with regard to the guilt of innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges

levelled against him. A denial of the Inquiry Officer's report before the disciplinary authority take its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.”

11. 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...”

12. 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”.

13. During the course of hearing, learned State counsel has not been able to point out any jurisdictional error or illegality apparent on the record of the case so as to convince this Court to take a different view than the one taken by the Courts below, which have recorded concurrent findings of fact. They had carefully examined and sifted through the evidence before recording their respective findings and arrived at a judicious conclusion, which cannot be faulted with. There is no misreading or ignorance of evidence made out.

14. Having evaluated the matter, this Court finds there to be neither any question of law involved nor any perversity in the impugned judgments and decrees. Thus the present appeal is dismissed, being without any substance therein.

(AMAN CHAUDHARY)
JUDGE

14.12.2023
M.Kamra

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