

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA-560-2000 (O&M)
Date of Decision :21.02.2023

K.L. Kapur

...Appellant

Versus

Punjab School Education Board
and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Vivek Singla, Advocate for the appellant.

Mr. Ranjit Singh Kalra, Advocate and
Ms. Gagan Sekhon, Advocate for the respondent.

* * *

Harsimran Singh Sethi, J. (Oral)

The present regular second appeal has been filed challenging the judgment and decree dated 21.08.1999 passed by the Lower Appellate Court by which, judgment and decree of the trial Court dated 27.11.1996 has been set aside and the suit filed by the appellant-plaintiff was dismissed.

Certain facts need to be mentioned to appreciate the controversy in a correct perspective.

The appellant-plaintiff, who was working as Clerk with the Panjab University, Chandigarh, in the year 1969 was allocated Punjab School Education Board created in the said year. While working as Assistant with the respondent-Board on 27.04.1979, he was suspended and thereafter, a charge sheet was issued upon him on 29.08.1979. After the

reply, a show cause notice was issued to the appellant, which show cause notice was challenged by the appellant by filing a civil suit and the said show cause notice was set aside by the Civil Court vide order dated 03.10.1990.

A fresh enquiry was initiated against the appellant-plaintiff on the basis of the charge sheet dated 29.08.1979 and in reply to the said charge sheet, which was filed on 19.11.1991, the punishing authority being not satisfied, appointed an Enquiry Officer to conduct an enquiry into the allegations alleged in the said charge sheet. The Enquiry officer submitted his report on 24.03.1993 proposing the charges and a show cause notice was issued to the appellant on 27.08.1993 to file objections, if any. After considering the reply submitted by the appellant on 16.11.1993, punishment of stoppage of five annual increments with cumulative effect was imposed upon the appellant with further direction that no amount beyond the subsistence allowance already paid will be admissible for the period, for which, the appellant remained under suspension and his suspension period will only be counted for the purpose of continuity in service.

Against the said order of punishment dated 16.11.1993, appellant-plaintiff had filed an appeal which appeal was decided by the respondent-Board on 11.07.1995 rejecting the same. Ultimately, the appellant-plaintiff filed a civil suit challenging the order of punishment dated 16.11.1993 as well as order dated 11.07.1995 rejecting his appeal.

In reply to the civil suit filed by the appellant-plaintiff, the respondent-Board came out with the plea that though, the appellant-plaintiff is challenging the order of punishment on the ground that enquiry has not been conducted in the manner required for but he had accepted his guilt

before the Enquiry Officer hence, the allegations that the enquiry is not conducted as per law is incorrect.

Keeping in view the evidence which had come on record, the trial Court went into the conduct of the enquiry and decided to evaluate the evidence which had come before the Enquiry Officer so as to adjudicate whether finding recorded by the Enquiry Officer were correct or not. Ultimately, the civil suit filed by the appellant-plaintiff was allowed by the trial Court vide judgement and decree dated 27.11.1996 on the ground that certain documents asked for by the appellant-plaintiff were not supplied to him, which act on the part of the respondent-Board vitiated the enquiry proceedings.

Feeling aggrieved against the said judgement and decree dated 27.11.1996 of the trial Court, respondent-Board filed an appeal which appeal came to be allowed vide order dated 21.08.1999 holding that once the appellant-plaintiff had himself confessed to the allegations being correct and pleaded mercy and had given an undertaking not to repeat the act again, the adjudication by the trial Court with regard to the validity of the enquiry proceedings was bad as the trial Court acted in a manner as it being Appellate authority, which is not permissible. Further, the Lower Appellate Court held that even after being exonerated by the criminal Court, the department was well within its right to hold departmental proceedings and hence, set aside the judgement and decree of the trial Court dated 27.11.1996 and consequently, dismissed the suit filed by the appellant-plaintiff. Hence, the present regular second appeal.

First argument which has been raised by the learned counsel for the appellant-plaintiff is that holding the appellant guilty on the basis of his

confessional statement by the Enquiry Officer was not correct as Enquiry Officer was liable to corroborate the allegations with the evidence, which had come on record hence, the judgment and decree of the Lower Appellate Court, which places reliance upon the confessional part so as to hold the enquiry proceedings proper, is incorrect.

The said argument is totally fallacious and cannot be accepted. It is a settled principle of law that strict rules of evidence do not apply in the departmental proceedings and even proving of the allegations on the preponderance is good enough. The said principle of law has not been disputed by the learned counsel for the appellant-plaintiff

That being so, once it is a conceded position that appellant-plaintiff had given in writing before the Enquiry Officer with regard to the confession of allegations and prayed for leniency with the undertaking that he only committed the said act under the influence of some other officer concerned, which act will not be repeated again hence, it cannot be said that more evidence was required to prove the allegations. Once, the allegations were conceded by the appellant-plaintiff, the said confession was good enough for the punishing authority to pass an appropriate order on the charge sheet. After confession, even the enquiry proceedings were not required to be held. Hence, the argument of the learned counsel for the appellant-plaintiff that the Lower Appellate Court relied upon the confessional statement to hold the enquiry proceedings is not correct, needs no interference by this Court.

Hon'ble Supreme Court of India in **Civil Appeal No.440-1966**
titled as **The Central Bank of India Limited vs. Karunamoy Banerjee**

decided on 18.08.1967 has held as under:-

“18. In the case before us, we have already referred to the various proceedings that have taken place, from which it will be seen clearly that the workman was' at all stages, admitting the truth of the allegations made against him, by the management. In his communication, dated March 17, 1961, as well as, in his reply, to the charges, made by him on June 20, 1961, he has 'categorically admitted that he has committed a mistake in permitting the constituents concerned to overdraw, without obtaining the sanction of, the appropriate authorities. Even when the enquiry proceedings began, he had stated that he had nothing more to add, in respect of the charges framed against him. When once the workman himself has, in answer to the charge levelled against him, admitted his guilt, in our opinion, there will be nothing more for the management to enquire into. That was the position in the case before us. Therefore, we are not inclined to agree with the reasoning of the Labour Court that when there has been an admission' of guilt, by the respondent himself, it can still be stated, that there is a violation of the principles of natural justice merely because of the fact that the workman was examined, in the first instance. Nor, are we impressed with the further view, expressed by the Labour Court, that the way in which answers were elicited from the workman, showed that there has been a cross-examination, by the management, to obtain points in substantiation of the charges. We have gone through the entire examination of the respondent at the domestic enquiry, and we are satisfied that there is no such infirmity. In fact, the question of the management trying to obtain

answers to support the charges, does not arise at all, in this case because the respondent has consistently admitted his guilt, at all stages. On the other hand, the nature of the questions put to the respondent clearly indicate that the management, when once the workman had, admitted his guilt, was only giving him an opportunity to explain his conduct or to refer to circumstances, if any, which could be taken into account in extenuation of his conduct. The management had also permitted the respondent to put questions to the other two witnesses, examined during the enquiry, viz., Mr. Bhatena and Mr. Savkar.

19. We must, however, emphasize that the rules of natural justice, as laid down by this Court, will have to be observed, in the conduct of a domestic enquiry against a workman. If the allegations are denied, by the workman, it is needless to state that the burden of proving the truth of those allegations will be on the management; and, the witnesses called, by the management, must be allowed to be cross-examined, by the workman, and the latter must also be given an opportunity to examine himself and adduce any other evidence that he might choose, in support of his plea. But, if the workman admits his guilt, to insist upon the management to let in evidence above the allegations, will, in our opinion, only be an empty formality. In such a case, it will be open to the management to examine the workman himself, even in the first instance, so as to enable him to offer any explanation for his conduct, or to place before the management any circumstances which will go to mitigate the gravity of the offence. But, even then, the

examination of the workman, under such circumstances, should not savour of an inquisition. If, after the examination of the workman, the management chooses to examine any witnesses, the workman must be given a reasonable opportunity to cross-examine those witnesses and also to adduce any other evidence' that he may choose."

Learned counsel for the appellant-plaintiff further argues that on the same set of allegations, criminal proceedings were initiated, in which, the appellant-plaintiff had already exonerated hence, holding of appellant-plaintiff guilty in the departmental proceedings for the same act becomes automatically vitiated hence, the punishment imposed in the departmental proceedings cannot be sustained in the eyes of law especially, when confessional statement has been disbelieved by the criminal Court.

It is once again reiterated that in the criminal proceedings to prove the charges, evidence beyond reasonable doubt has to be proved whereas, in the departmental enquiry such evidence is not needed. Confessional statement has not been accepted by the criminal Court, keeping in view Section 24 of the Evidence Act, which benefit is not available to the appellant in the departmental proceedings. Hence, merely that confessional statement has not been accepted by the Criminal Court while considering the allegations on the criminal side, findings recorded in the departmental proceedings cannot be treated as perverse or without jurisdiction.

Even otherwise, as per the settled principle of law, even after acquittal in the criminal case, department is well within its right to initiate the departmental proceedings with regard to the same incident. For the

ready reference judgment of the Hon'ble Supreme Court of India in Civil Appeal No.1763-1764 of 2022 titled as State of Karnataka and another vs. Umesh decided on 22.03.2022 is reproduced herein:-

“13.The principles which govern a disciplinary enquiry are distinct from those which apply to a criminal trial. In a prosecution for an offence punishable under the criminal law, the burden lies on the prosecution to establish the ingredients of the offence beyond reasonable doubt. The accused is entitled to a presumption of innocence. The purpose of a disciplinary proceeding by an employer is to enquire into an allegation of misconduct by an employee which results in a violation of the service rules governing the relationship of employment. Unlike a criminal prosecution where the charge has to be established beyond reasonable doubt, in a disciplinary proceeding, a charge of misconduct has to be established on a preponderance of probabilities. The rules of evidence which apply to a criminal trial are distinct from those which govern a disciplinary enquiry. The acquittal of the accused in a criminal case does not debar the employer from proceeding in the exercise of disciplinary jurisdiction.”

Once, even after acquittal in the criminal case, department is well within its right to initiate the departmental proceedings, the argument of the learned counsel for the appellant that after acquittal no finding of the guilty could have been recorded by the Enquiry Officer cannot be accepted being contrary to the settled principle of law.

Learned counsel for the appellant-plaintiff further argues that after the submission of the enquiry report, punishing authority was required

to pass a detailed order, as to why, punishment needs to be imposed upon the appellant-plaintiff.

In the present case, the appellant-plaintiff had confessed to the guilt and had sought mercy with the undertaking not to repeat the act again. Under these circumstances, a speaking order was not at all required to be passed by the punishing authority to adjudicate the guilt of the appellant, which guilt had already been established by the Enquiry Officer in his report. Once, the report of the Enquiry Officer was accepted by the Punishing Authority, the argument of the learned counsel for the appellant that punishing authority was also required to evaluate the evidence while passing the order of punishment is not at all correct proposition of law. No rule has been brought to the notice of this Court, as per which, punishing authority is required to deal with the evidence once again in order to prove the allegations so as to pass an order of punishment. In the absence of any such rule, argument of the learned counsel for the appellant that order passed by the punishing authority imposing punishment upon the appellant-plaintiff was non-speaking order, cannot be accepted.

Learned counsel for the appellant-plaintiff further submits that the charge sheet was issued upon the appellant-plaintiff in the year 1979 and the punishment was imposed in the year 1983 and for a period of approximately 14 years, charge sheet was kept pending, which had caused prejudice to the appellant.

Keeping in view the fact that after the initiation of proceedings against the appellant-plaintiff in the year 1979, the appellant-plaintiff had initiated civil proceedings, which remained pending, due to which, disciplinary proceedings were also kept pending by the department hence,

the pendency of the same cannot be attributed to the respondent-Board.

Learned counsel for the appellant submits that more than one punishment has been imposed upon the appellant-plaintiff as not only five increments were stopped but the appellant-plaintiff has also not been paid any amount over and above the subsistence allowance and his suspension period has been treated only for the purpose of continuity in service.

The said argument of the learned counsel for the appellant-plaintiff is also fallacious and cannot be accepted. Once, the appellant-plaintiff was held guilty by the punishing authority, it was within the jurisdiction of the punishing authority to pass an appropriate order of punishment. Learned counsel for the appellant conceded that jurisdiction to decide the intervening period for which, the employee is to be remained under suspension is also with the punishing authority. As the appellant was punished after he was found guilty of the allegations, the act of the respondent-Board not to pay him over and above the subsistence allowance cannot be treated as arbitrary keeping in view the rules governing the service. The said order is not qua the punishment but is only qua the decision how the intervening period is to be treated therefore, argument that more than one punishment has been imposed upon the appellant-plaintiff by the impugned order is totally incorrect and cannot be accepted.

Keeping in view the above, judgment and decree of the Lower Appellate Court dated 21.08.1999 is perfectly valid and legal as no perversity on the facts or law has been brought to the notice of this Court so as to warrant any interference by this Court hence, the present regular second appeal is accordingly dismissed.

Civil miscellaneous application pending if any, is also disposed

of.

February 21, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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