

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA-4291-1999 (O&M)
Date of Decision :14.03.2023

Ram Chander Bajaj

...Appellant

Versus

Punjab State thorough Secretary
and others

...Respondents

RSA-2120-2000 (O&M)

Mukhtiar Singh (deceased) through LRs

...Appellants

Versus

State of Punjab an another

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. K.S. Dhaliwal, Advocate and
Mr. K.P.S. Virk, Advocate and Mr. J.S. Kang, Advocate
and Mr. Jatin Kundu, Advocate for the appellant
in RSA-4291-1999 and RSA-2120-2000.

Mr. Gurvinder Singh, AAG, Punjab.

* * *

Harsimran Singh Sethi, J. (Oral)

CM-1272-C-2023

Present application has been filed for placing on record
synopsis in compliance of order dated 13.09.2022 passed by a Coordinate
Bench of this Court.

Application is allowed. Synopsis are taken on record.

Main Appeals

By this common order, above mentioned two regular second appeals, which have arisen out of the common departmental proceedings which were held against both the appellants, are being disposed of.

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

The appellants in both the appeals were working with the respondent-department of Food and Supply Punjab. Keeping in view certain shortages/misappropriation of stock which were found, departmental proceedings were initiated against the employees concerned including the appellants herein. It has also come on record that due opportunities were given to the delinquent officials by serving them a charge sheet seeking their reply and thereafter an Enquiry Officer was appointed, who had summoned the record and recorded the statement of the witnesses, which witnesses were duly cross-examined by the delinquent officials. As per the enquiry report given by the Enquiry Officer, charges against the charged officials were proved after which, enquiry report was given to them for their comments and after going through the comments received, the impugned orders dismissing both the appellants from service were passed by the punishing authority. The appellants had filed appeals against the order of the punishing authority imposing punishment and after their appeals were dismissed, the appellants filed a civil suit challenging the order of imposing punishment of dismissal from service as well as rejecting their appeal.

Civil suits filed by both the appellants were dismissed keeping in view the evidence which had come on record and a finding has been recorded by the trial Court that due opportunity was given by the

department to the appellants to defend themselves in the departmental proceedings and it is only after the charges were proved against them, the order of punishment was passed and keeping in view the settled principle of law that Civil Court is not to sit in appeal over the decision of the punishing authority, especially when nothing was brought on record to show that disciplinary proceedings conducted against both the appellants were in violation of the rules governing the service.

Aggrieved against the judgment and decree of the trial Court, the appellants have filed appeals before the Lower Appellate Court, which appeals were also dismissed upholding the judgment and decree of the trial Court, hence, the present regular second appeal.

Learned counsel for the appellants argues that the enquiry proceedings were conducted in a manner contrary to the rules governing the service. Learned counsel for the appellants further argues that preliminary enquiry report was brought on record but the officer, who conducted the preliminary enquiry was not examined which has caused prejudice to the appellants hence, the final enquiry report and consequent order of punishment as well as order rejecting the appeals of the appellants are liable to be set aside.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It may be noticed here that enquiry report has not been challenged by the appellants even in the civil suit though, the grievance is being raised now qua the non-examination of the author of the preliminary report but no such objection was raised during the course of the enquiry

proceedings. Learned counsel for the appellants has not been able to point out any evidence that any such objection was ever raised by the appellants during the enquiry proceedings. In the absence of any such objection raised, enquiry proceedings cannot be termed to be held in violation of Rules governing the service.

Even otherwise, the evidence required to prove the charges in a disciplinary proceedings is of preponderance. Once, the preliminary report was given by an officer concerned after associating the appellants, a non-examination of the author of the preliminary enquiry report cannot be treated to be sufficient ground to declare the enquiry proceedings vitiated especially, when no prejudice caused has been brought to the notice of this Court.

Even otherwise, keeping in view the settled principle of law, the Civil Court or even the High Court while examining the order passed by the punishing authority cannot sit in appeal over the decision of the punishing authority and judicial intervention is only admissible to the extent as to whether there is any evidence which has come on record to prove the allegations before the enquiry officer and the punishment which has been imposed, has been imposed by following rules governing the service or punishment is such which is shocking and disproportionate to the charges alleged and proved.

Hon'ble Supreme Court of India in **Civil Appeal 7939-7940-2022** titled as **Subrata Nath vs. Union of India and others** decided on 23.11.2022 settled the question of law with regard to jurisdiction of the Court to interfere in the matter relating to disciplinary proceedings.

Relevant paragraphs of the judgment are as under:-

“22.To sum up the legal position, being fact finding authorities, both the Disciplinary Authority and the Appellate Authority are vested with the exclusive power to examine the evidence forming part of the inquiry report. On finding the evidence to be adequate and reliable during the departmental inquiry, the Disciplinary Authority has the discretion to impose appropriate punishment on the delinquent employee keeping in mind the gravity of the misconduct. However, in exercise of powers of judicial review, the High Court or for that matter, the Tribunal cannot ordinarily reappreciate the evidence to arrive at its own conclusion in respect of the penalty imposed unless and until the punishment imposed is so disproportionate to the offence that it would shock the conscience of the High Court/Tribunal or is found to be flawed for other reasons, as enumerated in P. Gunasekaran (supra). If the punishment imposed on the delinquent employee is such that shocks the conscience of the High Court or the Tribunal, then the Disciplinary/Appellate Authority may be called upon to re-consider the penalty imposed. Only in exceptional circumstances, which need to be mentioned, should the High Court/Tribunal decide to impose appropriate punishment by itself, on offering cogent reasons therefor.

23. Applying the law laid down above to the instant case, we are of the view that the High Court ought not to have interfered with the findings of fact recorded by the Disciplinary Authority. Charge-1 levelled against the respondent pertained to negligence and dereliction of duty attributed to him for having failed to prevent theft of 800 kgs of copper wires lying at Alif Nagar scrap yard under his security cover while performing duty in the late hours of 7th November, 2007 upto the early hours of 8 th November, 2007. Records reveal that the Disciplinary Authority has minutely examined the entire evidence brought on record including the deposition of eight prosecution witnesses each of whom have corroborated the charges levelled against the respondent, duly supported by documentary and circumstantial evidence for arriving at the conclusion that the Articles of Charge-I stood proved against the respondent. Pertinently, the respondent did not produce any defence witness and the documents produced by him did not prove anything in his favour.”

Once, a finding of fact has been recorded by the Courts below on the basis of evidence on record that due opportunity was given to the appellants to defend themselves in enquiry proceedings as not only charge sheet was served upon them but even their replies were considered before appointing an enquiry officer and the enquiry officer has proved all the charges against the appellants on the basis of the evidence which has come

on record and even the witnesses, who appeared before the enquiry officer were cross-examined and the said enquiry report was given to the appellants for their comments and it was only thereafter order of punishment was passed, no grievance can be raised by the appellants to contend that departmental proceedings were held in a manner contrary to the rules governing the service. Once, nothing has been brought on record to show that the findings recorded by the Court below qua holding of enquiry in the manner required under law to be perverse, no interference is called for by this Court in the present regular second appeals.

Last argument raised by the learned counsel for the appellants is that the punishment which has been imposed upon the appellants is disproportionate to the charges alleged as well as discriminatory as some of the delinquent officials, who were also charge sheeted, were retained in service and different punishment was imposed upon them.

Qua the said argument, it may be noticed that the allegations against the appellants was of embezzlement. Once, the embezzlement has been proved, it cannot be said that punishment of dismissal from service imposed is shocking and as per the settled principle of law, the quantum of embezzlement is also no ground for imposing a lesser punishment. In the facts and circumstances of the present case, where the allegations have already been proved against the appellants qua the embezzlement, no interference is called for by this Court qua the argument being raised by the learned counsel for the appellants.

With regard to the argument that punishment imposed is discriminatory as certain officers, who were also chargesheeted have been

retained in service by imposing different punishment, the same is within the jurisdiction of the punishing authority, keeping in view the allegations alleged and evidence which has come on record qua the different delinquent qua their participation in the act alleged. Learned counsel for the appellants conceded the fact before this Court that one B.S. Chauhan was working on higher post and was only a supervisory officer whereas, allegation against the appellants was that they had purchased the stock concerned which stock items were found less in numbers, which proved embezzlement, which fact alone changes the colour as punishments have been imposed keeping in view the allegations alleged against a particular official which also shows that punishing authority applied its mind even while imposing punishment qua different role of different delinquents though, involved in the same act.

Keeping in view the facts and circumstances narrated hereinbefore, no interference is called for by this Court in the judgments and decrees of the Court below and the present regular appeals are accordingly dismissed.

Photocopy of this order be placed on the file of connected case.

March 14, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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