

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

RSA-4890-1999

Date of Decision: 21.12.2023

Ajit Ram Saini

...Appellant

Versus

State of Punjab and others

...Respondents

CORAM : HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Dhruv Walia, Advocate for the appellant.

Mr. Manipal Singh Atwal, DAG, Punjab.

Mr. Deepak Suri, Advocate for respondent No.4.

AMAN CHAUDHARY, J

1. Challenge in the present regular second appeal is to the concurrent findings of facts returned by Courts below in favour of the defendant-respondent in a suit filed for recovery of Rs.1 lakh as damages for wrongful proceedings against the plaintiff-appellant. For the sake of convenience, parties shall be referred as per their original status.

2. The facts in a nutshell are that disciplinary proceedings were initiated against the plaintiff-Ajit Ram Saini, vide memo dated 05.07.1984, wherein an enquiry was conducted, since the cement samples taken were found not to be upto the standards. The proceedings were pending till 04.05.1989 and during the interregnum, he retired on 30.09.1986. The suit has been filed for recovery of damages to the tune of Rs.1,00,000/- on account of wrongful action on part of the defendants in harassing him by involving him in disciplinary proceedings in which he was exonerated after 5 years. Notice under Section 80 CPC was also served to the defendant Nos. 1, 3 and 4 but they failed to respond to it.

3. The defendants in their written statement assailed the validity and legality of the notice under Section 80 CPC, while also raised preliminary objections that, necessary permission should be taken from Government before instituting a case against its officers/officials; suit of the plaintiff was time barred and no cause of action had also arisen. Merely facing the departmental enquiry does not tantamount to harassment, humiliation or degradation, as the same was conducted by the competent authority.

4. The learned trial Court after framing the issues and on the basis of the evidence led by the parties, dismissed the suit by observing that the enquiry was dropped on a technical ground, since the procedure prescribed under the instructions was not followed. However, it held that the same does not give rise to a cause of action, as long as it is conducted in good faith or on some complaint, being in the interest of the State and therefore, the plaintiff was not entitled to any damages.

5. Aggrieved plaintiff filed an appeal, which came to be dismissed by the lower appellate Court, wherein it was observed that there have been no instances of defendants harassing him. The acts performed by the officials of Vigilance Department were in pursuance of their official duty and as per their capacity and the department proceedings were also dropped. The findings of the trial Court were accordingly upheld.

6. Hence, the present second appeal.

7. Learned counsel contended that the Courts below gravely erred in non-suiting the plaintiff, without taking into consideration that the proceedings were initiated against him on the anvil of an anonymous complaint. He was unnecessarily made to go through the departmental enquiry without being at fault which consequently resulted in he having been exonerated therefrom. He was

therefore entitled to the damages as claimed on account of the humiliation caused to him.

8. On the other hand, learned counsel for the State as also for respondent No.4 have submitted that after appreciating the evidence led by the parties and the law, the trial below had rejected the claim of the plaintiff by dismissing the suit, which was rightly affirmed by the learned lower Appellate Court.

9. Heard the learned counsel on either side and gone through the paper book as well as the record.

10. Notably, the plaintiff was working as an Executive Engineer, at Nakian Power House (Anandpur Sahib Hydel Project), when a complaint was received that work on power house II was below specifications, hence, on 06.10.1980 the Vigilance Department, Punjab took a sample of concrete by breaking a portion thereof in order to make a comparison with the fresh concrete. Thereafter, a memo dated 05.07.1984, was issued by defendant No.4 vide which the allegations of using less cement were levelled against the plaintiff, since he was incharge of the quality control. It being a matter of serious nature, since the sample of concrete taken from a dam were found to be below specifications, thus, it was in the larger interest of administration that the Vigilance Department had enquired into the matter in order to ascertain the lapse was on whose account and on basis thereof, the disciplinary proceedings were initiated against some officers/officials, including the plaintiff. It is due to the samples of the concrete not having been taken by following the proper method that led to his exoneration of the charges of misconduct levelled against him and two others, vide a letter dated 04.05.1989. It, in other words, cannot be concluded that either the complaint was false or the proceedings gave a clean chit to him. It is also not been established by

the plaintiff that he was singled out or that the officials had any animus against him, there being no possibility of an inference drawn in this regard, in absence of any evidence led, as bald pleadings cannot be relied upon.

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 counsel for the appellant 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 have 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

21.12.2023

Hemant

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