

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(207)

RSA-558-1999 (O&M)

Date of Decision : February 08, 2023

Union of India and others

.. Appellants

Versus

Gurmit Singh

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Aseem Aggarwal, Advocate, for the appellants.

Mr. Arun Abrol, Advocate, for the respondent.

HARSIMRAN SINGH SETHI J. (ORAL)

Present Regular Second Appeal has been filed against the judgment of the lower Appellate Court dated 04.09.1998 by which, the judgment and decree of the trial Court dated 30.11.1995 has been set aside and the suit filed by the respondent-plaintiff was allowed.

The facts which has led to the filing of the present Regular Second Appeal is that the respondent was working with the CRPF and was posted in District Moga, Punjab. In the month of May, 1990, he was posted at Moga, an incident took place between him and civilians there for which, the proceedings against him under the Central Reserved Police Force Act were initiated.

The lower Appellate Court has allowed the appeal filed by the

respondent-plaintiff by holding that the dismissal order of an employee from service without holding an enquiry against him and even without ascertaining the actual facts which has led to the action against an employee under the CRPF Act, could not have been passed and the respondent-plaintiff was directed to be reinstated in service but without back wages.

Learned counsel for the appellants has only raised one argument in the present appeal that the trial Court at Gurdaspur where the civil suit was filed by the respondent-plaintiff did not had the jurisdiction to entertain the suit/adjudicate the suit on the ground that when the action was taken against the respondent-plaintiff, he was posted in District Moga.

Learned counsel for the appellants argues that the findings on issue No.4 by the lower Appellate Court are not correct and therefore, the suit was liable to be dismissed on the ground the Court trying the said suit filed by the respondent-plaintiff did not had the jurisdiction to adjudicate the same.

I have heard learned counsel for the appellants and have gone through the record with his able assistance.

Though, it is a conceded position that at the time when the incident occurred, the respondent-plaintiff was posted at Moga. After the order of dismissal was passed, the appellants filed an appeal while the respondent-plaintiff was residing at his native village Gurdaspur. The said appeal was decided by the respondent and the order was conveyed to him at his address given in Gurdaspur. The lower Appellate Court decided the question of jurisdiction in favour of the respondent-plaintiff keeping in view the order passed by the DIG rejecting the appeal was conveyed to him at his native village Khanewal in District Gurdaspur.

Learned counsel for the appellants has not been able to dispute the said fact that the appeal preferred by the respondent-plaintiff was filed while he was residing in Gurdaspur and the order dismissing the said departmental appeal was conveyed to him at the said given address in Gurdaspur (Punjab) only.

It is a settled principle of law that the order passed by the punishing authority merges in the order of appeal. Once, the order in appeal was passed by the authorities concerned and conveyed to respondent-plaintiff at Gurdaspur, it cannot be said that the Court at Gurdaspur did not had the jurisdiction to decide the suit.

The doctrine of merger is a settled principle of law as settled in ***Civil Appeal No.128 of 1955 titled as Commissioner of Income Tax, Bombay vs. Amritlal Bhogilal and Co., decided on 28.04.1958.*** The relevant paragraph 10 of the said judgment is as under:-

“10. There can be no doubt that, if an appeal is provided against an order passed by a tribunal, the decision of the appellate authority is the operative decision in law. If the appellate authority modifies or reverses the decision of the tribunal, it is obvious that it is the appellate decision that is effective and can be enforced. In law the position would be just the same even if the appellate decision merely confirms the decision of the tribunal. As a result of the confirmation or affirmance of the decision of the tribunal by the appellate authority the original decision merges in the appellate decision and it is the appellate decision alone which subsists and is operative and capable of enforcement; but the question is whether this principle can apply to the Income-tax Officer's order granting registration to the respondent.”

The same question of law again came to be decided by the

Hon'ble Supreme Court of India in *Civil Appeal No.12309 of 1996 titled as Kunhayammed vs. State of Kerala and another, decided on 19.07.2000.*

The Hon'ble Supreme Court of India reiterated the law as settled in *Amritlal Bhogilal's (supra)*.

By applying the said doctrine of merger in the present case, the order of punishment merged in the order passed by the Appellate Authority, which order passed in appeal was conveyed to the respondent-plaintiff at Gurdaspur, hence, the suit filed by the respondent-plaintiff has been held to be within the territorial jurisdiction of Gurdaspur.

Keeping in view the facts and settled principle of law noticed hereinbefore, finding recorded cannot be treated as perverse or against law as, it has already been established on the basis of the evidence which has come on record that the order passed dismissing the respondent from service merges with the order passed by the DIG dismissing his appeal, which order was concededly conveyed to him in Gurdaspur. That being so, it cannot be said that the findings recorded by the lower Appellate Court in paragraph 16 of the judgment qua the maintainability of the suit is perverse to any evidence or fact on record.

Even otherwise, it is not a case that the respondent-plaintiff was posted in one State and the legal proceedings were initiated in another State. The order of punishment was passed in the State of Punjab qua an employee, who was in All India Service and the proceedings initiated by him were also in the State of Punjab. The technical arguments being raised by the respondent is not available to them.

Keeping in view the above, the findings recorded by the Court below qua the maintainability of the present suit filed by the respondent-

plaintiff needs no interference by this Court.

No other argument was raised by the respondent during the course of hearing qua any other aspect.

Keeping in view the above, no interference is called by this Court in the present Regular Second Appeal and the same is dismissed.

As the main appeal has been dismissed, applications i.e. CM-12542-C-2017 and CM-1042-C-1999 also stand dismissed.

February 08, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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