

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA-804-2001 (O&M)
Date of Decision :12.01.2023

The Punjab School Education Board
and others

...Appellants

Versus

Malak Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. D.V. Sharma, Senior Advocate with
Mr. Tushar Sharma, Advocate for the appellants.

Mr. Raj Kumar Bhatia, Advocate for respondent.

* * *

Harsimran Singh Sethi, J. (Oral)

In the present regular second appeal filed by the Punjab School Education Board the challenge is to the judgement of the lower Appellant Court dated 06.10.2000 by which, the judgment of the trial Court dated 16.05.1998 has been set aside and the suit filed by the respondent-plaintiff has been decreed.

Before considering the arguments raised by the learned counsel for the respective parties, certain facts need to be noticed.

The respondent-plaintiff was appointed as Clerk with the appellant-Board on 08.03.1983 and on 18.07.1990 he was placed under

suspension. The allegations against the respondent-plaintiff were that he had published result of 20 private candidates of District Sangrur related to the matriculation examination held in March, 1990 despite the fact that neither admission form nor award list of the said candidates was available with the appellant-Board. Immediately thereupon, show cause notice was issued to the respondent-plaintiff on 30.07.1990 proposing termination of his services. An interim reply to the show cause notice dated 30.07.1990 was filed by the respondent-plaintiff demanding certain documents, which were being relied upon so that he could properly defend himself. Thereafter, the said show cause notice dated 30.07.1990 was withdrawn and charge sheet dated 20.11.1990 was issued to the respondent-plaintiff on the same allegations as contained in show cause notice dated 30.07.1990.

After issuance of the charge sheet, the respondent-plaintiff demanded the documents which were being relied upon qua the allegations as contended in the charge sheet dated 20.11.1990 as no list of documents was attached with the charge sheet and as per the respondent-plaintiff even the list of witnesses was also not supplied alongwith the charge sheet but no reply was given by the appellant-board to the request of the respondent-plaintiff and without waiting for the reply of the respondent-plaintiff qua the charge sheet, an Enquiry Officer was appointed. Thereafter, the Enquiry Officer submitted the enquiry report and on the basis of the said enquiry report, a show cause notice dated 29.05.1991 was issued to the respondent-plaintiff. Respondent-plaintiff again demanded copies of the documents, which were being relied upon but without giving copies of the documents, an order dated 31.01.1992 dismissing the respondent-plaintiff from service was passed.

Respondent-plaintiff filed appeal against the order of dismissal, which was heard by the Board which also included the authority who passed the order of punishment and the said appeal was dismissed.

Thereafter, a review petition was filed by the respondent-plaintiff, which was not placed before the Board and the same was dismissed by the Chairman alone. Feeling aggrieved, respondent-plaintiff filed civil suit challenging the order dismissing him from services as well as the orders passed in the appeal by the Board and review petition decided by the Chairman. The said civil suit was dismissed by the trial Court vide order dated 16.05.1998 and against the said order, an appeal was preferred by the respondent-plaintiff, which came to be decided on 06.10.2000.

The lower Appellate Court pointed out that alongwith the charge sheet, no document was served and thereafter, despite demand, no document was provided to the respondent-plaintiff, which hampered the defence of the respondent-plaintiff and further, against the order of dismissal, while considering the appeal, even the punishing authority was present at the time of deciding the appeal, which vitiate the process of deciding the appeal and even the review petition filed was not placed before the appellate authority but was dismissed by the Chairman, who had passed the order of dismissal. On this ground, the lower Appellate Court came to the conclusion that enquiry proceedings against the respondent-plaintiff were not conducted in accordance with law and respondent-plaintiff was not given proper opportunity to defend himself hence, order of dismissal from service as well as order passed in the appeal and review petition were set aside and a direction was issued to the department to reinstate the respondent-plaintiff in service.

The said order of the lower Appellate Court dated 06.10.2000 has been impugned in the present regular second appeal, which was filed in the year 2001 i.e. 21 years ago.

It may be noticed herein itself that as there was no interim order granted in favour of the appellant-Board in the present regular second appeal, respondent-plaintiff was reinstated in service and he continued to discharge his duties till he attained the age of superannuation on 31.05.2017. Though, the respondent-plaintiff has already retired but his pensionary benefits have been withheld by the department on the ground of pendency of the present regular second appeal.

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

Learned counsel for the appellants argues that the findings recorded by Court below that no documents which were asked for by the respondent-plaintiff were supplied to him, is incorrect for the reason that in case respondent-plaintiff wanted to inspect any document, he was free to do so and in fact he has inspected the documents also.

Learned counsel for the respondent-plaintiff disputes the same and submits that no evidence has come on record to show that any document was ever served along with the charge sheet which was the requirement as per law and further, the document which was stated to be the basis of the allegations, was never either produced before the Enquiry Officer or shown to the respondent-plaintiff. The law on the said issue is clear that when disciplinary proceedings are initiated against the delinquent, while issuing charge sheet which includes summary of the allegations, the documents which are relied to form a prima facie view regarding the allegations as well

as those are to be relied during the enquiry proceedings and the list of witnesses are to be served along with the charge sheet so that the delinquent should know what he has to defend during the enquiry proceedings. The said question of law has already been settled in CWP-12573-2012 titled as **Union of India and others vs. Sushil Kumar Vashisht and another** decided on 02.07.2015. Relevant paragraphs of the judgment are as under:-

“(8) We have perused the records. The Disciplinary Authority at the time of framing of article of charges was required to furnish list of documents and witnesses. In the present case, respondent No.1 has not been provided list of documents and witnesses, while furnishing the charge memo and seeking his explanation. It is mandatory to furnish list of documents and witnesses to the concerned employee before he is subjected to disciplinary proceedings. On this issue, the Apex Court has held that the employee is entitled for list of documents and witnesses and if the same is not furnished, the entire enquiry proceedings would be vitiated.

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(11) The Disciplinary Authority is bound by the procedure laid down in the CCS (CCA) Rules, 1965 and it cannot side track or ignore. It was mandatory on its part to furnish list of documents and witnesses while seeking explanation to the charges/charge memo. In not furnishing resulted in violation of principles of natural justice. The Judicial Member (third member) has noticed the aforesaid lacuna among other grounds and allowed the application. We requested the learned counsel for the petitioners to produce necessary materials regarding furnishing of list of

documents and witnesses. He was unable to produce any materials to demonstrate that list of documents and witnesses have been furnished to respondent No.1. Since the non- furnishing of list of documents and witnesses has resulted into severe prejudice to the defence plea of respondent No.1, on this ground alone, the writ petition is liable to be rejected.”

Learned Senior counsel appearing for the appellants concedes that keeping in view the evidence which has come on record, including the charge sheet served upon respondent-plaintiff, no list of document was ever appended alongwith the charge sheet, which were to be relied upon during the disciplinary proceedings and in fact have been relied by the Enquiry Officer during the enquiry proceedings. It has further been conceded that there was also no list of witnesses appended with the charge sheet which was issued to the employee concerned. That being so, it cannot be said that the disciplinary proceedings conducted against the respondent-plaintiff were in a manner required as per law so as to give him proper opportunity to defend himself against the allegations alleged. The prime rule which needs to be followed during the disciplinary proceedings is that a charged officer/official needs to be given ample opportunities to defend himself qua the allegations alleged against him especially, the documents being relied upon and the list of witnesses, which are to be examined.

In the present case, no such procedure has been followed, which has already come on record in the order passed by the lower Appellate Court.

Learned Senior counsel appearing for the appellants has not been able to show that the charge sheet issued to the respondent-plaintiff

contained the list of witnesses or the list of documents, which were served upon the respondent-plaintiff. Mere assertion that it was the duty of the charged officer/official to examine those documents, does not suffice the fact that the due opportunity was given to the delinquent official to defend himself.

A charge sheet has been issued by the department and it is the duty of the department to prove those charges and that too by giving due opportunity to the charged officer/official for defence. In the present case, the said due opportunity is missing as even prior to the issuance of charge sheet when show cause notice was issued, the documents were demanded by the respondent-plaintiff, which were never supplied to him. Hence, keeping in view the settled principle of law in *Sushil Kumar Vashisht (supra)*, disciplinary proceedings were conducted in a manner causing prejudice to the respondent-plaintiff hence, rightly been declared illegal by the lower Appellate Court.

Learned counsel for the respondent-plaintiff has submitted that the allegations against the respondent-plaintiff was that he had declared the result of the 24 candidates without there being any examination form or award list of the said candidates and the document being asked for by the respondent-plaintiff was in regards to the said declaration of result by him so as to prove that respondent-plaintiff had declared the said result so as to be guilty of misconduct and the said document is very material to prove that it was the respondent-plaintiff, who had declared the said result. In the absence of any such document to be placed on record or in the absence of furnishing the said document to the respondent-plaintiff, no charges could have been proved against the respondent-plaintiff hence, in the absence of

said document either being appended alongwith the charge sheet or in the absence of the same supplied to the respondent-plaintiff during the enquiry proceedings, vitiates the whole enquiry proceedings. Learned Senior counsel has not been able to prove from the evidence on record that said document was ever served upon the respondent-plaintiff at any given point of time during the conduct of the disciplinary proceedings. Keeping in view the said factual position, it cannot be said that finding recorded by the lower Appellate Court that required documents were not supplied to the respondent-plaintiff is incorrect.

Further discrepancy in deciding the appeal as well as review petition also exists in the present case. Order dated 31.01.1992, dismissing the respondent-plaintiff from services was passed by the Chairman against which order, the respondent-plaintiff had filed an appeal and it is a conceded position that Chairman was also present during the proceedings when the Board decided the appeal filed by the respondent-plaintiff against the order of dismissal of service passed by the Chairman. It is the settled principle of law that an officer who has passed the order, which is a subject matter of appeal, cannot be present has already been decided by this Court in **CWP-9757-2022** titled as **Kuldeep Singh Saini vs. State of Haryana and others** decided on 07.09.2022. Relevant paragraphs of the judgment are as under:-

“6. The only question which arise in the present petition is whether, the decision which has been taken by the appellate authority in case of the petitioner in respect of the impugned order of punishment dated 04.10.2018 is valid or is vitiated as the authority which passed the order dated

04.10.2018 i.e. the punishing authority was also part of the appellate authority and actively participated in arriving at the decision which was taken in respect of the appeal preferred by the petitioner against the said order of punishment.

7. Learned counsel for the petitioner cites the judgment in Writ Petition No.24629 of 2012 titled as Mohd. Chand and another vs. State of U.P. And others, decided on 22.05.2012 passed by the Allahabad High Court, wherein, it has been held that the same person, who has passed the basic order of punishment cannot participate so as to decide appeal preferred against the order passed imposing punishment but the order passed has to be tested neutral person. The relevant paragraph of the judgment is as under:-

“There is another famous dictum based upon the principle of natural justice enshrined by Lord Hewart, C.J., which says "Justice should not only be done but should manifestly and undoubtedly be seen to be done" * Thus, it is cardinal that in the matter of dispensation of justice certain rules have to be observed which manifestly ensure that justice has been done and for that purpose it is essential that veracity of the judgment ought not to be allowed to be tested by the same person in appeal rather it should be tested by another person. Earlier as per the practice prevalent in the High Courts of India in the absence of any specific prohibition in law a practice prevailed of including judges in Bench against whose judgment the appeal is to be heard but slowly this practice was given up and fell in desuetude. In AIR 1963 SC 1 R. Vishwanathan Vs. Abdul Wajid while dealing with the issue of the practice of having judges making a reference to the larger Bench as a member of the larger Bench, it was

observed that it is desirable that a judge should not take part in the determination of appeal against his own decision unless the statute expressly authorizes him to do so. The principle is that one who has made the decision having a judicial flavour should not participate in appeal arising from such a decision.”

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9. In this regard, once the same person who has passed the punishment/basic order, participates in the appeal proceedings so as to decide the legality of his/her order, mere participation is good enough to vitiate the said order.

10. The justice should not only be done but seems to have been done is the principle which needs to be followed and in the present case where the same Officer who has passed the order of punishment, also participates in respect of the appeal preferred against his/her own order, the principle mentioned hereinbefore, is violated.”

Keeping in view the fact that it is a conceded position that in the present case, the Chairman, who has passed the punishment order was present while deciding the appeal, the order rejecting the appeal cannot be held to be valid one and the lower Appellate Court has rightly held that process envisaged under law to decide the appeal has not been followed, which vitiates the order passed in the appeal.

Even thereafter, a review petition was filed by the respondent-plaintiff against the order passed by the Board, which review was also decided by the Chairman in his personal capacity without putting the same before the Board. That being so, once an appeal was to be decided by the Board, rejection of a review petition filed against the order of the Board could not have been decided by the Chairman alone in his own capacity.

These irregularities clearly show that respondent-plaintiff was not proceeded in the manner required while holding disciplinary proceedings, hence, no interference is called for in the order 06.10.2000 passed by the lower Appellate Court.

Keeping in view the fact which exists now in the year 2023, judgment of the lower Appellate Court stands executed as the respondent-plaintiff was reinstated in service and he has already worked for a period of 17 years after his reinstatement in service and had attained the age of superannuation on 31.05.2017 and retired.

That being so, there will be no justification in remanding the case back to the authorities concerned for passing an appropriate order on the disciplinary proceedings when once the respondent-plaintiff had attained the age of superannuation and retired and is no longer in service especially, when the respondent-plaintiff had worked with the appellant-department for a period of 17 years after the judgement of the lower Appellate Court and that too without any blemish record as nothing has brought to the notice of this Court that there was any allegations against the respondent-plaintiff in those 17 years of any misconduct.

Keeping in view the above, no ground for interference in the order dated 06.10.2000 passed by the lower Appellate Court is made out and the appeal is accordingly dismissed.

Qua the release of the pensionary benefits to the respondent-plaintiff, this Court has been informed that respondent-plaintiff has already filed a writ petition qua the said relief, which claim will be decided in the said writ petition.

CM-1675-C-2001

Present application is also dismissed.

January 12, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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