IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(201) **RSA-2507-2005**
Date of Decision : April 18, 2023

State of Punjab and others **.. Appellants**

Versus

Lavinder Pal Singh **.. Respondent**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Gurvinder Singh, Assistant Advocate General, Punjab.

Mr. R.S. Randhawa, Advocate and
Mr. Taranum Madaan, Advocate, for the respondent.

HARSIMRAN SINGH SETHI J. (ORAL)

Present Regular Second Appeal has been filed by the State challenging the judgment and decree of the lower Appellate Court dated 02.04.2005 by which, the judgment and decree of the trial Court dated 06.01.2001 has been set aside and the suit filed by the respondent-plaintiff has been allowed.

Certain facts needs to be mentioned for the correct appreciation of the controversy in question.

The respondent-plaintiff was appointed as Junior Auditor on 14.10.1980. While working on the said post, he was suspended along with the others w.e.f. 28.04.1994 and a charge-sheet was served upon him. Along with the respondent-plaintiff, one Arjan Singh, Raj Dulari and Ramji

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Das Sharma were also proceeded against in departmental proceedings on the same allegations of embezzlement. Enquiry Officer was appointed to find out the truth in the allegations, negligence in performance of duties was proved but the embezzlement of money was not proved. The enquiry report was given to all the employees who were being proceeded against and ultimately on 15.05.1997, punishment of stoppage of three increments with cumulative effect was passed and the period of suspension was ordered to be treated as a leave of kind due. It may be noticed that the respondent-plaintiff filed a civil suit challenging the said order of punishment whereas, the other employees, who were also proceeded against in the joint enquiry namely Arjan Singh, Raj Dulari and Ramji Das Sharma challenged similar order of punishment by filing CWP No.15807 of 1998, CWP No.16004 of 1998 and CWP No.16005 of 1998 respectively.

Keeping in view the evidence which came on record, the trial Court interpreted the same and held that as the enquiry was held against the respondent-plaintiff qua the allegations in a manner required under the rules and the Civil Court cannot sit in appeal over the decision of the Department, hence, no relief qua the punishment imposed can be granted in the favour of the respondent-plaintiff and the said suit was dismissed vide judgment and decree dated 06.01.2001.

Feeling aggrieved against the said decision, the respondent-plaintiff filed an appeal before the lower Appellate Court and the said appeal came to be decided on 02.04.2005 wherein, the lower Appellate Court held that the allegation of embezzlement were not proved but only the allegations of negligence in performance of duties was proved by the enquiry officer and even the said enquiry was not conducted in a manner

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envisaged under the Rules, the judgment and decree of the trial Court dated 06.01.2001 was set aside and the order of punishment imposing the punishment of stoppage of three increments with cumulative effective was set aside and the consequential benefits were allowed but with liberty to the Department to hold a fresh enquiry into the allegations.

The said judgment and decree of the lower Appellate Court dated 02.04.2005 is under challenge in the present Regular Second Appeal.

It may be noticed here that the other employees, who were also proceeded against along with the respondent-plaintiff and were also punished along with the respondent-plaintiff had filed writ petition before this Court challenging the imposition of the punishment and succeeded in their writ petition as Coordinate Bench of this Court by a common decision dated 25.05.2016 held that the enquiry proceedings were not held in a manner prescribed under the Rules and the punishment imposed upon them was set aside.

Learned counsel for the appellants-State submits that no justifiable reason has been given by the lower Appellate Court to hold that the enquiry proceedings conducted against the respondent-plaintiff were without following the due process envisaged under law or there was no evidence with the enquiry officer to hold the respondent-plaintiff guilty of the allegations, hence, the judgment of the lower Appellate Court dated 02.04.2005 is liable to be set aside.

Learned counsel for the respondent-plaintiff submits that due reasons have been given by the lower Appellate Court while holding that the rules required to be followed for holding the departmental enquiry were not followed especially that the preliminary enquiry report was not supplied

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but the same was relied upon by the enquiry officer to arrive at the findings given in the enquiry report and there was no opportunity given to cross-examine the employees, hence, the enquiry proceedings were conducted in a manner contrary to the rules and that enquiry proceedings were completed within a period of one day. Hence, the judgment of the lower Appellate Court dated 02.04.2005 needs to be maintained.

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

It may be noticed that against four employees, joint proceedings were conducted with regard to the allegations of embezzlement of funds. All the four employees were held guilty in the said disciplinary proceedings, which were conducted by the same enquiry officer as the disciplinary proceedings were joint in nature. While examining the said disciplinary proceedings, a Coordinate Bench of this Court while deciding the writ petitions filed by the other similarly situated employees, who were also proceeded against along with the respondent-plaintiff, following observations were made, which are reproduced hereunder for the ready reference:

> *" 3. While in service all the petitioners, including a fourth non-applicant, were charge-sheeted for major misconduct alleging embezzlement of employer's money. They were put to departmental proceedings. The Enquiry Officer appointed by the respondent department issued notice to the petitioner on January 4, 1996 calling him [and the other petitioners] to appear before him on January 10, 1996. The petitioners pleaded not guilty and claimed trial. On January 10, 1996 the enquiry officer concluded the entire inquiry on a single day without giving them any opportunity to lead evidence in their*

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defence. Prosecution witnesses submitted affidavits against the petitioners and in their absence the 'evidence' was taken on the enquiry file. Opportunity of cross-examination was denied. The work of the enquiry officer to say the least deserves to be seriously criticized for lack of knowledge of rudimentary procedure in holding a domestic trial in violation of set procedure in Rule 8 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970. The work of the enquiry officer leaves his conduct in serious doubt and shows that he was biased against the petitioner. The enquiry officer acted as judge, prosecutor and the presenting officer all rolled into one. A perusal of the inquiry report shows that evidence was not gathered by affording reasonable opportunity to the petitioners todefend themselves and none of the charges were actually proven there being no legal evidence to arrive at the stage of consideration of alleged misconduct on a preponderance of probabilities and yet he held the charges were proven against the petitioners in a most slipshod manner.

4. In the order Annex. R-2 passed by the Government of Punjab, Department of Finance Local Audit Wing the competent disciplinary authority was of the view that the petitioner had not passed the disputed bill and to this effect the findings of the Enquiry Officer were endorsed. Strange as it may seem, the enquiry officer had found that the bill was not passed by petitioner Arjan Singh but by Ramji Das, Junior Auditor. The blame then shifts to Ramji Das and at least the petitioner cannot be accused of non-passing of the bill. The only doubt expressed in the order of the Government was that the petitioner was not able to explain how the enhanced amount was claimed by the Punjab State Electricity Board when he had passed the bill without raising the objection. What was found against him was that he had approved payment but not the bill in the careless manner. But the bill was not passed by him. None of the other charges like

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dereliction of duty etc. were held proved. When the first charge is noticed, even if proved to the extent of carelessness, that cannot justify major punishment of withholding of two increments with cumulative effect. In the facts and circumstances the punishment inflicted on the petitioner is excessively disproportionate to the alleged charge to the extent of due care not exercised on a bill which was the duty of someone else to pass and therefore, the orders suffer from errors apparent on the face of record. The findings of the enquiry officer are all perverse, irrational and opposed to common sense. The petitioner has culled out the findings of the enquiry officer at page 7 of the paper-book on Charges A to D, which are reproduced below, which tell their own story militating against the punishment inflicted without substance:-

"Charge-A: "In the light of the above, this charge levelled against Sh. Arjan Singh, Auditor, is not proved, as the latter bill in which excess payment is alleged has been passed by Sh. Ramji Das, Auditor and not by Sh. Arjan Singh Auditor."

Charge-B- Therefore, Sh. Arjan Singh, Auditor, cannot be held guilty in his individual capacity."

Charge-C- " It appears from the E.C.R. And the vouchers that these excess payments are possible, however, it is difficult to arrive at a definite conclusion, because in the absence of original bills, it cannot be said with certainty that these payments pertain to a single month."

Charge-D- "This charge is not specific and no body can be held guilty merely on the basis of doubt."

5. Leave that apart, the inquiry itself is held to be a defective inquiry which was neither fair nor proper when the procedure laid down in the Punjab Civil Services (Punishment and Appeal) Rules, 1970 was not followed and to the contrary was flagrantly breached by a sham enquiry visiting the petitioner/s with harm of grave magnitude by major punishments totally

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disproportionate to the alleged misconduct. It is trite law that a defective enquiry is no enquiry in the eyes of law and stands on the same footing as are cases of no enquiry.

6. As a result, the petitions are allowed and the entire inquiry proceedings and the punishment orders which followed are quashed being illegal, arbitrary and unconstitutional. For the reasons recorded above, the accompanying petitions also succeed, the illegal and perverse enquiry proceedings being common to them suffer from the same patent defects. As a corollary the petitioners are declared entitled to consequential benefits i.e. arrears of pay and revision of pension after refixation of pay. The amounts be calculated and paid within three months from the date of supply of a certified copy of the order."

A bare perusal of the above would show that even a Coordinate Bench of this Court has already recorded a finding that the enquiry proceedings were not conducted in a manner required for wherein the reference of the respondent-plaintiff has also been given. Hence, once a Coordinate Bench of this Court has already recorded a finding qua the same disciplinary proceedings to have been conducted in a manner causing prejudice to the employees and nothing has been brought to the notice of this Court so as to record a different finding, hence, the assertion of the appellants that the enquiry proceedings were conducted as per the rules, cannot be accepted so as to over turn the judgment of the lower Appellate Court dated 02.04.2005.

At this stage, learned counsel for the respondent-plaintiff submits that though by the impugned judgment, the lower Appellate Court had given liberty to the Department to hold a fresh enquiry in case of the respondent-plaintiff but as the said judgment had already been stayed and in

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the meantime, the respondent-plaintiff has already died, hence, no fresh enquiry can be held as no proceedings can be conducted against a dead employee, hence, the judgment of the lower Appellate Court be modified to the said extent on the prayer of the respondent, who is now being represented by his legal heirs.

Learned counsel for the appellants-State has not been able to rebut the assertion that respondent-plaintiff has already died, hence, the prayer of the respondent-plaintiff needs to be accepted keeping in view the law that no disciplinary proceedings can be held against a dead employee. The benefits which accrue to the respondent-plaintiff under the judgment of the lower Appellate Court, be extended to the legal heirs without there being any fresh enquiry to be conducted keeping in view the facts and circumstances of the present case noticed hereinbefore.

The appeal filed by the State is accordingly dismissed with the observation as made hereinbefore.

April 18, 2023 **(HARSIMRAN SINGH SETHI)**
harsha **JUDGE**

Whether speaking/reasoned : Yes
Whether reportable : Yes

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