

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

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RSA-2591-2006 (O&M)

Date of decision: 04.12.2023

State of Haryana and others

....Defendant-Appellants

Versus

Gianander Singh (Deceased) through his LR's.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Jagdish Manchanda, Addl. AG, Haryana.

None for the respondent.

AMAN CHAUDHARY, J.

1. The instant regular second appeal has been filed by the defendant-appellants against the concurrent findings recorded by Courts below, whereby the suit for declaration and mandatory injunction was decreed in favour of the plaintiff-respondent.

2. The facts in a nutshell are that the plaintiff-respondent was serving as an Assistant on substantive basis in Divisional Employment Office, Rohtak. On 14.02.1997, he was served with a report vide which adverse remarks for the year 1995-96 were conveyed to him, therefore on 20.02.1997 when his case was considered along with other eligible candidates for promotion, he was not found fit. He had thus no sufficient time in between to make representation against the same, which when subsequently submitted was rejected without granting him any opportunity of hearing. Thus, the present suit was filed for declaration and mandatory injunction.

3. The defendants contested the above by filing a written statement stating therein that the ACR report was issued without any malicious intent. The fact that the plaintiff worked for at least 3 months under the Reporting Officer, he was allowed vide instructions issued by Haryana Government dated 02.03.1971 to submit the report, which was done in due course of time after finalising it. Moreso, all the representations filed by the plaintiff were duly considered and only thereafter, were rejected.

4. Notably, learned trial Court after framing the issues, decreed the suit in favour of the plaintiff by observing that no credible evidence was brought on record by the defendant to substantiate the adverse remarks and same had been recorded by the Reporting Officer in a biased manner and without due adherence to the proper procedure as per instructions issued by the Government, held that he is eligible for promotion to the post of Deputy Superintendent from February 1997 as well as to all other additional benefits arising therefrom.

5. Aggrieved by the said decision, an appeal was filed by the defendant-State, whereby the lower appellate Court affirmed the findings of trial Court on the ground that the impugned ACR was conveyed after much delay, asserting further that adverse remarks recorded against the plaintiff were not correct insofar as being against the Government instructions. Consequently, the appeal was dismissed.

6. Learned State counsel has submitted that the Courts below have ignored the fact that the adverse remarks were recorded bonafidely, against which the representations made by the plaintiff-respondent were rightly dismissed. Furthermore, there was no delay in communicating the same to him, thus, the conclusion as drawn was erroneous and the judgments and decrees are liable to be

set aside.

7. Heard and perused.

8. It is apt to refer to the statement of PW-1, Hakumkat Rai, Deputy Superintendent wherein he stated that plaintiff had been working in the Department since 1971 and the ACR for the year 1995-96 was conveyed to him on 14.02.1997, however, the same should have been made within a period of three months, which was by June 1996. Further DW1 Usha Setia, Divisional Employment Officer, admitted that no opportunity of personal hearing was given to the plaintiff while deciding the representations filed by him. The work and conduct of the plaintiff-respondent was found to be satisfactory for which even a Commendation Certificate was issued to him by the Deputy Commissioner Rohtak while he was working in the Flood Branch and thus the ACR for the year 1995-96 recorded by the Reporting Officer, under whom the plaintiff had worked only for four months was held to be not sustainable in the eyes of law, being malafide. The trial Court had in its findings also observed that the inordinate delay of 8 months in conveying the ACR in question to the plaintiff was evident. Further, the appellate Court, while dismissing the appeal, observed that neither any justification was given for the adverse remarks in the ACR nor any cogent reasons were given for rejecting the representations filed by the plaintiff.

9. Illuminating the importance and purpose of communication of remarks in the ACR, Hon'ble the Supreme Court in **Dev Dutt vs. Union of India**, (2008) 8 SCC 725 had observed thus:

“19. In our opinion, every entry in the A.C.R. of a public servant must be communicated to him within a reasonable period, whether it is a poor, fair, average, good or very good entry. This is because non-communication of such an entry may adversely affect the employee in two ways : (1) Had the

entry been communicated to him he would know about the assessment of his work and conduct by his superiors, which would enable him to improve his work in future (2) He would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its upgradation. Hence non-communication of an entry is arbitrary, and it has been held by the Constitution Bench decision of this Court in *Maneka Gandhi v. Union of India* (supra) that arbitrariness violates Article 14 of the Constitution.

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39. In the present case, we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the Annual Confidential Report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation. This in our opinion is the correct legal position even though there may be no Rule/G.O. requiring communication of the entry, or even if there is a Rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by Article 14 of the Constitution in our opinion requires such communication. Article 14 will override all rules or Government orders.

40. We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the concerned authority, and the concerned authority must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible.”

10. In **State of U.P. v. Anirudh Rai**, 2000 SCC OnLine All 382, a case, wherein the promotion of the employee-respondent was deferred on account of adverse entries in the ACR, which were communicated to him after a delay of 4 years, it was held that the same were unreasonable, illegal and based on arbitrariness as he had not been granted the his right to file appeal against it.

11. Upon a careful consideration of this matter, it is found that the lower appellate Court as well as the trial Court have examined and sifted through the evidence before recording their respective findings and arrived at a judicious conclusion. No misreading or ignoring of evidence could also be pointed out. The extent to which this Court can intervene in a second appeal is notably restricted, in view of the judgment of Hon’ble the Supreme Court in **Randhir Kaur vs. Prithvi Pal Singh**, (2019) 17 SCC 71, “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. No illegality or perversity in either of the impugned judgments and decrees passed by the Courts below, returning concurrent findings of facts is found.

13. As a sequel, the present appeal being meritless, is hereby dismissed.

(AMAN CHAUDHARY)
JUDGE

04.12.2023
gsv/Ankur

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