

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(292)

CM-3768-C-2022 in/and
RSA-3324-2006
Date of Decision : April 13, 2023

State of Punjab

.. Appellant

Versus

Jarnail Singh

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Gurvinder Singh, Assistant Advocate General, Punjab,
for the non-applicant/appellant-State.

Mr. Narinder Singh Panwar, Advocate, for the applicant-
respondent.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-3768-C-2022

Present application has been filed for fixing the appeal at an
early actual date.

Notice of the application to the counsel opposite.

Mr. Gurvinder Singh, Assistant Advocate General, Punjab,
accepts notice on behalf of non-applicant/appellant-State and raises no
objection for the grant of prayer as raised in the present application.

Keeping in view the averments made in the application, the
same is allowed and the main appeal is taken up for hearing today itself.

RSA-3324-2006

In the present Regular Second Appeal, the judgment and decree of the lower Appellate Court dated 01.06.2006 is under challenge by which, the judgment and decree of the trial Court dated 17.01.2006 by which, the suit filed by the respondent-plaintiff was dismissed, has been set aside and the suit filed by the respondent-plaintiff has been decreed with a direction that fresh enquiry proceedings be conducted against the respondent-plaintiff afresh after granting him due opportunity to defend.

Learned counsel for the appellant-State argues that the reasons for accepting the suit filed by the respondent-plaintiff have been given in paragraph 7 of the judgment of the lower Appellate Court wherein, it has been mentioned that the charge-sheet which led to imposition of punishment was issued to the respondent-plaintiff by an authority, which was not a punishing authority, hence, any proceedings conducted in respect of the said charge-sheet becomes void and further ground taken by the lower Appellate Court to allow the suit filed by the respondent-plaintiff is that the respondent-plaintiff has not been given an opportunity to engage the counsel.

Learned counsel for the appellant-State further argues that while recording the said findings, nothing has been mentioned as to which authority was the punishing authority who was required to serve a charge-sheet upon the respondent-plaintiff as per the rules governing the service and under which rules governing the service, the assistance of a lawyer was to be provided to the respondent-plaintiff.

Learned counsel for the appellant submits that in the absence of any such evidence/facts on record, the findings have been recorded in

paragraph 7 of the judgment of the lower Appellate Court, which findings cannot be sustained being perverse to the evidence/facts on record.

Learned counsel for the respondent-plaintiff submits that though it is a matter of fact that while recording the finding, the lower Appellate Court has not mentioned the punishing authority which was required to serve the charge-sheet upon the respondent-plaintiff, but it is a matter of fact that the charge-sheet was not served by the punishing authority. Hence, the order passed by the lower Appellate Court dated 01.06.2006 is liable to be upheld.

Learned counsel for the respondent-plaintiff further submits that an another employee named as Jarnail Singh having Belt No.2372, has been given a different punishment than the one imposed upon the respondent-plaintiff, hence, on this account also, the punishment imposed upon the respondent-plaintiff is liable to be reviewed.

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

Before a finding is recorded, the evidence/facts on the basis of which a particular finding is being recorded has to be mentioned by the Court to support the said finding.

In the present case, nothing has been mentioned as to why the Jail Superintendent of the Jail, where the respondent-plaintiff was working as Warden was not considered as the punishing authority. Further, no provision of rule has been cited to prove that somebody else than the Jail Superintendent who had served the charge-sheet upon the respondent-plaintiff, was the punishing authority. In the absence of any fact/evidence supporting the finding that the Jail Superintendent was not the punishing

authority, the findings recorded by the lower Appellate Court in paragraph 7 cannot be sustained in the eyes of law.

Further, for providing assistance of a lawyer during the departmental enquiry, no rule allowing the said assistance has been noticed/discussed. No rule has been cited according to which there is a provision to engage a lawyer to conduct the enquiry proceedings on behalf of delinquent employee. In the absence of any such rule being brought on record or being mentioned in the judgment, the said findings are perverse and have been rendered without there being evidence on record.

In view of the facts mentioned hereinbefore, two findings on the basis of which the suit filed by the respondent-plaintiff was allowed, are perverse as those findings have been recorded without there being any evidence or facts on record to support the same.

Learned counsel for the respondent-plaintiff has not been able to point out a single fact to support the finding that the jail Superintendent was not the punishing authority.

Therefore, the findings recorded by the lower Appellate Court cannot be sustained in the eyes of law, hence, the judgment and decree of the trial Court dated 01.06.2006 is accordingly set aside.

An argument has been raised by the learned counsel for the respondent-plaintiff that a similarly situated employee namely Jarnail Singh having Belt No.2372 was given different punishment than one imposed upon respondent-plaintiff in somewhat similar circumstances and he relies upon the order passed by the Jail Superintendent wherein, the punishment of dismissal was modified by the Jail Superintendent, Head Quarter Jail Ferozepur vide order dated 12.05.1999, which benefit has never been

extended to the respondent-plaintiff.

It may be noticed that the present is the Regular Second Appeal, which has to be decided on the basis of the evidence which has come on record. It is a conceded position that the order dated 12.05.1999 passed in the case of Jarnail Singh having Belt No.2372 is not on record. Hence, no benefit of the same can be given by this Court but liberty can be given to the respondent-plaintiff to approach the respondent by filing appropriate representation bringing to their notice claim qua equal treatment as given to Jarnail Singh having Belt No.2372.

Learned State counsel submits that in case any representation is filed by the respondent-plaintiff, the same will be considered in accordance with law and appropriate order will be passed within a period of three months of the receipt of any such representation and in case it is found that the claim of the respondent-plaintiff, who is similarly situated to Jarnail Singh having Belt No.2372, appropriate relief will also be extended.

Keeping in view the above, the appeal filed by the State is accepted and the judgment and decree of the lower Appellate Court is set aside and that of trial Court is restored but with liberty to the respondent-plaintiff to avail appropriate remedy of filing representation before the authorities concerned in case he intends to claim the relief as being extended to Jarnail Singh having Belt No.2372.

The present Regular Second Appeal is allowed in above terms.

April 13, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes