

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(101) CM-2922-C-2022 in/and
RSA-3703-2006 (O&M)
Date of Decision : March 16, 2023

State of Haryana and others

.. Appellants

Versus

Ritu Paran

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Vibha Tewari, Assistant Advocate General, Haryana,
for the appellant-State.

Mr. R.S. Malik, Advocate, for the respondent.

HARSIMRAN SINGH SETHI J. (ORAL)

On joint request of learned counsel for the parties, the main
appeal is taken up for hearing today itself.

RSA-3703-2006

In the present Regular Second Appeal, the challenge is to the
judgment and decree of the trial Court dated 08.02.2006 by which, the ACR
of the respondent-plaintiff for the year 1990-91, 1993-94, and 1994-95 were
set aside and the respondent-plaintiff was allowed the standard pay scale
along with other benefits as well as judgment of the lower Appellate Court
dated 01.06.2006 by which, the appeal preferred by the appellants-State was
dismissed.

Learned counsel for the appellants argues that in the present case, the only reason given by the Courts below for setting aside the Annual Confidential Report is that adverse comments recorded therein were not conveyed. Learned counsel for the appellants submits that merely that the adverse entries were not conveyed to the respondent-plaintiff, does not mean that the Court can infer that even the opinion recorded by the Officer concerned qua the respondent-plaintiff was arbitrary or illegal, hence, the adverse entries recorded in the ACR of the respondent-plaintiff could not have been set aside, hence, the judgment of the Courts below are perverse as the evidence on record has not been appreciated in the correct perspective.

Learned counsel for the respondent-plaintiff submits that non-conveying of the entry in the ACR for the year concerned itself rendered the recording of the said ACR bad and the judgments of the Courts below are perfectly valid and legal by which the adverse entries for the year 1990-91, 1993-94, and 1994-95 were set aside.

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

Certain facts which have come on record is that there was a criminal case pending against the respondent-plaintiff in a particular year in which the adverse ACRs were recorded. Not only this, it is a matter of record which has come before the Courts that the respondent-plaintiff was also under suspension keeping in view the disciplinary proceedings being conducted against him during the said period for which the ACR was recorded.

Keeping in view the said facts, it cannot be said that recording of the ACR by the reporting Officer, who was the immediate superior of the respondent-plaintiff was without any valid justification, the assessment of a particular Officer by the reporting Officer can only be challenged on the ground that there was no material to record a particular observation.

Learned counsel for the respondent-plaintiff has not been able to point out any material fact/evidence which has come on record to show that recording of the ACR by the reporting Officer for the years in question was without any basis or justification or were recorded in the absence of any material to support the view taken. In the absence of any such assertion, the Courts below could not have set aside the ACRs in question merely on the ground that the same were not conveyed.

The said question of law is decided in ***Civil Appeal No.5651-1997 titled as Amrik Singh vs. Union of India, decided on 16.11.2000*** wherein, it has been decided that the scope of the jurisdiction of the Court being very limited, it cannot go into the correctness of the adverse remarks nor into the assessment made by the Selection Board. The relevant paragraphs of the said judgment are as under:-

“ 15. In para 29 of the said judgment, this Court stated as follows:-

“The contention put forth before us is that there are factual inaccuracies in the statement recorded by the Cabinet Secretary in his note and, therefore, must be deemed to be vitiated so as to reach a conclusion that the decision of the Government in this regard is not based on proper material. The learned Attorney General, therefore, took great pains to bring the entire records relating to the relevant period which

was considered by the Cabinet Secretary and sought to point out that there were notings available in those files which justify these remarks. Prima facie, we cannot say, having gone through those records, that these notings are baseless. Critical analysis of appraisal of the file by the Court may neither be conducive to the interests of the officers concerned or for the morale of the entire force. May be one may emphasise one aspect rather than the other but in the appraisal concerned and we cannot substitute our view to that of the authorities. It is a well-known principle of administrative law that when relevant considerations have been taken note of and irrelevant aspects have been eschewed from decisions have nexus to the facts on record, the same cannot be attacked on merits. Judicial review is permissible only to the extent of finding whether process in reaching decision has been observed correctly and not the decision as such. In that view of the matter, we think there is no justification for the High Court to have interfered with the order made by the Government.”

21. In the result, we are not inclined to grant any relief to the appellant in spite of the fact that his performance in the subsequent years has been shown to be very good and his ratings were very high. Ultimately the single adverse remarks of 1985-86 by the Reviewing Officer had stood in his way, not only at the time of original consideration but also when the matter was considered afresh pursuant to the directions of the High Court. The result may be unfortunate. But the scope of the jurisdiction of the High Court being very limited, we cannot go into the correctness of the adverse remarks nor into the assessment made by the Selection Board on the two occasions.”

Non-conveying of an ACR though will have certain ramification but non-conveying will not render recording of the ACR as bad so as to be taken out of record by setting aside those reports. The Courts

below have misdirected themselves while setting aside the adverse entries only on the ground that the adverse entries were not conveyed to the respondent-plaintiff. Hence, the orders passed by the Courts below are perverse keeping in view the facts and evidence on record as well as the law cited hereinbefore. Hence, the order passed by the Courts below for setting aside the ACR in question itself, is set aside.

Once, the orders passed by the Courts below qua the quashing of the ACR have been set aside, the consequent direction to release the standard pay scale in favour of the respondent-plaintiff cannot be sustained as well. Once, the record of the respondent-plaintiff was such that disentitle the grant of standard pay scale, no direction can be given by the Court to the employer to ignore a particular record to grant the benefit unless and until, the said record is inadmissible to be taken into consideration keeping in view the relevant rules or the settled principle of law. Learned counsel for the respondent has not been able to show from record that even if the ACRs in question are taken out consideration, record of the respondent-plaintiff was such that he was entitled for the grant of standard pay scale. Hence, the direction given by the Courts below without appreciating the record of the respondent-plaintiff, which is impermissible.

Keeping in view the above, the judgments of the Court below dated 08.02.2006 and 01.06.2006 are set aside and the Civil Suit No.60 of 2003 filed by the respondent-plaintiff is dismissed.

CM-2922-C-2022

As the main appeal has been disposed of, present application

also stands disposed of. Any other miscellaneous application pending, if any is also disposed of.

March 16, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No