

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(208)

RSA-1325-2008 (O&M)

Date of Decision : March 21, 2023

State of Punjab and others

.. Appellants

Versus

Hardip Singh

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Gurvinder Singh, Assistant Advocate General, Punjab,
for the appellants.

Mr. Amit Gupta, Advocate, for the respondent.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-947-C-2019

As prayed for, the application is allowed.

Short affidavit on behalf of the appellants is taken on record.

RSA-1325-2008

Present Regular Second Appeal has been filed by the appellants-State challenging the judgment and decree of the trial Court dated 03.03.2006 by which, the suit filed by the respondent-plaintiff challenging the order dated 30.06.1998 by which his services were terminated, was allowed as well as the judgment and decree of the lower Appellate Court by which, the appeal filed by State of Punjab challenging

the judgment and decree of the trial Court dated 03.03.2006, has been

dismissed.

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

The respondent-plaintiff was appointed as a Constable on 17.05.1993. In the year 1998, the respondent-plaintiff absented himself starting from 25.05.1998 till 27.06.1998 for which absence, disciplinary proceedings were initiated against him. During the said disciplinary proceedings, the respondent-plaintiff had took a stand that his wife was bitten by a snake and she was being treated in a hospital due to which, it was difficult for the respondent-plaintiff to attend the duty hence, the said absence be ignored as the same was beyond the control of the respondent-plaintiff and was not intentional. As the charges of unauthorized absence were proved during the enquiry proceedings, action was taken against the respondent-plaintiff and vide order dated 30.09.1998, he was dismissed from service.

The said order of dismissal was challenged by the respondent-plaintiff before the Civil Court wherein, the respondent-plaintiff had taken a stand that not only the absence from duty due to which his services have been terminated was beyond the control of the respondent-plaintiff and was unintentional but the rules of natural justice were also violated during the conduct of disciplinary proceedings as, the copy of the enquiry report was not given to him for his reply/objections, which is contrary to the settled principle of law.

Keeping in view the evidence, which had come on record, the suit filed by the respondent-plaintiff was allowed on the ground that nothing

has come on record as to why, the absence was taken as a gross misconduct especially when a certificate from the Civil Hospital Ropar was brought on record, wherein, it was clearly mentioned that the wife of the respondent-plaintiff was bitten by a snake and was being treated in a hospital as well as the fact that the enquiry report was not supplied to the respondent-plaintiff before passing the order of punishment, which act on the part of the Department was contrary to the settled principle of law and the respondent-plaintiff was directed to be treated in service by setting aside the order dismissing him from service.

Feeling aggrieved against the judgment and decree of the trial Court dated 03.03.2006, State of Punjab filed an appeal before the lower Appellate Court, which came to be decided on 03.01.2008 and the findings recorded by the trial Court were affirmed and the appeal filed by the appellant-State was dismissed. Hence, the present Regular Second Appeal.

It may be noticed here that while issuing the notice of motion in the present appeal, the operation of the judgments and decrees of the Courts below were stayed.

Learned counsel for the appellants argues that once the disciplinary proceedings were held to be bad on technical ground of not serving a show cause notice upon the respondent-plaintiff along with the enquiry report, the Courts were required to remit the matter back for fresh enquiry from the stage the illegality came into being, hence, reinstating the respondent-plaintiff without giving opportunity to the Department to purge the irregularities in the disciplinary proceedings, is bad in the eyes of law.

Learned counsel for the appellants submits that keeping in view

the evidence, which has come on record, the absence in question was not the sole act of misconduct but in a period of five years of his service, there were 13 punishments, which were imposed upon the respondent-plaintiff, most of them were due to the unauthorized absence from service, which clearly shows that the respondent-plaintiff was a habitual absentee, hence, reinstating him without giving opportunity to the Department to pass a fresh order in compliance of rules of natural justice, is contrary to the settled principle of law.

Learned counsel for the respondent-plaintiff, on the other hand, submits that once it has already come on record that while conducting the disciplinary proceedings, in pursuance to which, impugned order dated 30.09.1998 was passed, the order passed by the Court below directing that the respondent-plaintiff is to be treated in service cannot be held to be bad.

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

It has already come on record that in a short span of five years of service, there were 13 punishments which were imposed upon the respondent-plaintiff and most of them were qua the unauthorized absence from service. This fact has not been rebutted by the learned counsel for the respondent-plaintiff. That being so, reinstating an habitual absentee and that too merely on the basis of technicality and that too without giving an opportunity to the Department to deal with the said irregularity, is contrary to the settled principle of law.

The Hon'ble Supreme Court of India in ***Civil Appeal No.6776 of 2022 titled as The Inspector of Panchayats and District Collector,***

Salem vs. S. Arichandran and others, decided on 23.09.2022, has held that where an order of dismissal passed is set aside on the basis of technicality or non-observing of the rules of natural justice, the Department is entitled to pass a fresh order in accordance with law after observing the rules of natural justice. Relevant paragraph of the judgment is as under:-

“6.2 Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and as the order of dismissal has been set aside on the ground that the same was in breach of principles of Natural Justice, the High Court ought to have remitted the case concerned to the Disciplinary Authority to conduct the inquiry from the point that it stood vitiated and to conclude the same after furnishing a copy of the Inquiry Report to the delinquent and to give opportunity to the delinquent to submit his comments on the Inquiry Officer's Report.”

That being so, the direction given by the Courts below for reinstating the respondent-plaintiff with all consequential benefits and that too without giving the Department a right to conduct the disciplinary proceedings from the stage where the irregularity crept in, cannot be allowed.

The Courts below have failed to appreciate the fact that the irregularity in the departmental proceedings, which does not go to the roots of the case cannot preclude the Department to pass a fresh order after removing the irregularities which has come into being. Hence, the judgments and decrees of the Courts below reinstating the respondent-plaintiff in service with all consequential benefits cannot be held to be in accordance with the settled principle of law noticed hereinbefore and the same is accordingly set aside.

Keeping in view the facts and circumstances of the present case, though the impugned order of termination of service of the respondent-plaintiff dated 30.09.1998 is held to be bad but the appellant-Department is given an opportunity to re-start the disciplinary proceedings from the stage of serving of the enquiry report upon the respondent-plaintiff and seek his reply and thereafter, keeping in view the objection taken by the respondent-plaintiff, appropriate order, be passed. In case, as per the fresh order, any punishment lesser than the one already imposed vide order dated 30.09.1998, is imposed, while passing the fresh order, the intervening period for which the respondent-plaintiff remained out of service, be also decided in accordance with law and the rules governing the service. Benefit if any admissible upon setting aside the order of dismissal, will depend upon the fresh order to be passed and no benefit ipso facto will be admissible to the respondent-plaintiff.

Further, in case the Department after observing the rules of natural justice, even in the fresh order, comes to the conclusion that the punishment of termination of services is to be imposed, due reason be mentioned in the said order.

It is made clear that the respondent-plaintiff will be entitled to avail appropriate remedy against the fresh order in case, he is aggrieved in any manner.

Let the fresh order be passed within a period of three months from the receipt of copy of this order.

It may be noticed that the respondent-plaintiff be also given a personal hearing before passing the appropriate order.

The Regular Second Appeal is allowed in above terms.

March 21, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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