

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

347

RSA-1834-2008 (O&M)
Date of decision: 04.12.2023

State of Haryana and another

....Defendant-Appellants

Versus

Rampal

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

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

None for the respondent.

AMAN CHAUDHARY, J.

1. Challenge in the present regular second appeal is filed to the concurrent findings of facts returned by both Courts below in favour of the plaintiff-respondent in a suit filed by him for mandatory injunction.

2. Summarily, the facts are that the plaintiff-Rampal was working as a driver with Haryana Roadways, Rohtak. Defendant No.2-The General Manager, Haryana Roadways, Rohtak had passed an order dated 16.11.1999 vide which two annual increments of the plaintiff-respondent were stopped with cumulative effect for an accident caused by his rash and negligent driving. Thereafter, plaintiff-respondent had challenged the same by way of the present suit for mandatory injunction, which was contested by the defendant-appellant, *inter alia*, on the ground that there was an alternate remedy available, which had not been availed of, thus, it was not maintainable.

3. The trial Court decreed the suit in favour of the plaintiff-respondent on the ground that there was no substantial evidence that had come in the enquiry to hold him guilty for rash and negligent driving and that enquiry officer acted in the dual role of prosecutor as well as the Judge. There being gross violation of the procedure prescribed by rules, the enquiry order Ex. D-14, show cause notice Ex. D-15 along with the punishment order Ex. D-19 dated 16.11.99 were held to be not legally sustainable.

4. The aforesaid findings were affirmed by the lower Appellate Court while dismissing the appeal filed by the State by taking into consideration that DW1 Ashok Kumar had admitted that neither the list of witnesses nor of documents was supplied to the plaintiff-respondent and there was no Presenting Officer from the Department.

5. Dissatisfied with the foregoing decisions, learned State counsel has submitted that both Courts below have passed the impugned judgments and decree which are totally contrary to the evidence produced on record. On 22.10.1995, the plaintiff-respondent was found guilty of negligence in driving the vehicle of Haryana Roadways. On receipt of a report in this regard, he was placed under suspension on 10.11.1995. Since, no plausible reply was filed by him, he was rightly proceeded against under Rule 7 of the Haryana Civil Services (Punishment and Appeals) Rules, 1987 and there was no procedure flaw in conduct of enquiry.

6. Heard and perused the record.

7. Evidently, the sole witness i.e. DW1 Ashok Kumar was not present on the spot at the time of the accident, which clearly rendered the evidence against the plaintiff during the enquiry, as wanting. In addition to the above fact being in contradiction with his statement, it is also to be noted that the enquiry officer and

prosecutor being the same is impermissible, behind which is the weight of the law laid down in **Union of India vs. Ram Lakhan Sharma**, (2018) 7 SCC 670, wherein Hon'ble the Supreme Court observed that, "Thus, the question as to whether Inquiry Officer who is supposed to act independently in an inquiry has acted as prosecutor or not is a question of fact which has to be decided on the facts and proceedings of particular case. In the present case we have noticed that the High Court had summoned the entire inquiry proceedings and after perusing the proceedings the High Court came to the conclusion that Inquiry Officer himself led the examination in chief of the prosecution witness by putting questions. The High Court further held that the Inquiry Officer acted himself as prosecutor and Judge in the said disciplinary enquiry. The above conclusion of the High Court has already been noticed from paragraphs 9 and 10 of the judgment of the High court giving rise to Civil Appeal No.2608 of 2012. Further that, "The High Court having come to the conclusion that Inquiry Officer has acted as prosecutor also, the capacity of independent adjudicator was lost which adversely affecting his independent role of adjudicator. In the circumstances, the principle of bias shall come into play and the High Court was right in setting aside the dismissal orders by giving liberty to the appellants to proceed with inquiry afresh. We make it clear that our observations as made above are in the facts of the present cases."

8. A Constitution Bench of Hon'ble the Supreme Court has elaborately considered and elucidated the principles of natural justice in **A.K. Kraipak and others vs. Union of India and others**, AIR 1970 Supreme Court 150 by observing that the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. The concept of natural justice has undergone a great deal of change in recent years. It was held that, "The aim of the

rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely (1) no one shall be a judge in his own case (*Nemo debet esse iudex propria causa*) and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably...”

9. The non-furnishing of requisite documents as also the details of witnesses, besides the appellants having failed to produce credible evidence in order to prove the charges, the Courts below cannot be said to have fallen in any error of fact or law in returning the findings in favour of the plaintiff-respondent. The parameters of interference in a second appeal, have been laid down in **Randhir Kaur vs. Prithvi Pal Singh**, (2019) 17 SCC 71 by Hon’ble the Supreme Court wherein it was observed and held that, “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.”

10. Having evaluated the matter, it is found that after a meticulous analysis of the evidence adduced, the Courts below have reached their respective

conclusions, which are justified. There being no question of law involved in the case and neither any infirmity or illegality found in the impugned judgments and decree, the present appeal fails and is hereby dismissed.

(AMAN CHAUDHARY)
JUDGE

04.12.2023
gsv/Ankur

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