

CM No. 7326-C of 2022 in/and
RSA No. 2142 of 2022 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(104)

CM No. 7326-C of 2022 in/and
RSA No. 2142 of 2022 (O&M)
Date of Decision : 17.01.2023

Om Parkash Godara

...Appellant

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vikas Bishnoi, Advocate for the appellant.

Ms. Vibha Tewari, Assistant Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

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Present application has been filed for seeking condonation of
delay of 7 days in filing the appeal.

Notice of the application to the counsel opposite.

Ms. Vibha Tewari, learned Assistant Advocate General,
Haryana, who is present in Court, accepts notice on behalf of the
respondent-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, which
is duly supported by an affidavit, the same is allowed and delay of 7 days in
filing the appeal is condoned.

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Application is allowed, as prayed for.

RSA-2142-2022

In the present regular second appeal, the challenge is to the decree passed by the lower appellate court dated 24.05.2022 by which the decree of the trial court in civil suit filed by the appellant-plaintiff for declaration and mandatory injunction qua the punishment of recovery imposed vide order dated 07.09.2012, has been upheld.

In the present case, the department after holding a departmental enquiry against the appellant-plaintiff, passed an order of punishment of recovery of loss amounting to ₹92,151/- vide order dated 07.09.2012. Against the said order of punishment, the appellant-plaintiff preferred an appeal before the higher authorities, which was dismissed on 11.06.2015 and both the orders were challenged by the appellant-plaintiff by filing the civil suit so as to declare them null and void and to restrain the respondents from recovering the amount in question from the appellant-plaintiff. The suit filed by the appellant-plaintiff was decreed on 15.03.2019, which judgment of the trial court was challenged by the respondent-State in appeal, which has been allowed by the lower appellate court on 24.05.2022. In the present regular second appeal, the challenge is to the judgment of the lower appellate court dated 24.05.2022.

Learned counsel for the appellant-plaintiff argues that the punishment of recovery of alleged loss, imposed by defendant No. 2 vide order dated 07.09.2012 as well as the rejection of the appeal filed against the said order of punishment by defendant No. 3 vide order dated 11.06.2015 are bad in law and the judgment of the trial court dated 15.03.2019 allowing the suit filed by the appellant-plaintiff is perfectly

valid and legal. Learned counsel for the appellant-plaintiff further argues that there was no enquiry, which was held before imposing the punishment upon the appellant-plaintiff and the punishment was imposed merely by issuance of a show cause notice and thereafter, passing an order of punishment, which procedure is contrary to the settled principle of law.

The said argument has been dealt with by the lower appellate court. The findings have been recorded by the lower appellate court that as per the rules governing the service for imposition of a minor punishment, the same can be done after issuance of a show cause notice and thereafter passing an appropriate order keeping in view the reply furnished by the employee concerned. In the present case, learned counsel for the appellant-plaintiff conceded that the show cause notice was issued to the appellant-plaintiff and thereafter, the order of recovery was passed, which punishment is concededly a minor punishment. Keeping in view the said fact, once a minor punishment has been imposed, the plea of the appellant-plaintiff that no procedure envisaged under the rules for imposing the minor punishment was followed, cannot be accepted.

Further, as it has already come on record by way of evidence that departmental enquiry was conducted by the department against the appellant-plaintiff and proper opportunity was given to the appellant-plaintiff before passing the order in the departmental proceedings. Learned counsel for the appellant-plaintiff has not been able to rebut the said fact or point out any perversity in the said finding of the court. Hence, the said argument that enquiry proceedings were not conducted against the appellant-plaintiff before imposing the punishment is contrary to the facts

on record. Learned counsel for the appellant-plaintiff conceded at the time of hearing that though there was an enquiry proceeding conducted but the same was not conducted in accordance with law and the enquiry report submitted by the Enquiry Officer was not correct.

The second argument, which is being raised by the learned counsel for the appellant-plaintiff that there was no evidence on record with the Enquiry Officer to hold the appellant-plaintiff guilty. First of all, the enquiry report was not under challenge at any given point of time so as to conclude that whether the said enquiry report is based upon the evidence or not. Further, nothing has been brought to the notice of even this Court as to what evidence on record was not considered by the Enquiry Officer to prove the charge. Said argument raised by the learned counsel has not been supported by the evidence on record so as to demand acceptance. In the absence of any prejudice shown, no interference can be done by this Court and that too in a regular second appeal so as to re-appreciate the evidence against so as to arrive at a different conclusion. The scope of the Court in interfering into the disciplinary proceedings is restricted. Nothing has been brought to the notice of this Court that the findings of the lower appellate court is contrary to the rules governing the service or any evidence on record.

Keeping in view the said fact, as no perversity has been pointed out by learned counsel for the appellant-plaintiff with regard to the judgment of the lower appellate court dated 24.05.2022, no interference is called for by this Court.

Dismissed.

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As the main appeal has been dismissed, the present application
also stands dismissed.

January 17, 2023
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No