

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 5582 of 2019 (O&M)

Date of Decision: 02.08.2023

Rajbir Singh

... Appellant(s)

Versus

State of Haryana and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Rakesh Bakshi and Mr. Piyush Sharma, Advocates
for the appellant(s).

Mr. Jaspal Singh Pannu, Assistant Advocate General,
Haryana.

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in ***Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157.***

2. Though an application to condone the delay of 1965 days in re-filing the appeal has been filed, however, this Court has heard the learned counsel representing the appellant on merits of the case.

3. The correctness of the concurrent findings of fact arrived at by both the Courts below is being assailed by the plaintiff. He filed a suit for declaration to the effect that the order passed by the Director of Lotteries, Haryana, on 31.10.2003 while dismissing the plaintiff from service besides

the recovery of ₹2,96,58,318/- is illegal. He also prayed for the decree of

permanent injunction.

4. The defendants, while contesting the suit, submitted that the appellant was posted in Lucknow camp from the years 1993 to 1995. He sold the lottery tickets to the various agents on receipt of the cheques which were dishonoured subsequently. It is claimed that as per instructions issued by the concerned authority, the lottery tickets could only be transferred on the receipt of the amount through demand draft or cash. It was further asserted that the appellant did not submit the dishonoured cheque with the department within the prescribed time. As already noticed, both the Courts below dismissed the plaintiff's suit.

5. The learned counsel representing the appellant submits that the punishment awarded to the appellant is excessive as on the one hand he has been dismissed from his services, whereas on the other hand, an amount of ₹2,96,58,318/- is sought to be recovered.

6. This Court has considered the submissions. This Court is exercising the second appellate jurisdiction. It is evident that the appellant, in violation of the instructions issued by the department, permitted the sale of the lottery tickets without insisting on demand draft or cash. Taking the payment in cheque, when not permissible, and not submitting dishonoured cheque with the department in time is evident recklessness and ignorance of law. Moreover, an ample opportunity was given to the appellant in the departmental enquiry.

7. As regards the argument of the learned counsel representing the appellant, it would be noticed here that the State Government has suffered a huge loss due to the act and conduct of the appellant. The disciplinary

Regular Second Appeal No. 5582 of 2019 (O&M)**3**

authority has ordered dismissal of the plaintiff from his service on account of the infringement of the instructions issued. Besides this, the pecuniary loss caused to the State of Haryana is sought to be recovered. In the opinion of this Court, the learned counsel representing the appellant has failed to show that the punishment awarded is disproportionate to the misconduct.

8. Keeping in view the aforesaid facts and discussion, no ground is made out to interfere with the concurrent findings of fact arrived at by both the Courts below. Hence, the present appeal is dismissed.

9. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

August 02, 2023**“DK”**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No