

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

254

RSA-2842-2022

Date of Decision :17.03.2023

Mahinder Singh

...Appellant

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Virender Kumar, Advocate for the appellant.

Ms. Vibha Tewari, AAG, Haryana.

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Harsimran Singh Sethi, J. (Oral)

Present regular second appeal has been filed challenging the judgment and decree of the trial Court dated 02.04.2018 as well as judgment and decree dated 12.07.2022 passed by the Lower Appellate Court by which, the suit filed by the appellant/plaintiff was dismissed and the appeal filed against the said order was also dismissed.

Learned counsel for the appellant/plaintiff argues that in the present case, at the fag end of the career of the appellant/plaintiff, orders dated 16.08.2012 and 31.1.2013 were passed by the respondent-department by which, annual increments granted to the appellant/plaintiff were withdrawn by applying Rule 9(2)(c) of the Punjab Jails Department State Service Rule, 1963 (in short, '1963 Rules') according to which, Sub Assistant Superintendent was only entitled to get increments in case he/she passes the required departmental examination and recovery of the payment

of excess amount to the appellant-plaintiff was ordered.

Learned counsel for the appellant/plaintiff submits that though, it is a conceded fact that appellant/plaintiff had not passed the said departmental examination but no opportunity of hearing was given to the appellant/plaintiff before passing the impugned orders of withdrawing the annual increments and recovery of the payment of excess amount. Hence, impugned orders were liable to be set aside but the Courts below had not appreciated the said fact in correct perspective so as to grant the relief to the appellant/plaintiff.

Learned counsel for the respondent-State submits that once, it is a conceded position that under 1963 Rules, a Sub Assistant Superintendent was required to pass a departmental examination and it is also conceded fact that appellant/plaintiff had not passed the said examination, withdrawal of the benefit of annual increments cannot be treated as arbitrary as no prejudice is shown to have been suffered by the appellant/plaintiff

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

Though, an order passed against an employee which causes civil consequences requires that the department should follow the rules of natural justice so as to seek explanation of an employee concerned before passing an order. But in the present case, once, it is a conceded fact that appellant/plaintiff has not passed the required departmental examination and according to 1963 Rules, the annual increments cannot be made available to him in case of non-passing of a departmental examination, it cannot be said that orders passed against the appellant/plaintiff were

contrary to the rules governing the service. The rules of natural justice cannot be accepted to mean that without there being any prejudice shown to have been suffered by an employee, even a valid order which is permissible under the rules governing the service, cannot be passed.

Rather than remanding the case back to the authorities concerned, learned counsel for the appellant/plaintiff was requested to point out any infirmity in the findings recorded so that prejudice, if any, suffered by the appellant/plaintiff could be analyzed and an appropriate order could be passed.

Learned counsel for the appellant/plaintiff only relies upon the proviso to Rule 9 of the 1963 Rules to claim exemption from passing the departmental examination. The said argument has already been dealt with by the trial Court in para-14 of the judgment dated 02.04.2018, which interpretation of the rule is perfectly valid. Further, proviso to Rule 9 of 1963 Rules provides only one time exemption from passing the departmental examination to an employee who had already attained 45 years of age at the time of issuance of notification in the year 1963, which fact is clear from the reading of the said rule. The said proviso to the Rule 9 of 1963 Rules is not applicable upon appellant/plaintiff to claim exemption from passing the departmental examination. Learned counsel for the appellant/plaintiff further places reliance upon the order passed by a Coordinate Bench of this Court in **RSA-2136-2010** titled as **State of Haryana vs. Vijayveer Singh** decided on 21.12.2012.

Order passed by the Coordinate Bench of this Court in **Vijayveer Singh (supra)** is not applicable in the facts and circumstances of the present case.

Learned counsel for the appellant/plaintiff was requested to point out any prejudice and to make out a case before this Court qua the entitlement of the appellant/plaintiff for increments keeping in view Rule 9 of the 1963 Rules, which learned counsel for the appellant/plaintiff has failed to establish.

Keeping in view the above, no interference is called for by this Court in this regular second appeal and the present regular second appeal is accordingly dismissed.

March 17, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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