

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(228)

CM-4794-C-2016 in/and
RSA-1764-2016 (O&M)
Date of Decision : 02.05.2023

Attar Singh

...Appellant

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Abhimanyu Kalsy, Advocate for
Mr. Rakesh Dhiman, Advocate for the appellant.

Ms. Vibha Tewari, Assistant Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

CM-4794-C-2016

Present application has been filed seeking condonation of delay
of 14 days in filing the appeal.

Keeping in view the averments made in the application, which
are duly supported by an affidavit, the same is allowed and delay of 14 days
in filing the appeal is condoned.

CM-4793-C-2016

Application is allowed, as prayed for.

The present regular second appeal has been filed against the judgment and decree of the trial court dated 16.09.2014 as well as judgment and decree of the lower appellate court dated 11.09.2015 by which, the suit filed by the appellant-plaintiff challenging the order dated 16.07.2010, was dismissed.

The only ground, which has been raised by learned counsel for the appellant-plaintiff is that it has already come on record of the lower appellate court that the enquiry report was only furnished to the appellant-plaintiff after the same had already been accepted by the punishing authority and a tentative opinion has been formed to impose punishment upon the appellant-plaintiff, which is contrary to the settled principle of law settled by the Division Bench of this Court in CWP No. 17710 of 2005 titled as ***Ramesh Kumar Vs. State of Haryana and others***, decided on 15.05.2006.

Learned counsel for the respondents-defendants concedes the factum that in the present case, the enquiry report was considered and accepted and opinion was formed to punish the appellant-plaintiff before the enquiry report was sent to him along with the show cause notice but submits that as no prejudice has been caused to him with the proceeding adopted by the department, present appeal may kindly be dismissed

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

It is a settled principle of law that where an Enquiry Officer is other than the punishing authority, findings of the Enquiry Officer are to be put to the delinquent official for his/her comments and it is only thereafter,

the authorities concerned has to ascertain, whether to accept the enquiry report or not, before any action is taken against the delinquent official.

In the present case, the enquiry report was accepted by the punishing authority and even made a mind to punish the appellant-plaintiff even before the enquiry report was furnished to the appellant-plaintiff for his comments. The said procedure adopted by the punishing authority is contrary to the settled principle of law settled by the Division Bench of this Court in *Ramesh Kumar's case (supra)*. Learned counsel for the respondents-defendants has not been able to point out that the judgment in *Ramesh Kumar's case (supra)* is not applicable in the facts and circumstances of the case.

Keeping in view the above, the impugned order dated 16.07.2010 is set-aside.

At this stage, learned counsel for the respondents-defendants submits that as the impugned order is being set-aside on technicality, the department be given an opportunity to pass a fresh order in accordance with law.

Learned counsel for the appellant-plaintiff raises no objection to the said view.

Keeping in view the above, though the impugned order of punishment dated 16.07.2010 is set-aside but the respondents-defendants will be at liberty to pass a fresh order in accordance with law after following the due process as envisaged under the law. Once, the liberty is given to the respondent-department to pass a fresh order, the consequential benefit, if any of setting-aside the impugned order dated 16.07.2010 by this court will

depend upon the fresh order to be passed by the respondents-defendants. In case, the department decides not to imposed any punishment, in that situation, the appellant-plaintiff will also be entitled for consequential benefit of setting-aside the impugned order dated 16.07.2010. In case, the department comes to the conclusion that the punishment is to be imposed, a reasoned order will be passed and the benefit, if any, for which the appellant-plaintiff will be entitled for, will depend upon the said fresh order passed.

Appeal is allowed in above terms.

May 02, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No