

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(226)

RSA No. 1039 of 2015
Date of Decision : 28.03.2023

Gurmit Singh

...Appellant

Versus

Government of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

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

Mr. Gurvinder Singh, Assistant Advocate General, Punjab.

Harsimran Singh Sethi J. (Oral)

In the present regular second appeal, the challenge is to the judgment and decree of the lower appellate court dated 24.07.2014 by which, the judgment and decree of the trial court dated 31.01.2014 has been set-aside and the suit filed by the appellant-plaintiff has been dismissed.

In the suit filed by the appellant-plaintiff, the challenge was to the order dated 18.07.2005, by which, the appellant-plaintiff was dismissed from service on the ground of theft of the official property and selling the same to a scrap dealer. It is a conceded position before this Court that the appellant-plaintiff was served with a charge-sheet dated 11.06.2004 and due enquiry was held into the allegations and after the allegation against the appellant-plaintiff was proved in the departmental enquiry, the punishment of dismissal from service was imposed, which punishment was challenged

by the appellant-plaintiff before the civil court by filing a civil suit.

The said civil suit was allowed by the trial court by interpreting the evidence and the facts, which had come on record holding that the departmental enquiry was held against the appellant-plaintiff without observing the rules of natural justice.

Aggrieved against the judgment and decree of the trial court dated 31.01.2014, the State preferred an appeal before the lower appellate court, which came to be decided on 24.07.2014 and the judgment and decree of the trial court dated 31.01.2014 was set-aside and the suit filed by the appellant-plaintiff was dismissed. The lower appellate court noticed that once the charges alleged were accepted by the appellant-plaintiff himself in his written statement dated 28.01.2004, the question that the enquiry proceedings were not conducted in accordance with the law, cannot be accepted. Further, it was recorded by the lower appellate court that the trial court though held that the enquiry proceeding was conducted without following the rules of natural justice but neither any such fact was brought on record nor any reason was given to support the said finding. The lower appellate court reversed the judgment of the trial court and the suit filed by the appellant-plaintiff was dismissed. Hence, the present regular second appeal.

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

Learned counsel for the appellant-plaintiff argues that the judgment of the lower appellate court dated 24.07.2014 is perverse and cannot be sustained, especially when the trial court had allowed the claim of

the appellant-plaintiff vide judgment and decree dated 31.01.2014.

On being asked to point out the perversity in the judgment of the lower appellate court, learned counsel for the appellant-plaintiff has not been able to point out any such perversity in the findings of the lower appellate court.

In the regular second appeal, the interference by this court can only be done in those cases, where perversity in the judgments of the courts below while recording the findings is brought on record. In the regular second appeal, the facts and evidence, which has come on record cannot be re-appreciated to record a different finding than the one recorded by the courts below. In the present case, the effort of the appellant-plaintiff is that this Court should re-appreciate the facts and evidence on record so as to record a finding other than the one recorded by the lower appellate court. The said prayer cannot be accepted as this court can only interfere in the findings recorded in case any perversity is brought to the notice of this court, which the appellant-plaintiff has failed to show so as to seek any interference by this court in the present regular second appeal.

Qua the argument, which has been raised by the learned counsel for the appellant-plaintiff is that the appellant-plaintiff was not guilty of the allegation, once, it is a conceded position that the enquiry was conducted in a manner envisaged under the rules governing the service and as per the facts and evidence which are projected before this Court, no discrepancies in the procedure adopted during the enquiry proceeding exists nor any irregularity committed is highlighted during the holding of the enquiry proceedings. Rather in the statement dated 28.01.2004, the charges

were admitted by the appellant-plaintiff, it cannot be said that the findings recorded by the court below are incorrect or against the evidence. Once, the allegation stood admitted by the concerned delinquent, there is no need of even holding the enquiry, hence, in the present case, as the allegations were admitted by the appellant-plaintiff, he cannot raise any argument qua any discrepancy in the conduct of the enquiry.

Further, the courts are not to sit in an appeal over the decision of an Enquiry Officer as to whether, the appellant-plaintiff should be held guilty or not. The only jurisdiction of the court is to assess whether, the procedure envisaged under the rule is followed before imposing the punishment or not. In the present case, no irregularity in the departmental proceedings could be pointed out so as to hold that the enquiry proceedings were vitiated and consequently the order of punishment to be bad.

Learned counsel for the appellant-plaintiff submits that the authorities concerned as well as the courts below failed to notice that the appellant-plaintiff had 20 years of service in his credit and the order of dismissal from service is totally disproportionate to the charges alleged and proved hence, in the facts and circumstances, the punishment of compulsory retirement should have been imposed instead of dismissal from service.

In this regard, it may be noticed that the charge against the appellant-plaintiff is of theft. The jurisdiction of the court to interfere in the punishment imposed is only in case where the punishment imposed is totally disproportionate and shocking keeping in view the charges alleged and proved. In the present case, where the allegation of theft was conceded and proved, it cannot be said that the punishment imposed is disproportionate to

the charges alleged and proved, hence, this court will not intervene with regard to the quantum of punishment imposed upon the appellant-plaintiff.

Keeping in view the above, no ground is made out for any interference by this court in the present regular second appeal qua the judgment and decree of the lower appellate court dated 24.07.2014.

Dismissed.

March 28, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No