

**CM No.8765-C of 2022 in/and
RSA No.1375 of 2015 (O&M)**

Neutral Citation No. 2023:PHHC:048917

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IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH

(102+219)

**CM No.8765-C of 2022 in/and
RSA No.1375 of 2015 (O&M)
Date of Decision : 11.04.2023**

Managing Director Uttar Haryana Bijli Vitran Nigam Ltd. and others

...Appellants

Versus

Gordhan

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Shvetanshu Goel, Advocate
for the applicant-respondent.

Mr. Shiva Prashar, Advocate for
Mr. Amar Vivek Aggarwal, Advocate
for the non-applicant/appellants.

Harsimran Singh Sethi J. (Oral)

CM No.8765-C of 2022

Application is allowed.

Documents are taken on record.

RSA No.1375 of 2015

In the present case, the challenge is to the judgment and decree of the trial Court dated 20.12.2013 by which, the suit filed by the respondent-plaintiff for declaration that the order dated 21.06.2013 passed by appellants-defendants is illegal, was decreed as well as against the judgment and decree of the lower Appellate Court dated 19.11.2014 by which appeal filed by the appellants was dismissed.

By the order dated 21.06.2013, the period of suspension of the respondent-plaintiff from 28.06.1998 to 30.09.1997 and thereafter once again from 15.03.2001 to 25.01.2010 was treated to be the leave of kind due keeping in view the fact that the respondent-plaintiff was facing FIR No.199 dated 14.09.1996.

Learned counsel for the appellants submits that departmental proceedings were initiated against the respondent-plaintiff after acquittal which was permissible under law and in the said disciplinary proceedings, he was exonerated by the Enquiry Officer only on the ground that the amount embezzled stand deposited. As the respondent-plaintiff had retired from service on 31.10.2012 and keeping in view the fact that the embezzled amount was deposited by the respondent-plaintiff, no further action was taken and the suspension period was treated to be as leave of kind due, which was perfectly valid and legal and both the Courts below ignored the fact that the amount embezzled was deposited by the respondent-plaintiff, which amounts to admission of guilt hence, the appellants were well within their right to treat the period of suspension as leave of kind due.

Learned counsel for the respondents argues that as the respondent-plaintiff was acquitted by the competent Court of Law vide judgment and decree dated 18.08.2009 (Annexure P-1) in the FIR No.199 dated 14.09.1996, he was entitled for all the benefits for the suspension period whereas the same were denied to the respondent-plaintiff by the order dated 21.06.2013 as the said suspension period was not treated as duty period but was treated as leave of kind due.

Learned counsel for the respondent-plaintiff further argues that

whenever the issue with regard to the suspension period is to be decided, a show

cause notice needs to be issued to the employee concerned so as to consider his objections to the proposal of the department and in the present case concededly, no show cause notice was issued prior to the issuance of the impugned order, which itself renders the order dated 21.06.2013 illegal and arbitrary.

Learned counsel for the respondent-plaintiff further submits that though certain amount was deposited but once the respondent-plaintiff was exonerated by the Criminal Court as well as by the Enquiry Officer, the show cause notice should have been issued to the respondent-plaintiff before passing the impugned order so as to allow the employee to raise objection to the said notice for the consideration of the department while forming the opinion as to whether respondent-plaintiff is entitled for the benefit of suspension period or not.

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

In the present case, it is a conceded position that before passing the impugned order dated 21.06.2013 no show cause notice was issued, though under the Rules governing the service, any order in respect of deciding the suspension period can be passed only after giving due opportunity to the delinquent concerned. Hence, the order dated 21.06.2013 cannot be sustained in the eyes of law having been passed without following the process mentioned in the Rules governing the service.

Once the impugned order is being set aside on the basis of technicality of not observing the Rules governing service, due opportunity needs to be given to the department to pass fresh order in accordance with law by complying with the requirement of Rules in question. The said question of law has already been decided by the Hon'ble Supreme Court of India in Civil Appeal

No.6776 of 2022, titled as **The Inspector of Panchayats and District Collector, Salem Vs. S. Arichandran and others**, dated 23.09.2022. The relevant para is reproduced as under:

6.2. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and as the order of dismissal has been set aside on the ground that the same was in breach of principles of Natural Justice, the High Court ought to have remitted the case concerned to the Disciplinary Authority to conduct the inquiry from the point that it stood vitiated and to conclude the same after furnishing a copy of the Inquiry Report to the delinquent and to give opportunity to the delinquent to submit his comments on the Inquiry Officer's Report."

Hence, setting aside of the order dated 21.06.2013 is upheld but with the liberty to the department to pass fresh order in accordance with law after giving due opportunity to the respondent-plaintiff about the objection, if any, to be raised qua the proposal as to how the suspension period is to be treated.

As the respondent-plaintiff has already retired about a decade ago, it will be in the fitness of things that fresh order will be passed within a period of one month from the date of receipt of copy of this order. It is made clear that benefits, if any, for which the respondent-plaintiff became entitled will depend upon the fresh order to be passed. The authorities are directed to keep in mind the fact that in the criminal proceedings as well as departmental proceedings, the respondent-plaintiff was exonerated.

The present appeal is disposed of in the above terms.

CM No.3886-C of 2015

Application is also disposed of.

April 11, 2023

jt

(HARSIMRAN SINGH SETHI)
JUDGE

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