

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(217)

RSA-2332-2015 (O&M)

Date of Decision : January 11, 2023

C.C.S. H.A.U Hisar Through its Vice Chancellor .. Appellant

Versus

Satbir Singh

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sailender Singh, Advocate, for the appellant.

Mr. Amit Singla, Advocate, for the respondent.

HARSIMRAN SINGH SETHI J. (ORAL)

Present Regular Second Appeal has been filed challenging the judgment of the lower Appellate Court dated 05.03.2015 by which the findings recorded by the trial Court in its order dated 21.09.2011 were set aside and a direction was given to re-instate the respondent-plaintiff in service but without any back wages.

Certain facts need to be enumerated herein for the appreciation of the controversy involved in the present Regular Second Appeal. The respondent-plaintiff was in the employment of the appellant-University as a Security Guard and while he was in service, he was convicted by the competent Court of law vide order dated 20.05.1999 under Section 302, 323 148 and 149 of the IPC. On the basis of the said conviction, the University dismissed the respondent-plaintiff from service by passing an order dated 15.10.1999 but with effect from the date he was convicted i.e. 20.05.1999.

The said order was never challenged by the respondent-plaintiff and was

accepted.

Against the order of conviction, the respondent-plaintiff filed an appeal and this Court vide order dated 26.03.2008 though acquitted the respondent-plaintiff of conviction under Section 302 of IPC by giving him benefit of doubt but upheld the said conviction under Section 323, 148 and 149 of the IPC. After the said order, the respondent-plaintiff approached the University for reinstatement on the ground that he has been acquitted by the High Court qua his conviction under Section 302 IPC. The said claim was declined by the University on 03.02.2009 keeping in view the fact that his conviction under the remaining provisions of the IPC has already been upheld, hence, he is not entitled for reinstatement in service, which action has been challenged by the respondent-plaintiff by filing a civil suit dated 04.04.2009/15.06.2009.

The trial Court, keeping in view the facts and circumstances of the present case where the respondent-plaintiff was not completely exonerated by the competent Court of law in the criminal proceedings and his guilt in respect of the offences under Section 323, 148 and 149 of the IPC was upheld, declined the relief and the suit was dismissed but on an appeal preferred by the respondent-plaintiff, the lower Appellate Court vide order dated 05.03.2015 held that the order dated 03.02.2009 by which, the benefit of reinstatement was declined by the respondent-University, was incorrect and directed the University to reinstate the respondent-plaintiff in service from the date he moved the application seeking reinstatement i.e. 18.08.2008 but without any consequential benefits and without any wages for the period the respondent-plaintiff remained out of service. The said order of the lower Appellate Court is impugned in the present Regular

Second Appeal.

Learned counsel for the appellant-University argues that once there is no challenge to the order of dismissal dated 15.10.1999 and the order of the dismissal was based upon the conviction of the respondent-plaintiff, which conviction was maintained by the High Court in appeal though modified, the grant of benefit by the lower Appellate Court of reinstatement is totally contrary to the facts as well as law.

As per the argument raised by the learned counsel for the appellant, once the order of dismissal dated 15.10.1999 remained un-challenged, mere acquittal under one of the Section of the IPC in appeal, cannot be a ground for automatic reinstatement especially when the conviction under other sections of the IPC has been upheld, which conviction has already attained finality.

Learned counsel for the respondent-plaintiff does not dispute the actual facts, which have been noticed hereinbefore but submits that as the conviction of the respondent-plaintiff under 302 IPC was set aside by this Court while passing order on 26.03.2008, the conviction under the other sections of the IPC does not relate to the moral turpitude, hence, the respondents were under an obligation to reinstate the respondent-plaintiff in service without there being any challenge to the order of termination initially passed on 15.10.1999 hence, the lower Appellate Court rightly reinstated the respondent-plaintiff in service.

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

It is a conceded fact that the respondent-plaintiff was dismissed from the service w.e.f. 20.05.1999 on the ground of conviction by passing

an order dated 15.10.1999. Though, at the said time when the order of dismissal was passed in the year 1999, the respondent-plaintiff was convicted of allegation under Section 302, 323, 148 and 149 of the IPC, which was the basis of the said order terminating the services of the respondent-plaintiff. Thereafter, in the year 2008, the respondent-plaintiff was only acquitted qua the allegations under Section 302 of the IPC but his conviction was maintained by this Court under Section 323, 148 and 149 of the IPC. That being so, in case the respondent-plaintiff was aggrieved that there is a change in the circumstances and keeping in view the changed circumstances, the order of dismissal cannot be sustained, he was required to seek a declaration that keeping in view the changed circumstances, the order terminating his services dated 15.10.1999 should be declared bad and he should be reinstated in service.

Learned counsel for the respondent-plaintiff has conceded that there is no challenge to the order of dismissal.

Once, there is no challenge to the order of dismissal dated 15.10.1999 on any ground and without setting aside the order of dismissal, the lower Appellate Court could not have directed the reinstatement of the respondent-plaintiff simpliciter. Hence, the order passed by the lower Appellate Court for reinstatement without there being any challenge to the order of dismissal, cannot be sustained in the eyes of law being beyond the judgment of the lower Appellate Court.

Further ground taken by the lower Appellate Court is that the conviction of the respondent-plaintiff under Section 323, 148 and 149 of the IPC does not involve moral turpitude, hence respondent-plaintiff is entitled for the reinstatement in service. The said benefit can only be given in case,

there is a challenge to the order of termination dated 15.10.1999. In the present case, once it is a conceded fact that the order dated 15.10.1999 dismissing the respondent-plaintiff from service is not under challenge on any ground, the same benefit could not have been extended especially when the order dismissing the respondent-plaintiff from service had already attained finality.

Even otherwise, the judgment of the lower Appellate Court that conviction under Sections 323, 148 and 149 of the IPC does not involve moral turpitude, the same is contrary to the judgment of the Division Bench of this Court in ***CWP No.12175 of 2000 titled as Jagir Singh vs. Punjab State, decided on 22.08.2002***, wherein, it has been held that even the conviction under Section 323 IPC involves the moral turpitude. Relevant para of the judgment is as under:-

“6. Mr. Kaushal submits that the offence under Section 323 I.P.C does not entail any moral turpitude. Thus, the petitioner's conviction or dismissal on that account should not lead to an adverse consequence. This contention is misconceived. The Department had dismissed the petitioner after his conviction by the Court. The order of dismissal was admittedly passed on the allegation that the petitioner was guilty of misconduct. It has not been shown that the order was ever set aside. At this stage, the petitioner cannot be permitted to say that it was not removal or misconduct. Even otherwise, the rule does not specifically require that the misconduct should involve moral turpitude. Still further, it cannot be said that the criminal offence under Section 323 I.P.C. is a highly moral act or that it does not involve any kind of moral turpitude.”

As per the judgment of the lower Appellate Court is contrary to

the settled principle of law on this account also and hence, cannot be sustained.

Keeping in view the above, the judgment of the lower Appellate Court dated 05.03.2015 is set aside and that of the trial Court dated 21.09.2011 is maintained as far as dismissing the suit filed by the respondent-plaintiff.

The present Regular Second Appeal is allowed in above terms.

CM-6098-C-2015

As the main appeal has been allowed, present application stands disposed of.

January 11, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes