

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-10950-C-2015 in/&
RSA-4560-2015
Date of Decision :19.04.2023

Bishan Singh

...Appellant

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Mayank Mathur, Advocate for the appellant.

Mr. Gurvinder Singh, AAG, Punjab.

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Harsimran Singh Sethi, J. (Oral)

Present regular second appeal has been filed against the judgment and decree dated 01.08.2015 passed by the lower Appellate Court by which, an appeal filed by the respondent-State against the judgment and decree of the trial Court dated 13.10.2014 has been accepted and the decree of the trial Court dated 13.10.2014 has been set aside and the suit filed by the appellant-plaintiff was dismissed.

Certain facts need to be noticed for the correct appreciation of the issue in hand.

Appellant-plaintiff joined the respondent-department of Food and Civil Supplies on 04.06.1970 as daftri and thereafter, he was promoted as clerk on 30.01.1974 and as Junior Auditor on 01.01.1997. While working on the post of Junior Auditor, a charge sheet was served upon the appellant-

plaintiff on 14.03.2001 on the allegations that he got released the retiral benefits of one Kaur Singh despite the fact that the said Kaur Singh was not entitled for the release of the said benefits and further that the said act on the part of the appellant-plaintiff was intentional to cause loss to the Government exchequer.

Reply filed by the appellant-plaintiff to the said charge sheet was not found to be satisfactory and an enquiry officer was appointed to conduct an enquiry qua the allegations alleged. Keeping in view the evidence which came on record during the disciplinary proceedings, the Enquiry Officer proved the charge that despite the fact that said Kaur Singh was not entitled for certain pensionary benefits but the appellant-plaintiff had made the recommendation on the basis of which, the retiral benefits were released to the said Kaur Singh, but the fact that the said act on the part of the appellant-plaintiff was with malafide intention, was not proved. Before the enquiry report could be accepted by the punishing authority, the same was sent to the appellant-plaintiff for his comments.

Keeping in view the reply filed by the appellant-plaintiff to the said enquiry report, vide order dated 24.09.2002/30.09.2002 punishment of stoppage of two annual increments with cumulative effect was imposed upon the appellant-plaintiff and the recovery of sum of Rs.7113.84 paise was also imposed upon him.

Against the said order of punishment, appellant-plaintiff preferred an appeal which appeal was rejected by the appellate authority vide order dated 21.1.2005 and, thereafter, being dissatisfied, the appellant-plaintiff filed a review which was also rejected by the authority concerned on 01.02.2007. Even memorial to the higher authority was submitted by the

appellant-plaintiff for reconsideration of the punishment imposed upon him, which was also rejected vide order dated 20.01.2009 upholding the order of punishment. The Said order of punishment dated 24.09.2002/30.09.2002 along with subsequent orders of the authorities concerned upholding the said order of punishment were challenged by the appellant-plaintiff by way of filing a civil suit.

Keeping in view the facts and evidence which come on record, the trial Court vide judgment and decree dated 13.10.2014 allowed the suit filed by the appellant-plaintiff holding that order of punishment dated 24.09.2002/30.09.2002 and subsequent orders passed by the authority concerned were illegal, null and void and were set aside with the direction that appellant-plaintiff will be entitled for the service benefits along with interest.

Feeling aggrieved against the said judgment and decree of the trial Court dated 13.10.2014, an appeal was preferred by the respondent-State before the lower Appellate Court, which appeal came to be decided on 01.08.2015 by which, judgment and decree of the trial Court dated 13.10.2014 was set aside and the suit filed by the appellant-plaintiff was dismissed. Hence, the present regular second appeal.

Learned counsel for the appellant-plaintiff argues that in the present case, there were two allegations alleged against the appellant-plaintiff and only one was proved during the course of disciplinary proceedings but the punishment has been imposed upon the appellant-plaintiff by the punishing authority assuming that both the allegations have been proved hence, the order passed by the punishing authority is factually incorrect which was rightly appreciated by the trial Court while passing the

judgment and decree dated 13.10.2014.

Learned counsel for the respondent-State contest the said argument by stating that nothing has come on record to prove that punishing authority had passed the order of punishment on the assumption that both the allegations were proved against the appellant-plaintiff hence, the lower Appellate Court has rightly considered the aspect including the evidence in a correct perspective and dismissed the suit filed by the appellant-plaintiff.

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

In respect of the argument raised by the learned counsel for the appellant-plaintiff, learned counsel for the appellant-plaintiff was requested to point out the evidence to support the said argument that punishing authority has considered both the charges as proved while imposing punishment of stoppage of two annual increments with cumulative effect.

Learned counsel for the appellant-plaintiff submits that the said fact is clear from the impugned order wherein, the punishing authority reproduced both the charges alleged hence, punishing authority imposed the punishment on the basis of the allegations alleged in the charge sheet.

The said interpretation of the order of punishing authority imposing punishment is not correct. In the order imposing the punishment, factual aspect has been given by the punishing authority while imposing the punishment and only factum has been mentioned that while issuing the charge sheet two allegations were alleged against the appellant-plaintiff which was enquired into by the Enquiry Officer and the enquiry report which was received from the enquiry officer was sent to the appellant-

plaintiff for his comments and keeping in view the reply filed by the appellant-plaintiff, punishment of stoppage of two annual increments with cumulative effect along with the recovery has been imposed. It is a conceded position that enquiry report was perused by the punishing authority and the same was sent to the appellant-plaintiff also for his comments. It is also conceded position that only one charge was proved by the Enquiry Officer. Once the said enquiry report has been accepted by the punishing authority, it cannot be said the while imposing the punishment both the charges were taken in consideration as proved to impose the punishment. Nothing mentioned in the order of punishment proves that punishment was imposed on the basis of the fact that both the charges alleged to have been proved before the enquiry officer. Interpretation being given to the order of punishment is not correct and has not been proved even from the plain reading of the order of punishment.

Keeping in view the said fact, the allegation of wrongful release of retiral benefit to one Kaur Singh by the appellant-plaintiff was proved and on the basis of the said proved allegations, order of punishment has been passed.

Learned counsel for the appellant-plaintiff relies upon the judgment of the Hon'ble Supreme Court of India in **Civil Appeal No.1891-2001** titled as **Lav Nigam vs. Chairman, MD, ITI Limited and another** decided on 03.04.2006 to contend that in case punishing authority disagrees with the findings of the enquiry report, the said disagreement should be supplied to the delinquent officer.

The judgment being relied upon is not applicable in the present case for the reason that nothing has come on record that at any given point

of time, the punishing authority disagreed with the findings of the enquiry report qua the non-proving of allegation of malafide. Rather while considering the argument raised on behalf of the appellant-plaintiff, it has already been recorded that it is only on the basis of the enquiry report wherein only one charge was proved, punishment was imposed, hence, the judgment being relied upon by the learned counsel for the appellant-plaintiff is not applicable in the facts and circumstances of the present case.

No other argument has been raised.

No perversity has been pointed out by the learned counsel for the appellant-plaintiff in the judgment and decree dated 01.08.2015 passed by the lower Appellate Court keeping in view the evidence which had come on record.

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

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Application is also dismissed.

April 19, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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