

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-1890-C-2023 &
CM-1891-C-2023 in/&
RSA-225-2014 (O&M)
Date of Decision :13.03.2023

State of Punjab and others

...Appellant

Versus

Jagtar Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Gurvinder Singh, AAG, Punjab
for appellant-State.

Mr. P.K. Bansal, Advocate for respondent.

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Harsimran Singh Sethi, J. (Oral)

CM-1890-C-2023

Present application has been filed for bringing on record the legal representatives of respondent-Jagtar Singh, who unfortunately died during the pendency of the present appeal.

Notice of the application to the non-applicant-appellant.

Mr. Gurvinder Singh, AAG, Punjab accepts notice on behalf of appellant-State and raises no objection for the grant of prayer as made in the present application.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the application is allowed. Legal representatives of respondent-Jagtar Singh, details of whom have been

given in para-3 of the application are ordered to be brought on record subject to all just exceptions.

Memo of parties is also taken on record.

CM-1891-C-2023

Present application has been filed for placing on record list of dates and events of the present case.

Keeping in view the averments made in the application, which are duly supported by an affidavit, application is allowed.

RSA-225-2014

Present regular second appeal has been filed challenging the judgment and decree dated 20.10.2012 passed by the Lower Appellate Court by which, judgment and decree of the trial Court dated 10.05.2012 dismissing the suit filed by the respondent/plaintiff, has been set aside and the enquiry proceedings have been held to be bad on the ground that enquiry officer while sending the enquiry report did not send all the documents to the punishing authority and the department has been directed to hold the enquiry proceedings afresh in view of the allegations alleged against the respondent-plaintiff.

Certain facts needs to be mentioned to appreciate the controversy in a correct perspective.

Respondent/plaintiff, who was working as driver with the respondent-State of Punjab was on duty on 24.08.2003 and he was directed to tow a bus from Ludhiana and bring it to the workshop in Ferozepur.

While driving the said truck, the respondent/plaintiff mowed down a rickshaw puller, who ultimately died, for which incident an FIR No.195

dated 25.08.2003 under Sections 279, 304-A and 427 of the IPC was registered against him. Keeping in view the said incident, disciplinary proceedings were initiated against the respondent/plaintiff. A regular departmental enquiry was conducted wherein, the allegations of negligence in driving were proved against the respondent/plaintiff and ultimately after considering the reply filed by the respondent/plaintiff to the enquiry report, punishing authority imposed a punishment of termination of service of the respondent/plaintiff vide order dated 21.10.2005.

Against the said order, respondent/plaintiff filed an appeal which was also dismissed. Even in respect of the criminal proceeding which were initiated qua FIR No.195 dated 25.08.2003, respondent/plaintiff was found guilty of the negligence in driving and he was sentenced to undergo imprisonment.

Order dismissing the respondent/plaintiff from service dated 21.10.2005 as well as order dismissing his appeal dated 31.10.2006 were challenged by the respondent/plaintiff by way of filing a civil suit, which civil suit came to be decided by the trial Court vide judgment and decree dated 10.05.2012 and keeping in view the evidence which had come on record, the trial Court came to the conclusion that order terminating the service of the respondent/plaintiff was passed after following due process of law and keeping in view the negligence proved and the suit was dismissed.

Aggrieved against the said judgment and decree of the trial Court dated 10.05.2012, respondent/plaintiff filed an appeal before the

Lower Appellate Court which appeal came to be decided on 20.10.2012 and the Lower Appellate Court came to the conclusion that the enquiry proceedings were held in violation of Rule 8(23) (ii) of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (In short, '1970 Rules') and therefore, any order passed on the basis of the said enquiry proceedings which have been held in violation of 1978 Rules cannot be sustained and the order terminating the services of the respondent/plaintiff as well as order passed in appeal by the Appellate Authority dated 21.10.2005 and 31.10.2006 respectively were set aside and the department has been directed to hold the enquiry proceedings afresh from the stage of conclusion of report of the Enquiry Officer. The said order of the Lower Appellate Court is under challenge in the present regular second appeal.

Learned counsel for the appellant argues that in the present case, violation of Rule 8(23) (ii) of the 1970 Rules is the basis for passing the impugned judgments and decrees by the Lower Appellate Court. Before proceeding further the said rule is reproduced for ready reference:-

- (23)** (i) After the conclusion of the inquiry, a report shall be prepared and it shall contain
- (a) The articles of charge and the statement of the imputation of misconduct or misbehavior.
 - (b) The defence of the Government employee in respect of each article of charge.
 - (c) An assessment of the evidence in respect of each articles of charge
 - (d) The findings on each article of charge and the reasons therefore.

Explanation- If in the opinion of the enquiring authority the proceedings of the enquiry establish

any article of charge different from the original articles of the charge, it may record its finding on such article of charge.

(ii) The Inquiring authority where it is not itself the punishing authority shall forward to the punishing authority the records of inquiry which shall include-

- (a) The report prepared by it under clause (i);
- (b) The written statements of defence, if any, submitted by the Government employee;
- (c) The oral and documentary evidence produced in the course of the inquiry;
- (d) Written brief, if any, filed by the presenting officer, or the Government employee or both during the course of the course of the inquiry;
- (e) The orders, if any, may be the punishment authority and the inquiring authority in regard to the inquiry.”

Learned counsel for the appellant argues that as per the Rule 8 (23) of the 1970 Rules, the Enquiry officer is to forward the record of the enquiry proceedings to the punishing authority and in the present case, the grievance being raised by the respondent/plaintiff that the Enquiry officer had only sent the enquiry report and not the total record of the enquiry to the punishing authority, which plea of the respondent/plaintiff has been accepted by the lower Appellate Court to hold that the enquiry proceedings were held in violation of the rules of natural justice. Learned counsel for the appellant argues that a procedure has only been prescribed to direct the enquiry officer to submit the record to the punishing authority but the non-submission of the same, can only treat the enquiry proceedings invalid in case the same act has caused prejudice to the delinquent concerned. Learned

counsel for the appellant submits that in the present case, the enquiry report was forwarded to the delinquent official and the reply was submitted by him which has been taken into account by the punishing authority before imposing the punishment upon the respondent/plaintiff hence, in the absence of any prejudice shown to be caused to the delinquent concerned, order passed by the Lower Appellate Court, setting aside the enquiry proceedings and consequent punishment order, is without appreciating the said rule in the correct perspective.

Learned counsel for the respondent/plaintiff submits that under the rules governing the service, the record of the enquiry proceedings was required to be submitted by the enquiry officer to the punishing authority and non-submission of the same, ipso facto is a valid ground to hold the enquiry proceedings as vitiated. Learned counsel for the respondent/plaintiff further argues that certain submissions advanced by the respondent/plaintiff before the punishing authority qua the status of the truck in question, which was involved in an accident, has not been appreciated while imposing the punishment upon him.

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

The first question which needs to be decided in the present regular second appeal is whether non-submission of entire record by the enquiry officer will ipso facto be considered as a ground to treat the enquiry proceedings bad or non-submission of the complete record can only be treated bad in case prejudice is caused to an employee concerned. The rule

is only a procedural rule for the enquiry officer as to what the enquiry officer is to do after concluding the enquiry proceedings. Rule envisage submission of the record to the punishing authority so that appropriate order is passed and objections, if any, raised by the delinquent concerned could be appreciated correctly. Non-following the said procedure can only be treated violative of the rules of natural justice only in case any prejudice is shown to be caused to the employee concerned. In the present case, enquiry report was submitted on the basis of the record and the said enquiry report was forwarded to the respondent/plaintiff for his comments and it is a conceded position that a reply to the said enquiry report was submitted by the respondent/plaintiff, which has been taken into consideration by the punishing authority while passing order dated 21.10.2005 imposing the punishment of dismissal from service. Once, all the objections raised by the respondent/plaintiff before the punishing authority were dealt with by the punishing authority and merely, that certain record was not sent by the enquiry officer that too without there being any prejudice shown to be caused to the respondent/plaintiff, cannot be treated to such an extent so as to vitiate the enquiry proceedings ipso facto. The findings recorded by the Lower Appellate Court are totally perverse as the rules of natural justice required examination of the plea so as not to cause prejudice to the employee concerned. Rules of natural justice, cannot be accepted to such an extent even where there is no prejudice cause. The violation of a directory provision cannot be treated to such an extent so as to declare the whole enquiry proceedings as vitiated. Hence, in the absence of any prejudice

shown by the respondent/plaintiff qua the non adherence of rule 8(23) of the 1970 Rules, the same cannot be treated as violative of rules of natural justice.

Further, learned counsel for the respondent/plaintiff argues that his submission that the truck in question which was being driven by him on the fateful day was in an old condition which fact has not been looked into by the Courts below. The Court cannot sit in appeal over the decision of the punishing authority. Once, it is a conceded position that respondent/plaintiff was convicted in a criminal case which was initiated against him qua the same accident where he was found to be negligent, putting the blame on the truck by the respondent/plaintiff has been considered by the punishing authority in a manner required keeping in view the facts and circumstance of the present case and no interference is called for by this Court and rather the interference done by the Court below is also by exceeding its jurisdiction.

Learned counsel for the respondent/plaintiff further argues that nothing has come on record during the enquiry proceedings that respondent/plaintiff was negligent in driving the truck in question.

On being asked, learned counsel for the respondent/plaintiff conceded the fact that the respondent/plaintiff has been convicted in the criminal proceedings for negligence. That being so, it cannot be held that respondent/plaintiff was not negligent so as to avoid punishment even in the departmental proceedings.

Keeping in view the above, judgment of the Lower Appellate

Court dated 20.10.2012 setting aside the judgment of the trial Court dated 10.05.2012 by holding that Rule 8(23) of the 1970 Rules was violated is held to be bad in the facts and circumstance of the present case as no prejudice has been shown to be caused by the respondent/plaintiff. Even otherwise the said rule is directory in nature. The present regular second appeal filed by appellant-State is allowed and the judgment and decree of the Lower Appellate Court is set aside and consequently, judgment and decree of the trial Court dismissing the suit filed by the respondent-plaintiff is restored.

March 13, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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