

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(105)

CM-8023-C-2022 in/and
RSA-1355-2017 (O&M)
Date of Decision : 13.03.2023

Punjab State Power Corporation and others

...Appellants

Versus

Kulbir Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. B.S. Mittal, Advocate for the appellants.

Mr. H.P.S. Ghuman, Advocate for the respondent-plaintiff.

Harsimran Singh Sethi J. (Oral)

CM-8023-C-2022

Present application has been filed for fixing the RSA No. 1355 of 2017 to an early actual date of hearing.

Keeping in view the averments made in the application, which are dully supported by an affidavit, the application is allowed and the RSA No. 1355 of 2017 is taken up for hearing today.

RSA-1355-2017

The present regular second appeal has been filed by the appellants-defendants challenging the judgment of the lower appellate court dated 12.07.2016 by which, the appeal filed by the respondent-plaintiff has been accepted and the judgment and decree of the trial court dated 23.01.2014 has been set-aside and the suit filed by the respondent-plaintiff

challenging the order terminating his services dated 08.06.2007 has been held to be bad on the ground that the departmental proceedings have been conducted in violation of the principles of natural justice.

Certain facts need to be mentioned here for correct appreciation of the controversy in hand.

While working as an Assistant Lineman, the respondent-plaintiff absented himself from duty from 17.03.2004. The employee was asked to report back on duty vide letter no. 7063 dated 24.05.2004 but the respondent-plaintiff did not join the service, which act of the respondent-plaintiff led to the issuance of a charge-sheet upon him dated 04.06.2004. The said charge-sheet was duly received by the respondent-plaintiff on 08.06.2004 but he did not submit any reply to the same. Various letters were written to the respondent-plaintiff by the appellants-defendants in July as well as in August, 2004 but he did not join back the service. Even the reply to the charge-sheet was not filed. Ultimately, the respondent-plaintiff joined the service on 09.07.2004 on which date, he was requested to file his reply to the charge-sheet dated 04.06.2004 but no reply was filed to the charge-sheet despite joining the duties by the respondent-plaintiff.

During the pendency of the disciplinary proceedings, the respondent-plaintiff again absented himself starting from 04.01.2005 and letters were again written to him to join back his duties but he failed to do so, which led to the initiation of another disciplinary proceeding against him on 18.05.2005 by serving of a charge-sheet. No reply was received from the respondent-plaintiff qua the said charge-sheet as well and he continued to remain absent in an unauthorised way. As the time specified for filing the reply to the charge-sheet got expired, then an Enquiry Officer was appointed

but the respondent-plaintiff failed to appear before him and even a notice was issued in the newspaper giving all the details and requesting the respondent-plaintiff to associate himself with the enquiry proceedings. Despite the above stated efforts of the appellant-defendant-Corporation, the respondent-plaintiff did not join back the service. Keeping in view the fact that the charges alleged in the charge-sheet were never controverted by the respondent-plaintiff, an order was passed on 08.06.2007 dismissing him from service. The said order was challenged by the respondent-plaintiff by filing a civil suit.

Keeping in view the evidence, which came on record, the trial court dismissed the suit holding that once the respondent-plaintiff did not dispute the fact that there was no sanction of leave and he was absent from his duty in an unauthorised way, suitable action has been taken by the department as the court will not sit over the decision of the disciplinary authority to examine the order passed by the authorities concerned, especially when, due opportunity was given to the respondent-plaintiff to associate himself with the disciplinary proceedings, which he failed to avail.

Against the judgment and decree of the trial court dated 23.01.2014, the respondent-plaintiff filed an appeal before the lower appellate court and the lower appellate court vide judgment and decree dated 12.07.2016 set-aside the judgment and decree of the trial court dated 23.01.2014 and allowed the civil suit on the ground that the enquiry proceedings were held in total violation of the rules of natural justice as no opportunity was given to the respondent-plaintiff to defend and the Enquiry Officer proved the charges on the basis of the document without recording the statement of the witnesses concerned hence, the present regular second

appeal.

The appellants-defendants in the present regular second appeal have challenged the findings of the lower appellate court dated 12.07.2016 on the ground that once the respondent-plaintiff failed to associate himself with the enquiry proceedings and there is no dispute with the fact that there was no sanction of leave in favour of the respondent-plaintiff, setting-aside the order of dismissal on the ground that enquiry proceedings were held in a manner against the rules, is bad as, no defence was ever offered by the respondent-plaintiff to the charges alleged against him despite the grant of due opportunity.

Learned counsel for the respondent-plaintiff, on the other hand, submits that though, there is no dispute that the respondent-plaintiff was not performing the duties for the period he remained absent but the said period of absence was required to be proved during the enquiry proceedings on the basis of the recording of the statement of the witnesses, which proceeding is missing in the present case hence, the judgment of the lower appellate court allowing the appeal filed by the respondent-plaintiff so as to set-aside the punishment imposed vide order dated 08.06.2007, is perfectly valid and legal.

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

The only question of law for consideration before this Court in the present regular second appeal is whether, in the facts and circumstances of the present case, it can be said that the respondent-plaintiff has not been given due opportunity to present his case qua the allegation, which was alleged against him in two disciplinary proceedings initiated against him in

the year 2004 as well as in the year 2005 qua the unauthorised absence or any prejudice has been caused to the respondent-plaintiff in the facts and circumstances of this case.

Learned counsel for the respondent-plaintiff conceded before this Court that even he did not associate himself with the enquiry proceedings. Further, it has already come on record that the first charge-sheet issued to him in the year 2004 was received by the respondent-plaintiff after he joined the service in July, 2004 and he did not submit any reply to the said charge-sheet controverting the allegation. Keeping in view the said fact, once despite receiving a charge-sheet, the respondent-plaintiff did not offer valid explanation for the unauthorised absence, proving of the charge by the Enquiry Officer in the facts and circumstances of the present case, cannot be held to be bad. The charges have been proved on the basis of the documents and the letters written to the respondent-plaintiff to join back the service, which he failed to do so. The allegations required adjudication at the hands of the Enquiry Officer when they are contested by the parties concerned. It is only, in case a charged officer submits a due explanation to the allegation alleged, he can avail the benefit of rebuttal of the documents as well as the witnesses. In the present case, the respondent-plaintiff, despite due opportunity, failed to associate himself with the enquiry proceedings and respondent-plaintiff did not even controvert the allegation so as to offer any valid explanation to the allegations alleged the allegations were proved on the basis of the documents concerned.

The said question has already been answered by the Hon'ble Supreme Court of India in SLP (C) Nos. 24220-24221 of 2007 titled as

Vijay S. Sathaye Vs. Indian Airlines Ltd. and others, decided on

06.09.2013, wherein, the Hon'ble Supreme Court of India has held that where the absence of an employee is beyond the authorised period, the employee should have been treated to have been resigned and ceases to be in service and in those cases, there is no need even to hold an enquiry or to give any notice as it would amount to a useless formality. The relevant paragraph 9 of the said judgment is as under :-

“9. It is a settled law that an employee cannot be termed as a slave, he has a right to abandon the service any time voluntarily by submitting his resignation and alternatively, not joining the duty and remaining absent for long. Absence from duty in the beginning may be a misconduct but when absence is for a very long period, it may amount to voluntarily abandonment of service and in that eventuality, the bonds of service come to an end automatically without requiring any order to be passed by the employer.”

Further, the Hon'ble Supreme Court of India held that where the absence is for a long period, it can be treated that the employee has himself abandoned his services.

In the present case, the respondent-plaintiff remained unauthorised absent on two different occasions, firstly in the year 2004 and then again starting from the year 2005 till he was dismissed despite initiation of the disciplinary proceedings. It is already on record that the department had sent number of requests/letters to the respondent-plaintiff to join the service as well as disciplinary proceedings so as to defend himself, which opportunities were not availed by him. Even a notice was issued in the newspaper to give an opportunity to the respondent-plaintiff to join the disciplinary proceedings, which opportunity was not encashed by the respondent-plaintiff. In these circumstances, keeping in view the settled

principle of law settled by the Hon'ble Supreme Court of India in ***Vijay S. Sathaye's case (supra)***, it cannot be said that the rules of natural justice were violated by the department before passing the order of termination.

Further, the courts can only go into the rules of natural justice in case, an employee participates in the departmental proceedings and is denied the cross-examination of the witnesses or is not supplied the documents before proving a charge. In the present case, the respondent-plaintiff did not avail the said opportunity as despite opportunity, he did not join the proceedings to controvert the allegations.

Keeping in view the settled principle of law settled by the Hon'ble Supreme Court of India in Civil Appeal No. 4263 of 1999 titled as ***Syndicate Bank Vs. The General Secretary, Syndicate Bank Staff Association and another***, decided on 25.04.2000, the Courts are not required to interfere with the action taken by the punishing authority, where an employee is at fault and despite given notice and opportunity to join the enquiry proceedings, did not come forward to join those proceedings. The relevant paragraphs 14 to 18 of the said judgment is as under :-

“14. In the present case action was taken by the Bank under Clause 16 of the Bipartite Settlement. It is not disputed that Dayananda absented himself from the work for a period of 90 or more consecutive days. It was thereafter that the Bank served a notice on him calling upon to report for duty within 30 days of the notice stating therein the grounds for the Bank to come to the conclusion that Dayananda had no intention of joining duties. Dayananda did not respond to the notice at all. On the expiry of the notice period Bank passed orders that Dayananda had voluntarily retired from the service of the Bank.

15. Now what are the requirements of principles of natural

justice, which are required to be observed ? These are : (1) workman should know the nature of the complaint or accusation; (2) an opportunity to state his case; and (3) the management should act in good faith which means that the action of the management should be fair, reasonable and just. All these three criteria have been fully met in the present case. Principles of natural justice are inbuilt in Clause 16 of the Bipartite Settlement. When evidence was led before the Tribunal, Bank produced the registered covers, which had been received back with the endorsement "refused" and the addressee "not found during delivery time". Dayananda said he never refused to receive the notice. In these circumstances Tribunal thought it necessary to hold that notice was not served on Dayananda as the Bank did not examine the postman. The notice was sent on the correct address of Dayananda and it was received back with the postal endorsement "refused". A clear presumption arose in favour of the Bank and against Dayananda. Yet the Tribunal held that no notice was given to Dayananda as postman was not produced by the Bank. This appears to us to be rather an incongruous finding by the Tribunal. Unfortunately, High Court did not go into this question at all. Considering the conduct of Dayananda all this period and after three years of his having voluntarily retired from the Bank in terms of Clause 16 of the Bipartite Settlement his statement that he did not receive the notice was a sheer lie. His whole edifice was built on falsehood and yet the Tribunal was there to give him relief on the platter though at the same time criticised his conduct during his employment with the Bank.

16. It is no point laying stress on the principles of natural justice without understanding their scope or real meaning. There are two essential elements of natural justice which are : (a) no man shall be judge in his own cause; and (b) no man shall be condemned, either civilly or criminally, without being

afforded an opportunity of being heard in answer to the charge made against him. In course of time by various judicial pronouncements these two principles of natural justice have been expanded, i.e., a party must have due notice when the Tribunal will proceed; Tribunal should not act on irrelevant evidence or shut out relevant evidence; if the Tribunal consists of several members they all must sit together at all times; Tribunal should act independently and should not be biased against any party; its action should be based on good faith and order and should act in just, fair and reasonable manner. These in fact are the extensions or refinements of the main principles of natural justice stated above.

17. Bank has followed the requirements of Clause 16 of the Bipartite Settlement. It rightly held that Dayananda has voluntarily retired from the service of the Bank. Under these circumstances it was not necessary for the Bank to hold any inquiry before passing the order. An inquiry would have been necessary if Dayananda had submitted his explanation which was not acceptable to the Bank or contended that he did report for duty but was not allowed to join by the Bank. Nothing of the like has happened here. Assuming for a moment that inquiry was necessitated, evidence led before the Tribunal clearly showed that notice was given to Dayananda and it is he who defaulted and offered no explanation of his absence from duty and did not report for duty within 30 days of the notice as required in Clause 16 of the Bipartite Settlement.

18. This undue reliance on the principles of natural justice by the Tribunal and even by the High Court has certainly led to miscarriage of justice as far as Bank is concerned. Conduct of Dayananda as an employee of the Bank has been astounding. It was not a case where the Tribunal should have given any relief to Dayananda and yet the Bank was directed to reinstate him with continuity of service and mercifully the latter part of the relief High Court struck down. There was no occasion for the

Tribunal to direct that Dayananda be reinstated in service or for the High Court not to have exercised its jurisdiction under [Article 226](#) of the Constitution to set aside the Award.”

Learned counsel for the respondent-plaintiff has raised an argument that the punishment imposed upon the respondent-plaintiff is harsh. In the facts and circumstances of the present case, where the respondent-plaintiff remained absent more than once and the second absence was during the pendency of the disciplinary proceedings against him showed his attitude towards his duty. Further, the respondent-plaintiff did not chose even to participate in the enquiry proceedings and keeping in view the findings recorded by the court coupled with the settled principle of law, he has abandoned his job, the argument being raised that the punishment is harsh, cannot be accepted. The judgment of the Hon'ble Supreme Court of India in Civil Appeal No. 2982 of 1989 titled as ***Union of India and others Vs. Giriraj Sharma***, decided on 17.03.1993, is not applicable in the facts and circumstances of the present case and no benefit of the same can be extended to him.

Keeping in view the above, it can be safely said that the judgment of the lower appellate court to hold that the enquiry proceedings were held against the respondent-plaintiff in violation of the rules of natural justice is perverse to the evidence, which is on record and is also contrary to the settled principle of law noticed hereinbefore hence, the same cannot be sustained.

Keeping in view the above, the judgment of the lower appellate court dated 12.07.2016 is set-aside and the judgment of the trial court dated 23.01.2014 is re-instated and the suit filed by the respondent-plaintiff shall be deemed to have been dismissed.

Accordingly, the appeal is allowed. Decree sheet be prepared accordingly.

CM-3215-C-2017

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

March 13, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No