

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CM-650-C-2023 in/&
RSA-1940-2018
Date of Decision :24.01.2023

Rajiv Kumar Nischal

...Appellant

Versus

State Bank of Patiala and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Gulshan Sharma, Advocate for the appellant.

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Harsimran Singh Sethi, J. (Oral)

CM-650-C-2023

Application has been filed for placing on record list of dates/synopsis in compliance of the order dated 06.02.2020 passed by the Coordinate Bench of this Court. Application is allowed and on the oral request of the learned counsel for the appellant case is taken up for hearing today.

RSA-1940-2018

In the present regular second appeal, the challenge is to judgment and decree dated 02.09.2014 passed by the trial Court by which, the suit filed by the appellant-plaintiff under Section 34 of the Specific Relief Act, 1963 for declaration to the effect that order dated 03.10.2008 passed by the respondent-Bank removing the appellant-plaintiff from service is illegal, null, void-ab-initio and arbitrary and the appellant-plaintiff

be reinstated in service along with full back wages, was dismissed as well as order dated 10.10.2017 passed by the lower Appellate Court by which, an appeal filed by the appellant-plaintiff against the said order of the trial Court dated 02.09.2014, was dismissed and judgment and decree of the trial Court was upheld.

Keeping in view the evidence which had come on record as well as statement of the appellant-plaintiff himself where the appellant-plaintiff had conceded the fact that there was no irregularity in holding the enquiry, the suit filed by the appellant-plaintiff was dismissed and order of dismissing the appellant from service was upheld by recording a finding that Court cannot act as an appellate authority and once no infirmity has been pointed out especially, when the charges have been proved against the employee concerned.

Judgment of the trial Court dated 02.09.2014 was assailed in an appeal, which was decided against the appellant-plaintiff vide order dated 10.10.2017 of the Lower Appellate Court. Order dated 02.09.2014 passed by the trial Court as well as order dated 10.10.2017 passed by the lower Appellate Court are under challenge in the present appeal with the payer that the same may be set aside and the suit filed by the appellant-plaintiff may kindly be allowed.

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

Learned counsel for the appellant argues that the findings of the Enquiry Officer are not correct and further keeping in view the charges alleged and proved against the appellant-plaintiff, imposition of punishment

of dismissal from service could not have been ordered by the respondent-Bank which aspect has not been looked into by the trial Court as well as lower Appellate Court while passing the respective orders.

In respect of the said argument raised by the learned counsel for the appellant-plaintiff, it may be noticed that the findings have been recorded by the trial Court in para-11 of the judgment, which is based upon the statement of the appellant-plaintiff wherein, appellant-plaintiff himself has conceded the fact that there is no irregularity in conducting the Enquiry proceedings and he has been given due opportunity for defence. That being so, as no procedural defect has been brought to the notice of the Court below, it cannot be said that the findings recorded by the Court below are perverted to the facts or evidence on record that due opportunity to defend was afforded to the appellant-plaintiff during the conduct of the disciplinary proceedings. In the absence of any perversity being pointed out, this Court has no jurisdiction to re-appreciate the facts, which have already come on record so as to return a different finding.

Further, it is a settled principle of law settled by the Hon'ble Supreme Court of India in **Civil Appeal Nos.7939-7940-2022** titled as **Union of India and others vs. Subrata Nath** decided on 23.11.2022 that Courts are not to act as an Appellate authority and the jurisdiction of the Courts is to ensure that proper procedure as envisaged under the law should be followed while holding enquiry. With regard to the imposition of punishment, the Court can only interfere in case the same is shocking and is hugely disproportionate to the allegations alleged and proved.

In the present case, no such factum has been brought to the

notice of this Court so as to come to the conclusion that the punishment imposed upon the appellant-plaintiff was hugely disproportionate to the allegations alleged against him and proved to be treated as shocking in any manner. There are allegations of misappropriation along with irregularity against the appellant-plaintiff due to which, Bank has also suffered loss hence, it cannot be said that the punishment imposed upon the appellant-plaintiff is disproportionate to the charges alleged and proved against him.

Keeping in view the facts recorded hereinbefore, as no perversity has been pointed out by the learned counsel for the appellant-plaintiff either qua the facts or evidence on record hence, no interference is called for by this Court in the findings so recorded by the Courts below and the present regular second appeal is accordingly dismissed.

January 24, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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