

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(106)

CM-1016-C-2023 in/and
RSA-2245-2018
Date of Decision : April 25, 2023

Jaswant Singh

.. Appellant

Versus

State of Punjab and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Gagneshwar Walia, Advocate, for the applicant-appellant.

Mr. Rohit Bansal, Senior DAG, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-1016-C-2023

As prayed for, the application is allowed.

Synopsis/list of events are taken on record.

RSA-2245-2018

Present Regular Second Appeal has been filed challenging the judgments of the Courts below by which, the suit filed by the appellant-plaintiff for declaring the order dated 28.12.2007 by which the punishment was imposed upon the appellant-plaintiff as well as the order passed in appeal, as arbitrary and illegal, was dismissed by the trial Court vide judgment and decree dated 12.05.2016, as well as against the judgment of the lower Appellate Court dated 18.05.2017 by which, the appeal filed by

the appellant-plaintiff against the judgment and decree of the trial Court, was dismissed.

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

The appellant-plaintiff was working as a Driver with the Transport Department of the Government of Punjab. On 14.10.1999, while the appellant-plaintiff was performing the duties on Bus No. PB12B-9419, an accident took place and in the said accident, one person died and an another person was injured. In respect of the said accident, an FIR No.143 dated 14.10.1999 was registered against the appellant-plaintiff under Section 279, 338 and 304-A of the IPC in which the appellant-plaintiff was found guilty and was convicted. After being convicted, the appellant-plaintiff was directed to serve the sentence for a period of one year and six months, which sentence was reduced in the appeal by the lower Appellate Court and in the criminal revision filed before this Court, the same was further attained finality reduced to already undergone. After the conviction of the appellant-plaintiff, action was taken against the appellant-plaintiff by the Department keeping in view the conviction and the competent authority terminated the services of the appellant-plaintiff vide order dated 09.03.2004 but on an appeal, the Appellate Authority on 15.06.2005, the punishment of termination from service was reduced to reduction in the time scale period for a period of three years.

Keeping in view the accident involving the appellant-plaintiff wherein, a person had lost life and another was injured, the claim petition was filed before the Motor Accident Claims Tribunal seeking compensation.

The said claim petition was decided and the claimants were found entitled for compensation of sum of Rs.5,97,145/-. The appellant, who was also party to the claim petition, was also held liable for the payment of compensation to the claimants.

The liability was discharged by the Department of Transport and in order to recover the said amount from the appellant, disciplinary proceedings were initiated against the appellant-plaintiff wherein, the negligence was proved. Despite the fact that the negligence was proved, rather than recovering the amount which was paid by the Transport Department on behalf of the appellant-plaintiff to the claimants, a punishment was imposed upon the appellant-plaintiff for stoppage of five increments with cumulative effect. The said order was passed on 28.12.2007. An appeal was preferred by the appellant-plaintiff against the said punishment order, which appeal was also dismissed by the Appellate Authority on 31.10.2011.

The order of punishment dated 28.12.2007 and the order passed by the Appellate Authority dated 31.10.2011 were challenged by the appellant-plaintiff by filing a civil suit. In the civil suit, the ground was taken that for the same offence, a punishment has already been imposed upon the appellant after being convicted of reducing his pay scale to the time scale for a period of three years vide order dated 15.06.2005, hence, no second punishment can be imposed again for the same offence. Another ground was taken that though in the charge sheet, the allegation was with regard to the recovery of compensation paid by the Department of Transport on behalf of the appellant-plaintiff but rather than directing the recovery of

the said amount, another punishment was imposed upon him stopping his five increments with cumulative effect, which amounts to double jeopardy.

Keeping in view the evidence which came on record, the same was interpreted by the trial Court keeping in view the facts of the present case and suit was dismissed by holding that once an order of punishment has been passed after giving due opportunity, the Court has no power to interfere. The allegation that the appellant-plaintiff was being punished twice for the same offence, was not dealt with. Feeling aggrieved against the judgment and decree of the trial Court dated 12.05.2016, the appeal was preferred which appeal also came to be dismissed by the lower Appellate Court on the ground that once the appellant-plaintiff was negligent in discharge of his duties, the loss suffered by the Transport Department can be recovered from him. Hence, the present Regular Second Appeal.

Learned counsel for the appellant, at the outset, argues that challenge to the order of punishment which has been impugned in the present case is of stoppage of five increments with cumulative effect is being pressed and not of the recovery of the amount which has been paid by the Department in respect of the compensation paid to the claimants.

Learned counsel for the appellant submits that he has no objection if the amount paid by the Department is deducted from his pending arrears but the punishment of stoppage of five increment is the second punishment on the same facts and same allegations, which is not permissible, which fact has totally been ignored by the Court below while passing the impugned judgment.

Learned counsel for the respondents-State has not been able to

rebut that it has already come on record that vide order dated 15.06.2005, on the basis of same accident, after being convicted of the allegations, the appellant-plaintiff has been imposed a punishment of reduction to the time scale for a period three years and once again, by the impugned order, his five increments have been stopped for the same offence.

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

It is a settled principle of law that no one can be punished twice for the same offence. Even Article 22.2 of the Constitution of India bars the same. In the present case, keeping in view the conviction of the appellant-plaintiff, which conviction was in connection with the accident which occurred and one person lost his life, the appellant-plaintiff was initially dismissed from service on 09.03.2004 on being convicted by the Competent Court of law but thereafter on an appeal, he was reinstated in service by modifying the punishment to that of reduction to the time scale for a period of three years. That being so, no departmental proceedings could have been held for inflicting another punishment on the basis of the same accident.

It may be noticed that in the subsequent charge-sheet which was issued to the appellant-plaintiff was for the recovery of the compensation which was paid by the Department to the claimants but, rather than directing the recovery of the said amount, the punishment of stoppage of five increments was imposed upon him with cumulative effect which shows that without application of mind, he was again punished for the same offence.

Learned counsel for the appellant-plaintiff submits that he has no objection with regard to the recovery of the amount of compensation which the Department had paid on behalf of the appellant from the dues, which are yet to be released in favour of the appellant-plaintiff as the appellant-plaintiff has already retired from service on 31.03.2021.

Keeping in view the facts and circumstances of the present case, it is clear that the Courts below though, were required to ascertain the fact as to how, for the same offence the appellant was being punished twice, rejected the claim of the appellant-plaintiff on the ground that once there is an enquiry held, the Court does not have power to interfere.

Though the said proposition is correct but whether, an employee can be punished twice for the same offence, was required to be seen by the Courts below, which they failed to appreciate. Hence, the suit filed by the appellant-plaintiff challenging the order of punishment dated 28.12.2007 as well as the order passed in appeal dated 30.10.2011 are set aside. The punishment of stoppage of five increments with cumulative effect is also set aside. The appellant-plaintiff is entitled for the grant of increment if they have already been withheld during his service career and thereafter, calculate his pay accordingly upto the date of his retirement.

It may be noticed that learned counsel for the appellant has already undertaken before this Court that the compensation which the Department has paid on behalf of the appellant to the claimants in respect of the accident in question, can be recovered from the dues in case the same has not been released so far. The said recovery be done in accordance with law keeping in view the policy of the State of Punjab.

The present appeal is allowed in above terms.

April 25, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No