

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(222)

RSA No. 2332 of 2018 (O&M)

Date of Decision : 28.04.2023

Sudhir Malik

...Appellant

Versus

Haryana Tourism Corporation and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sachmeet Singh Randhawa, Advocate for the appellant.

Harsimran Singh Sethi J. (Oral)

CM-6229-C-2018

Application is allowed, as prayed for.

RSA No. 2332 of 2018

1. In the present regular second appeal, the challenge is to the judgment and decree dated 31.10.2014 of the trial court by which, the suit filed by the appellant-plaintiff for declaration with consequential relief of permanent injunction and mandatory injunction has been dismissed as well as judgment and decree of the lower appellate court dated 15.09.2017, whereby the appeal filed against the order of the trial court has also been dismissed.

2. Certain facts may be noticed for the correct appreciation of the issue in hand.

3. The appellant-plaintiff was appointed as a Junior Engineer

(Horticulture) on 07.07.1989 and on 10.09.2004, on the basis of certain allegations of embezzlement of money, he was dismissed from service and the embezzled amount was ordered to be recovered from him. The appellant-plaintiff preferred an appeal with department against the dismissal order dated 10.09.2004 and the appellate authority vide order dated 20.12.2005 partly accepted the appeal of the appellant-plaintiff and modified the punishment of dismissal from service to that of reduction in time pay scale for a period of 10 years.

4. On being allowed to rejoin on 07.01.2006, a sum of Rs. 3910/- was deducted from each month's salary of the appellant-plaintiff so as to recover the loss/embezzled amount. The said recovery was challenged by the appellant-plaintiff by filing a civil suit that once the order imposing punishment of dismissal from service passed by the punishing authority dated 10.09.2004 has been set-aside by the appellate authority, no recovery could have been done.

5. Keeping in view the evidence and facts, which came on record, the trial Court came to the conclusion that the appellate authority vide order dated 20.12.2005 only accepted the appeal partly, which is clear from the order itself that only the punishment of dismissal from service was modified to that of reduction in time pay scale for a period of 10 years but the recovery of the embezzled amount to be done, as ordered by the punishing authority, was not modified, hence, the recovery of embezzled amount by the Corporation could not be treated arbitrary or illegal or without any valid justification and the suit filed by the appellant-plaintiff was dismissed by the trial Court dated 31.10.2014.

6. Feeling aggrieved against the judgment and decree of the trial

court dated 31.10.2014, the appellant-plaintiff filed an appeal, which came to be decided on 15.09.2017 and the findings of the trial Court on all the issues except Issue No. 6 were affirmed and the appeal was dismissed, hence, the present regular second appeal.

7. Learned counsel for the appellant-plaintiff argues that both the courts below failed to appreciate that once the order of punishment of dismissal from service was modified by the appellate authority, no recovery of the embezzled amount as ordered by the punishing authority could have been done, hence, perverse findings have been recorded by both the courts below hence, the judgments of the courts below are liable to be set-aside and the suit filed by the appellant-plaintiff may kindly be allowed.

8. I have heard learned counsel for the appellant and have gone through the record with his able assistance.

9. In the present case, it is a conceded position that the punishing authority vide order dated 10.09.2004 imposed punishment of dismissal from service along with the recovery of the embezzled amount amounting to Rs. 1,04,636/-. It was against this order, the appeal was filed and the appellate authority while passing the order in appeal clearly stated that the appeal is partly accepted so as to set-aside the punishment of dismissal from service to be substituted with the punishment of reduction to the lower stage in the time pay scale of the Juniors Engineers for a period of 10 years and further that the appellant-plaintiff will not earn increment for the period of 10 years. This shows that only the punishment of dismissal from service was modified and not with regard to the recovery of the shortage/embezzled amount of Rs. 1,04,636/-. In case, the argument of the appellant-plaintiff is accepted that even the punishment of recovery had been waived off by the

appellate authority, the same would have been mentioned in the order of appeal itself.

10. Once, the order of recovery of shortage/embezzled amount was maintained by the appellate authority, no such order was passed modifying the said punishment of recovery, hence, the judgments of the courts below are perfectly correct and have interpreted the evidence as well as the facts on record in a manner required for.

11. Learned counsel for the appellant-plaintiff further submits that though the order passed by the appellate authority dated 20.12.2005 stated that the appellant-plaintiff is to be reduced to the lowest time pay scale of the Junior Engineer of Rs. 5000/- -7850/-, the same could not have been done as, the said scale had already been modified. It may be noticed that the order dated 20.12.2005 was never challenged by the appellant-plaintiff even in the suit filed, hence, the said prayer of the appellant-plaintiff that he is entitled for a scale above the one mentioned in the order passed by the appellate authority, no relief can be granted on the said aspect.

12. No other argument was raised.

13. Keeping in view the above, no ground is made out for any interference by this Court as no perversity in the orders passed by the courts below has been pointed out by the learned counsel for the appellant-plaintiff.

14. Dismissed.

April 28, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No