

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(250)

CM-4328-C-2021 in/and
RSA-2823-2017
Date of Decision : March 14, 2023

State of Haryana Through Collector Hisar and others
.. Appellants

Versus

Daljit Singh (since deceased) through his LRs and others
.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Vibha Tewari, Assistant Advocate General, Haryana,
for the appellants/non-applicant.

Mr. Vikas Singh, Advocate, for the respondents/applicant.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-4328-C-2021

Present application has been filed for impleading legal representatives of respondent-Daljit Singh, who unfortunately died on 01.05.2020, during the pendency of the appeal.

Notice of the application to the counsel opposite.

Ms. Vibha Tewari, learned Assistant Advocate General, Haryana, accepts notice on behalf of the appellants-State. She raises no objection for the grant of prayer as raised in the present application.

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

representatives of the respondent Daljit Singh, the details of whom are given in para 2 of the application, are allowed to be impleaded in the present appeal and the amended memo of parties attached with the present application is taken on record.

On joint request of learned counsel for the parties, the main appeal is taken up for hearing today itself.

RSA-2823-2017

Present Regular Second Appeal has been filed against the judgment and decree of the lower Appellate Court dated 04.02.2017 by which, the judgment and decree of the trial Court dated 17.08.2015 has been set aside and the suit filed by the respondent-plaintiff has been allowed.

Certain facts needs to be mentioned herein for appreciating the controversy in correct perspective.

The respondent-plaintiff challenged the order dated 28.10.2011 by which, a recovery of Rs.2,43,845/- was imposed upon the respondent-plaintiff to be recovered from his retiral benefits. The said order was passed keeping in view the departmental proceedings which were initiated against the respondent-plaintiff qua the misappropriation of the Government money by not planting the trees and not taking care of the saplings planted due to which those were destroyed as well as the allegation that less number of sapling were planted than claimed which had caused the financial loss to the State. During the enquiry proceedings, Enquiry Officer gave a report on 01.06.2006 proving the allegations against the respondent-plaintiff except allegation No.6 after which, a show cause notice was issued to the respondent-plaintiff as to why the loss caused by the respondent-plaintiff be not recovered. Ultimately, the impugned order was passed on 28.10.2011

for recovery of Rs.2,43,845/- which was to be recovered from the retiral benefits of the respondent-plaintiff as the respondent-plaintiff retired on attaining the age of superannuation on 31.03.2009.

The said order of punishment was challenged by the respondent-plaintiff by filing a civil suit, which suit was dismissed by the trial Court vide judgment and decree dated 17.08.2015, which judgment and decree was challenged before the lower Appellate Court by the respondent-plaintiff. The lower Appellate Court vide judgment and decree dated 04.02.2017 allowed the appeal and set aside the judgment and decree of the trial dated 17.08.2015 and allowed the suit filed by the respondent-plaintiff so as to set aside the imposition of recovery of Rs.2,43,845/-, hence, the present Regular Second Appeal.

Learned counsel for the appellants-State submits that the judgment and decree of the lower Appellate Court is perverse.

On being asked to prove the perversity, learned counsel for the appellants has not been able to show that the findings recorded by the lower Appellate Court that the enquiry report is based upon no evidence, is in any way perverse. In paragraph 14 and 15, the facts regarding the enquiry proceedings qua the respondent-plaintiff have been detailed wherein, it has been duly mentioned that the enquiry report does not disclose the evidence which has come on record to support the allegations. Further, no mention of the witnesses, who have been examined has been detailed in the enquiry report and even the defence witness DW-1 stated on oath that he does not know as to whether any evidence was brought on record by the Enquiry Officer and the respondent-plaintiff was given liberty to cross-examine the witnesses. Further, the enquiry report, which is already on record, shows

that the same is totally cryptic and does not give the reasons/evidence so as to arrive at a conclusion so as to hold the respondent-plaintiff guilty of the allegations alleged.

The findings which have been recorded by the Enquiry Officer are not supported on any evidence, which came on record during the enquiry proceedings, hence, it can be safely said that present is a case of no evidence against the respondent-plaintiff so as to prove the allegations, which were alleged against him, which enquiry report was made the basis for the recovery of Rs.2,43,845/- from his retiral benefits.

Once, learned counsel for the appellants has not been able to dislodge the findings recorded by the lower Appellate Court qua the conduct of the enquiry contrary to the rules governing the service on the said aspect and non-examination of the witnesses by the Enquiry Officer and particularly that no reason has been given in the enquiry report, based upon the evidence, to hold the respondent-plaintiff guilty of the allegations, no interference is called for by this Court in the present Regular Second Appeal.

At this stage, learned counsel for the appellants submits that in case the enquiry proceedings are found to be bad on technical grounds, the Department be given a chance to hold an enquiry afresh.

The said argument is valid but cannot be implemented in the present case especially when the respondent-plaintiff has already died during the pendency of the present appeal. His legal representatives have already been brought on record.

Once, the respondent-plaintiff is no more in this world, no enquiry can be held against him even if, the case is remanded back to the authorities concerned. That being so, the said argument of remanding the case back to the authorities concerned for fresh enquiry, cannot be accepted in the facts and circumstances of the present case.

No other point has been argued.

Keeping in view the above, no ground is made out for any interference by this Court in the present Regular Second Appeal.

Dismissed.

March 14, 2023

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes