

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 3007 of 2018 (O&M)

Date of Decision: 22.08.2023

Jalandhar Improvement Trust, Jalandhar

... Appellant(s)

Versus

Jatinder Kumar Bhandari (Surveyor)

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Ms. Kavita Arora Advocate
for the appellant(s).

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.

2. The correctness of the concurrent findings of facts, arrived at by both the Courts below, is challenged by the defendant in this second appeal. In fact, the respondent's suit for the grant of decree of declaration that the order dated 20.02.1992, vide which he was compulsorily retired as punishment and also the order dated 19.07.1993, whereby his suspension period was treated as the non-duty period are illegal, null and void. The Court below found that the respondent (plaintiff in the suit) was working as a Surveyor in the Jalandhar Improvement Trust (hereinafter referred to as

the Trust") and under the directions of the then Chairman of the Trust, he

demarcated the plots and delivered its possession. Subsequently, the earlier Chairman was removed and a new Chairman was appointed and all the troubles began for the plaintiff. The respondent was alleged to have indulged in insubordination and exceeded his jurisdiction in delivering the possession after the demarcation of the plots. Both the Courts below have found that the disciplinary inquiry against the plaintiff was initiated without following the principles of natural justice as he was neither supplied with the copies of the document which were relied upon against him despite his request nor he was granted any opportunity to lead evidence. Thus, both the Courts below have found that the plaintiff (respondent herein) has complied with the directions of the then Chairman of the Trust, hence, he is not guilty of any misconduct.

3. Heard the learned counsel representing the appellant at length and with their able assistance, perused the paper-book.

4. The learned counsel representing the appellant contends that the suit filed by the plaintiffs was barred by limitation as the order of compulsory retirement was received by him on 28.02.1992, whereas the suit was filed on 28.04.1995. She further contends that in any case, the plaintiff deserves some penalty and both the Courts below were wrong in setting aside the order of compulsory retirement of the respondent.

5. This Court has considered the submissions while evaluating the arguments of the learned counsel. The First Appellate Court has noticed that the order of compulsory retirement was served upon the plaintiff on 28.02.1992. On 30.01.1995, he sent a notice as mandatorily required before filing the suit and after the expiry of two months that the suit was filed. In

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such circumstances, the findings of the First Appellate Court, the suit was not filed beyond the prescribed time does not require any interference.

6. The next argument of the learned counsel also does not have any substance because the disciplinary inquiry held against the plaintiff has been found to have been conducted in infringement of the principle of natural justice and the rules as an appropriate opportunity was not granted to the employee to present his case. Moreover, in the disciplinary inquiry, the previous Chairman was never examined as a witness of the Trust.

7. Keeping in view the aforesaid facts, no ground is made out to interfere with the concurrent findings of facts arrived at by both the Courts below. Hence, the present appeal is dismissed.

8. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

August 22, 2023
“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No