

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(223)

RSA No. 659 of 2014 (O&M)

Date of Decision : 27.03.2023

Dr. Charanjit Singh

...Appellant

Versus

Punjab State and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

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

Mr. Gurvinder Singh, Assistant Advocate General, Punjab.

Harsimran Singh Sethi J. (Oral)

CM-1490-C-2014

Application is allowed, as prayed for.

RSA No. 659 of 2014

The present regular second appeal has been filed challenging the judgments and decrees of the courts below by which, the suit filed by the appellant-plaintiff challenging the order dismissing him from service dated 02.05.2001 as well as the order passed in appeal dated 06.06.2002 that appellant-plaintiff be continued in the service with the consequential benefits, was dismissed as well as the order passed by the lower appellate court dated 17.07.2013 by which, the judgment and decree of the trial court dated 15.11.2020 was upheld.

Certain facts need to be mentioned for the correct appreciation

of the issue in hand.

The appellant-plaintiff joined the service as a Medical Officer in the year 1981. As being alleged by the appellant-plaintiff, while he was posted in Civil Hospital, Kapurthala in the year 1991, he was forced to submit a resignation on 15.02.1993 but before the said resignation could be accepted, he withdrew the same.

On 06.07.1999, the appellant-plaintiff was issued a charge-sheet with on account of absence from duty. The enquiry was held into the allegation and the appellant-plaintiff was exonerated of the allegation but the punishing authority dissented with the findings of the Enquiry Officer and ultimately, on the basis of the dissent note, the appellant-plaintiff was dismissed from service vide order dated 02.05.2001. Against the said order, the appellant-plaintiff preferred an appeal, which was also dismissed on 06.06.2002 and ultimately, the appellant-plaintiff filed a civil suit challenging the order of dismissal dated 02.05.2001 as well as the order passed in appeal dated 06.06.2002 with the prayer that the appellant-plaintiff be deemed to be in service with all consequential benefits.

In reply to the suit, the respondents-defendants filed reply that the appellant-plaintiff remained absent from duty and rather disobeyed the orders of the higher authorities and under the garb of resignation, the appellant-plaintiff did not attend the duties for which he was served a charge-sheet and though, the appellant-plaintiff was found innocent by the Enquiry Officer but the punishing authority dissented with the findings of the Enquiry Officer keeping in view the evidence on record and thereafter, the appellant-plaintiff was dismissed from service.

Keeping in view the evidence, which came on record, the trial court interpreted the same and held that as the appellant-plaintiff himself admitted that he remained absent from duty after submitting the resignation, no grievance can be made qua the charges alleged and the order passed keeping in view the said absence by the competent authority, cannot be faulted with and by the judgment and decree dated 15.11.2010, the suit filed by the appellant-plaintiff was dismissed.

The appellant-plaintiff filed an appeal before the lower appellate court, which also came to be dismissed on 07.07.2013 on the ground that though the appellant-plaintiff was declared innocent by the Enquiry Officer but the dissented note was forwarded by the respondents-defendants vide letter dated 29.05.2000 and as the appellant-plaintiff did not file any reply, the order of dismissal was passed, which act of the respondent-department cannot be faulted with hence, the present regular second appeal.

Learned counsel for the appellant-plaintiff argues that facts, which have been stated by the lower appellate court so as to dismiss the appellant-plaintiff from service that the dissenting note was sent to the appellant-plaintiff before passing the order of dismissal dated 02.05.2001, is factually incorrect and the said finding is perverse keeping in view the evidence, which has come on record. Learned counsel for the appellant-plaintiff further argues that DW1, namely, Dr. Sandeep Bhola in his testimony conceded that the dissenting note was never supplied to the appellant-plaintiff and no evidence has come on record to prove that the same was ever supplied to the appellant-plaintiff before passing the order of

dismissal, hence, the findings recorded by the lower appellate court are perverse and are liable to be set-aside.

Learned counsel appearing on behalf of the respondent-State has not been able to rebut the said statement of the learned counsel for the appellant-plaintiff that the dissenting note was never supplied to the appellant-plaintiff before passing the order of punishment of dismissal.

Keeping in view the said fact, the dissenting note, which has been taken into consideration by the punishing authority and is the basis of the order passed by the respondents-defendants terminating the service, cannot be sustained. The dissenting note was required to be given to the charged employee along with the material on the basis of which the dissenting note has been passed for the comments of the charged employee and it is only thereafter, the appropriate order can be passed.

In the present case, once the Enquiry Officer exonerated the appellant-plaintiff of the alleged charges but he was dismissed from service on the basis of the dissenting note of the punishing authority and as per the evidence, which has come on record, the dissenting note was not brought to the notice of the charged officer for his comments, the order passed in the enquiry terminating the services of the appellant-plaintiff cannot be sustained in the eyes of law. Once, the basic order dated 02.05.2001 is contrary to the settled principle of law, the order passed in appeal cannot be sustained as well and both are quashed.

The question, which arises is whether once the order of punishment is being set-aside on the basis of technicalities, the department needs to be given a chance to initiate the proceedings from the stage where

the discrepancy occurred.

As per the settled principle of law settled by the Hon'ble Supreme Court of India in Civil Appeal No. 6776 of 2022 titled as ***The Inspector of Panchayats and District Collector, Salem Vs. S. Arichandran & Ors.***, decided on 23.9.2022, once, certain irregularities crept into while conducting the disciplinary proceedings and due to those irregularities, the proceedings got vitiated and cannot be sustained, the department is entitled to conduct the proceedings afresh from the stage, from where the irregularities occurred. The relevant paragraph 6.2 of the said judgment is as under :-

“6.2 Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and as the order of dismissal has been set aside on the ground that the same was in breach of principles of Natural Justice, the High Court ought to have remitted the case concerned to the Disciplinary Authority to conduct the inquiry from the point that it stood vitiated and to conclude the same after furnishing a copy of the Inquiry Report to the delinquent and to give opportunity to the delinquent to submit his comments on the Inquiry Officer's Report.”

Learned counsel for the appellant-plaintiff has not been able to differentiate the judgment in ***S. Arichandran & Ors' case (supra)***, so as to be made applicable in the present case so as to remand the case back to the department for conducting the enquiry proceedings from the stage discrepancy occurred.

Accordingly, though the impugned orders dated 02.05.2001 as well as 06.06.2002 are set-aside but the case is remanded back to the authorities concerned for fresh decision so as to give the copy of dissenting

note to the appellant-plaintiff for his comments and thereafter, pass an appropriate order in the facts and circumstances of the present case. Even though the order dated 02.05.2001 dismissing the appellant-plaintiff from service has been set-aside but the same will not result in the reinstatement or release of any benefit as the impugned orders have been set-aside on technicalities with liberty to the department to pass a fresh order in accordance with law. The benefits, if any, available to the appellant-plaintiff will only depend upon the fresh order to be passed by the respondents-defendants in pursuance to the present order.

Let the fresh order be passed by the respondents-defendants within a period of three months from the receipt of certified copy of this order after conducting the enquiry proceedings from the stage of serving the dissenting note to the appellant-plaintiff. The consequential benefits, if any, will depend upon the order, which is to be passed by the punishing authority afresh. In case, the appellant-plaintiff is exonerated, the department will pass appropriate order qua the admissible consequential benefits as well.

The appeal is allowed in above terms. Decree sheet be prepared accordingly.

March 27, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No