

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(243)

RSA-6059-2017 (O&M)

Date of Decision : January 18, 2023

Jai Bhagwan

.. Appellant

Versus

**Haryana Coop. Sugar Mill Ltd. Rohtak Through Chairman-Cum-
Deputy Commissioner Rohtak and another**

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

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

Mr. R.S. Budhwar, Advocate, for the respondents.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-15868-C-2017

As prayed for, the application is allowed.

CM-3560-C-2018

As prayed for, the application is allowed.

Additional affidavit of the appellant along with punishment order dated 17.01.2014 is taken on record.

RSA-6059-2017

In the present appeal, the challenge is to the order passed by the trial Court dated 31.10.2015 by which, the suit filed by the appellant seeking declaration along with consequential relief of mandatory injunction has been dismissed as well as the order passed by the lower Appellate Court

dated 12.07.2017 by which the appeal filed by the appellant was dismissed.

Before advertng to the present appeal, certain facts needs to be mentioned.

The appellant-plaintiff was appointed as Crane Unloader/Operator with the respondent-Sugar Mill on 13.09.1991 on permanent basis. He cleared the probation keeping in view his work and conduct. In November 2012 i.e. after a period of 21 years of service, mother of the appellant who was living in Uttar Pradesh, became ill and in order to take care of her, by informing the incharge concerned, the appellant-plaintiff left to look after his mother in Uttar Pradesh and unfortunately, his mother died on 19.12.2012 and after finishing the last rites of his mother, he again joined back the service on 02.01.2013. After the appellant joined, he was served with a charge-sheet that he remained absent from his service willfully starting from 19.11.2012 from 02.01.2013 for a period of approximately one and a half month. After conducting the inquiry, the allegations were proved and a punishment was imposed upon the appellant vide order dated 17.01.2014 so as to fix the salary of the appellant as per the initial pay scale meaning thereby that increments granted for 22 years of service to the appellant, were taken away and his salary was fixed at the initial stage. The said order was impugned by the appellant by filing the civil suit to the effect that the punishment imposed be declared as void illegal, arbitrary and not commensurate to the charges alleged/proved and the appellant be granted the consequential benefits of his salary which he was already drawing prior to the passing of the impugned order along with arrears.

The trial Court held that enquiry was conducted against the appellant and that too as per the procedure laid down and the Court has no jurisdiction to entertain the plea of excessive punishment as the Court cannot discharge the duties of an Appellate Authority and once, no illegality was found in the conduct of the enquiry, the punishment imposed was within the domain of the employer and the suit was dismissed. Even the appeal filed against the said order passed by the trial Court dated 31.10.2015 was dismissed by the lower Appellate Court on 12.07.2017.

In the present Regular Second Appeal, the order passed by the trial Court as well as the lower Appellate Court have been impugned.

Learned counsel for the appellant argues that though the appellant was issued punishment after holding the enquiry but relevant facts were not taken into consideration while imposing the punishment as a a major punishment has been imposed, which is not commensurate to the charges alleged and proved against the appellant and his 22 years of service has been white washed by the employer and 22 increments granted to him in his service career were withdrawn so as to place him in initial scale of pay, which punishment is totally disproportionate and cannot be sustained.

Learned counsel for the respondents, on the other hand, submits that once an enquiry was held in accordance with law and no infirmity has been pointed out, the imposition of punishment by the respondent-Mill is as per the wisdom of the employer concerned, hence, no grievance can be raised by the appellant-plaintiff in the said regard.

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

It is a conceded position that before the issuance of the charge-sheet, the appellant had more than 22 years of service to his credit. Further, nothing adverse, which has come on record qua the service career, has been pointed out to the Court so as to show that the appellant was in habit of absenting himself from service. In the present case, there is a solitary occasion of absence of one and half months, which has also been explained by the appellant that his mother was not well, who was living in Uttar Pradesh and there was no body else to look after her due to which, he had gone to attend her and that too after informing the in-charge of the Mill but his mother could not survive and after she died on 19.12.2012 after completing her last rites, he came and joined on 02.01.2013.

Keeping in view the said aspect, this Court has to opine as to whether the order passed by the trial Court as well as the lower Appellate Court declining to interfere with the quantum of service by which 22 years of valid service was withdrawn so as to reduce the pay of the appellant to the initial pay scale.

While imposing the punishment, the circumstances under which the punishment is being imposed, has to be kept in mind by the employer. Though, the imposition of punishment is within the domain of the employer but the Court has a power to see whether the punishment keeping in view the facts and circumstances of the case is excessive, disproportionate and is shocking?

In the present case, a reason has been forwarded by the appellant so as to leave the station to attend his ailing mother, who unfortunately died and immediately after completing the last rites of her

after her death, he joined back his service. Under these circumstances,

taking away 22 years of service of an employee, is shocking and too harsh and cannot be termed as commensurate to the charges alleged and proved. Death certificate of the mother of the appellant is on record to show that she died during the absence period, though there might not be an order granting leave to the appellant but the same cannot be treated as intentional and without reason.

Learned counsel for the respondents argues that though the appellant has projected the illness of his mother as the cause for his absence, but nothing has come on record to show that his mother was ill or otherwise. Learned counsel for the respondents further submits that as the shift in-charge who was supposedly informed by the appellant, has not been examined, hence, the benefit of the said reason cannot be given to the appellant.

In practicality, keeping in view the illness of the mother, the employee is likely to inform his shift in-charge so as to avail the leave. Merely that shift in-charge was not examined, cannot be a ground to disbelieve the reason being extended by the appellant for the reason that it is a matter of fact which has come on record that the mother of the appellant had died on 19.12.2012 and death certificate has already been produced on record. This death certificate has to be co-related and given benefit to the appellant while examining the facts and the absence. In 22 years of service, there is no blemish upon the service of the appellant. All the evidence which has come on record, shows that plea taken by the appellant for the absence cannot be termed as fake or made up story.

With regard to excessive punishment, the Hon'ble Supreme

Court of India has held that with regard to the unauthorized absence for

imposition of punishment, a straightjacket formula cannot be applied for. As per the Hon'ble Supreme Court of India, unauthorized absence in case of disciplined force, is to be treated on a different footing as compared to an ordinary workman working in any other establishment. The Hon'ble Supreme Court of India has further held that the punishment imposed upon an employee should be commensurate to the allegations alleged and in the said case, where the absence was for a period of three and half months, the punishment was modified. Relevant paragraph of the judgment of the Hon'ble Supreme Court of India in ***Civil Appeal No.4059 of 2015 titled as Union of India and another vs. R.K. Sharma, decided on 30.06.2022***, is as under:-

“8. The short question which falls for consideration is whether the punishment of dismissal from service on account of absence from duty for the period mentioned in Article 1 of the Charge-memo, is proportionate, reasonable and in conformity with Articles 14 and 16 of the Constitution of India?

11. As regards to the period for which the respondent was absent from duty, we are satisfied that the punishment of dismissal from service is too harsh, disproportionate and not commensurate with the nature of the charge proved against the respondent. We are, therefore, of the view that the ends of justice would have been adequately met by imposing some lesser but major penalty upon the respondent.”

The Courts below have not at all dealt with the circumstances explained by the appellant, which had directly come on record as well as law on issue that the excessive punishment can be reviewed by the competent Court of law if the same is shocking.

In the present case, the trial Court as well as the lower

Appellate Court restrained themselves from applying its jurisdiction on the plea that the imposition of punishment is only within the domain of the employer and the Courts do not have power to scrutinize the punishment imposed keeping in view the charges alleged. The said view of the Courts below is not in accordance with law as held by the Hon'ble Supreme Court of India that the Courts will have the jurisdiction to look into the proportionality of the punishment imposed as compared to the charges alleged and proved, if punishment impugned is shocking in particular set of facts.

Keeping in view the above, the judgment of the trial Court dated 31.10.2015 as well as the lower Appellate Court dated 12.07.2017 are set aside. The suit filed by the appellant-plaintiff is allowed only to the extent that the order dated 17.01.2014 is set aside with liberty to the respondent-Mill to pass appropriate order afresh on the punishment to be imposed upon the appellant, which should be commensurate to the charges alleged.

Though, the order of punishment has been set aside on a technicality but as the charges against the appellant stood proved, benefits for which the appellant will become entitled for will be subject to the fresh order which will be passed by the respondent-Mill qua punishment.

The present Regular Second Appeal is allowed in above terms.

January 18, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No