

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(104)

CM-906-C-2023 in/and
RSA-6576-2018

Date of Decision : May 19, 2023

Satnam Dass

.. Appellant

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sunil Kumar Nehra, Advocate, for the applicant-appellant.

Ms. Vibha Tewari, Assistant Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-906-C-2023

As prayed for, the application is allowed.

Additional documents are taken on record.

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

RSA-6576-2018

1. Present regular second appeal has been filed by the appellant-plaintiff against the judgment and decree of the Courts below by which, though the order imposing the punishment of dismissal dated 24.09.2014 was set aside but consequential benefits of release of retiral benefits were not extended as liberty was given to the Department to pass a fresh order after supplying the copy of the enquiry report and other documents to the appellant-plaintiff.

2. The grievance which has been raised in the present appeal is that once the order of punishment was set aside, the consequential benefits such as pensionary benefits should have been released to the appellant-plaintiff, which relief has not been extended by the lower Appellate Court.

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

4. The appellant-plaintiff was appointed as Peon in the Irrigation Department on 15.11.1976. It may be noticed that next promotion from a class IV post is to class III post of Clerk and for promotion to the post of Clerk, a class IV employee had to be matriculate. Appellant-plaintiff had produced the matriculation certificate and Department after relying upon the said matriculation certificate, promoted him as a Clerk on 02.12.1982. Thereafter, he was promoted as Sub Divisional Clerk on 24.03.2011.

5. On 12.03.2012, keeping in view the complaint received that matriculation certificate submitted by the appellant-plaintiff was a forged document and the same was submitted by the appellant-plaintiff only to seek promotion to the post of Clerk, disciplinary proceedings were initiated against him under Rule 7 of the Haryana Civil Services, Punishment and Appeal Rules, 1987 for imposition of major punishment. It may be noticed that during the pendency of the disciplinary proceedings, the appellant-plaintiff attained the age of superannuation on 31.03.2012 and he was retired subject to the outcome of the disciplinary proceedings pending against him.

6. Despite the issuance of a charge-sheet, the appellant-plaintiff did not file the reply on merits and rather submitted that he cannot submit the original matriculation certificate as the same had been damaged and

misplaced during the floods which had come in District Rohtak in the year 1995. Keeping in view the fact that the disciplinary proceedings were pending against him, and the same related to seeking a promotion by forging a document, despite the fact that he had retired, no pensionary benefit was extended to him on the ground that there was a proposal to impose major punishment.

7. Further, it has come on record that despite various opportunities given to the appellant-plaintiff to produce original matriculation certificate, he failed to do so.

8. Keeping in view the fact that the appellant-plaintiff failed to produce the original matriculation certificate, which was produced at the time of seeking promotion to the post of Clerk, enquiry report was given by the Enquiry Officer on 07.02.2014 holding the appellant-plaintiff guilty of the allegations as he failed to produce the original matriculation certificate. After the enquiry report was submitted, punishing authority directed the Department to seek information for the Board of School Education Haryana about the veracity of the certificate as photocopy of the matriculation certificate was with the Department.

9. Keeping in view the information sought, it has come on record that the Board of School Education of Haryana on 19.09.2014 stated that the matriculation certificate submitted by the appellant-plaintiff was forged one and rather, they also submitted that the appellant-plaintiff appeared in the matriculation examination in March, 1979 but was declared failed hence, the matriculation certificate produced by the appellant-plaintiff was a forged one.

10. Keeping in view the facts which have come on record, punishing authority passed an order on 24.09.2014, dismissing the appellant-plaintiff from service w.e.f. the date he had produced the forged certificate and got promotion i.e 02.12.1982.

11. The appellant-plaintiff challenged the said order of punishment dated 24.09.2014 before the Civil Court raising certain objections to the procedure adopted by the Department in holding the disciplinary proceedings such as that after the enquiry report was submitted to the punishing authority proving the allegations of producing a forged document, the punishing authority directed the Enquiry Officer to check the veracity of the photocopy of the matriculation certificate which was with the Department, from the concerned examination body so as to check the genuineness of the same, as the original certificate was not being produced by the appellant-plaintiff and the appellant was not given chance to rebut the report received from the Board of School Education Haryana, hence, rules of natural justice have been violated.

12. Keeping in view the evidence which came on record, the trial Court held that as the final enquiry report was not given to the appellant-plaintiff before passing the order of punishment, which has caused prejudice to the appellant-plaintiff, hence the said order of punishment was set aside with liberty to the respondent-Department to supply the copy of all the documents as well as the copy of the enquiry report within a period of 15 days to the appellant-plaintiff and after giving an opportunity of hearing, appropriate fresh order be passed. The benefit of release of pensionary benefits as being demanded by the appellant-plaintiff was not extended to him by the trial Court.

13. Though, the said judgment and decree of the trial Court dated 01.08.2016 was accepted by the State of Haryana, but the appellant-plaintiff filed an appeal against the said judgment and decree of the trial Court on the ground that once the impugned order of punishment has been set aside, he is entitled for the consequential relief of being treated in service and the non-grant of consequential benefits by the trial Court i.e release of pensionary benefit, is bad.

14. The said appeal came to be decided on 13.11.2018 by the lower Appellate Court and the appeal filed by the appellant-plaintiff was dismissed by the lower Appellate Court.

15. It may be noticed that by the time, the appeal had been decided on 13.11.2018 by the lower Appellate Court, the Department had complied with the judgment and decree of the trial Court so as to pass a fresh order on 26.09.2016. As per the fresh order of punishment, the appellant-plaintiff has again been dismissed from service w.e.f. December 1987. It may be noticed that as per the fresh order of punishment, appellant-plaintiff did not associate himself with the departmental proceedings conducted in compliance of the decree of the trial Court despite various opportunities offered. On being asked as to whether fresh order of punishment dated 26.09.2016 has been challenged by the appellant-plaintiff, learned counsel for the appellant-plaintiff pleaded ignorance whereas the learned State counsel, on instructions, informed that they have not received any notice from any competent Court of law in respect of any challenge raised by the appellant-plaintiff qua the punishment imposed vide order dated 26.09.2016, hence, it can be safely presumed that even as of now status of the appellant-plaintiff is that he is a dismissed employee.

16. Orders passed by the Courts below are under challenged in the present regular second appeal.

17. The only argument which has been raised by the learned counsel for the appellant in the present appeal is that once the order of punishment dated 24.09.2014 was set aside by the trial Court, the consequential benefits should have been released to the appellant-plaintiff even if, the liberty was given to the Department to pass a fresh order of punishment, hence, the non-release of the pensionary benefits by the trial Court, in the facts and circumstances of the present case, is bad and hence, the judgments and decrees of the Courts below qua the said aspect are liable to be set aside and the suit filed by the appellant claiming the release of pensionary benefits needs to be allowed.

18. Learned counsel for the respondents-State, on the other hand, submits that once the order of punishment dated 24.09.2014 was only set aside on the technicality that the procedure envisaged under the Rules to hold the disciplinary proceedings was not followed as copy of the enquiry report was not given to the appellant-plaintiff, the trial Court set aside the order of punishment by giving liberty to pass a fresh order hence, the benefit of setting aside of the order of punishment on technicality, cannot be a ground for the release of his pensionary benefits especially when the liberty to pass a fresh order was given to the respondent-Department.

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

20. It may be noticed that the allegation alleged against the appellant-plaintiff was that he has forged the matriculation certificate in order to get promotion. From the facts and evidence on record, it has

already come on record that the matriculation certificate which was produced by the appellant-plaintiff was forged one and rather, as per the information supplied by the Board of School Education Haryana vide letter dated 19.09.2014, the appellant-plaintiff had failed in the matriculation examination held in the year 1979. These facts clearly go to show that prima facie the allegation being alleged against the appellant was correct. The order of punishment was only set aside by the trial Court only on the technicality that copy of the enquiry report was not submitted to the delinquent before passing the order of punishment.

21. Once, the order of punishment was not set aside on merit and liberty was also granted to the Department to pass a fresh order after complying with the procedure under the Rules for conducting the departmental proceedings, non-grant of the consequential benefits by the Courts below, was perfectly valid and legal. An employee who has been accused of forging the documents so as to get the benefit, cannot be allowed to get more benefits only the on the basis of temporary relief granted. Allowing the prayer of the appellant-plaintiff for the release of the pensionary benefits, in the facts and circumstances of the present case, will be putting premium on the illegal act committed by the appellant-plaintiff.

22. 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 and others, decided on 23.09.2022*** has held that where the order has been set aside on the ground of principle of natural justice, the only relief which can be granted is to remand back to the disciplinary authority to conduct the enquiry and pass the order afresh. In

the said case, the order passed by the High Court in setting aside the

punishment and directing the reinstatement of the delinquent along with back wages was held to be bad. The relevant paragraph of the said judgment are as under:-

“1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Judicature at Madras dated 29.10.2021 in Writ Appeal No. 2735 of 2021 by which the Division Bench of the High Court has dismissed the said appeal and has confirmed the order passed by the learned Single Judge directing the appellant to reinstate the respondent – original writ petitioner into service and pay arrears payable to him, the District Collector, Salem District, Tamil Nadu has preferred the present appeal.

2. That a departmental inquiry was initiated against the respondent, who was a Panchayat Assistant, for having committed the misconduct of misappropriation of funds pertaining to Samuthram Panchayat in connivance with the erstwhile President of the said Panchayat. By order dated 25.09.2006, an order of punishment was passed against the respondent – delinquent. The order of punishment was the subject matter of Writ Petition No. 1710 of 2007 before the High Court.

2.1 XXXX XXXX XXXX XXXX

2.2 The learned Single Judge allowed the said writ petition and ordered reinstatement with back wages by observing that the order of dismissal dated 11.06.2009 was in breach of principles of Natural Justice as the copy of the Inquiry Report was not given to the delinquent and without calling for his comments on the Inquiry Officer's Report, the order of dismissal was passed. The judgment and order passed by the 2 learned Single Judge was the subject matter of appeal before the Division Bench.

2.3 By the impugned judgment and order, the Division Bench of the High Court has dismissed the said appeal and has

confirmed the judgment and order passed by the learned Single Judge to reinstate the respondent with full back wages. The impugned judgment and order passed by the Division Bench of the High Court is the subject matter of present appeal before this Court.

3. Shri Amit Anand Tiwari, learned AAG appearing on behalf of the appellant has vehemently submitted that the respondent was charge sheeted for a very serious offence of misappropriation of the amount belonging to the Panchayat. It is submitted that if the Hon'ble High Court found the order of punishment in breach of Natural Justice, in that case, the matter ought to have been remanded to the Disciplinary Authority to conduct the inquiry from the point that it stood vitiated. Reliance is placed on the decisions of this Court in the case of Chairman, Life Insurance Corporation of India and Ors. Vs. A. Masilamani, (2013) 6 SCC 530 as well as in the case of State of Uttar Pradesh and Ors. Vs. Rajit Singh, 2022 SCC Online SC 341.

4. XXXX XXXX XXXX XXXX

5. XXXX XXXX XXXX XXXX

6. At the outset, it is required to be noted that the learned Single Judge has set aside the order of dismissal passed by the Disciplinary Authority on the ground that the same was in breach of principles of Natural Justice, in as much as, the copy of the Inquiry Officer's Report was not furnished to the delinquent and his comments were not called for on the Inquiry Officer's Report. It is to be noted that the respondent – delinquent was facing the departmental inquiry with respect to a very serious charge of misappropriation. Therefore, the High Court ought to have remitted the matter back to the Disciplinary Authority to conduct the inquiry from the point that it stood vitiated.

6.1 At this stage, a recent decision of this Court in the case of Rajit Singh (supra), in which this Court had considered its

earlier decision in the case of A. Masilamani (supra) is required to be referred to. In paragraph 15, it is observed and held as under:-

“15. It appears from the order passed by the Tribunal that the Tribunal also observed that the enquiry proceedings were against the principles of natural justice in as much as the documents mentioned in the charge sheet were not at all supplied to the delinquent officer. As per the settled proposition of law, in a case where it is found that the enquiry is not conducted properly and/or the same is in violation of the principles of natural justice, in that case, the Court cannot reinstate the employee as such and the matter is to be remanded to the Enquiry Officer/Disciplinary Authority to proceed further with the enquiry from the stage of violation of principles of natural justice is noticed and the enquiry has to be proceeded further after furnishing the necessary documents mentioned in the charge sheet, which are alleged to have not been given to the delinquent officer in the instant case. In the case of Chairman, Life Insurance Corporation of India v. A. Masilamani, (2013) 6 SCC 530, which was also pressed into service on behalf of the appellants before the High Court, it is observed in paragraph 16 as under:—

“16. It is a settled legal proposition, that once the court sets aside an order of punishment, on the ground that the enquiry was not properly conducted, the court cannot reinstate the employee. It must remit the case concerned to the disciplinary authority for it to conduct the enquiry from the point that it stood vitiated, and conclude the same. (Vide ECIL v. B. Karunakar [(1993) 4 SCC 727], Hiran Mayee Bhattacharyya v. S.M. School for Girls [(2002) 10 SCC 293], U.P. State Spg. Co. Ltd. v. R.S. Pandey [(2005) 8 SCC 264] and Union of India v. Y.S. Sadhu [(2008) 12 SCC 30]).”

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.

7. In view of the above and for the reasons stated above, present appeal succeeds in part. The impugned judgment(s) and order (s) passed by the Division Bench as well as Single Bench Judge of the High Court ordering reinstatement with back wages are hereby quashed and set aside. The case concerned is remitted 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 Officer's Report and after giving an opportunity to the delinquent to submit his comments on the Inquiry Officer's Report. The aforesaid exercise be completed within a period of six months from today. However, at the same time, considering the fact that earlier also the dismissal order was set aside on the ground that the same was found to be in breach of principles of Natural Justice and the matter was remitted back and thereafter again when the fresh order of dismissal has been passed, which is again found to be in violation of principles of Natural Justice and again the matter is to be remitted back, we allow the present appeal with costs to be paid by the appellant to the respondent- delinquent quantified at Rs.50,000/-, which shall be paid to the respondent-delinquent within a period of six weeks from today ”

23. Keeping in view the settled principle of law, the orders passed by the Courts below is perfectly valid as the order of punishment was set aside on the ground that the rules of natural justice were violated and liberty

was extended to the Department so as to pass a fresh order after observing Rules of natural justice. The consequential benefits could not have been released in the favour of the appellant-plaintiff especially when the Department was yet to decide as to whether, any punishment is to be imposed while passing the fresh order or not. The Courts have not come to the conclusion that in the facts and circumstances of the present case, no punishment was liable to be imposed upon the appellant-plaintiff. In the absence of any such finding, the claim of the consequential benefits of the appellant is without any valid justification. Rather, the non-grant of the consequential benefits is in accordance with the settled principle of law noticed hereinbefore. Hence, the claim being raised in the present appeal for the grant of consequential benefits after setting aside the order of punishment dated 24.09.2014, is not made out and the judgments of the Courts below are not perverse to the facts and evidence on record.

24. Further, it may be noticed that as per the judgment of the Hon'ble Supreme Court of India in ***Civil Appeal No.2911 of 2022 titled as M/s Indian Oil Corporation Ltd vs. Shri Rajendera D. Harmalkar, decided on 21.04.2022***, the Hon'ble Supreme Court of India has held that where an employee submits fabricated/fake/forged certificate so as to claim any benefit, same is grave misconduct and the dismissal from service is commensurate punishment. While deciding the Indian Oil Corporation's case (supra), the judgment of the High Court in setting aside the order of punishment of dismissal and reinstating the employee was held to be bad. From the said settled principle of law, it is clear that where a forged certificate has been used to secure benefit, the Department is well within the its jurisdiction to impose the punishment. Hence, keeping in view the

settled principle of law, when the matter has already been remanded back to the authorities concerned to pass a fresh order, granting the consequential benefits will be rewarding an employee, who is accused of defrauding the Department while in service. Hence, the claim being raised by the appellant so as to grant the consequential benefit of promotion is not made out in the facts and circumstances of the present case and has rightly been declined by the Courts below while passing the judgment and decree impugned in the present case.

25. Further, it may be noticed that as of now, the order passed by the trial Court has already been complied with and a fresh order has already been passed on 26.09.2016 wherein, it has already come on record that the appellant had secured promotion on the basis of forged documents and he has already been dismissed from service vide fresh order dated 26.09.2016.

26. During the argument, learned counsel for the appellant has conceded the said fact that the order of punishment has been passed on 26.09.2016 in compliance of the direction given by the trial Court. That being so, allowing the present appeal so as to grant the pensionary benefits would result in allowing the pensionary benefits to an employee, who has already been dismissed from service. A dismissed employee cannot be granted the pensionary benefits. Therefore, even on this account, as the appellant has already been dismissed again by passing an order afresh as far as back 26.09.2016 and nothing has come on record that he has challenged the order dated 26.09.2016 imposing the punishment, no relief of the pensionary benefits can be allowed in favour of the appellant-plaintiff.

27. Learned counsel for the appellant-plaintiff raises another argument that as the appellant had already retired from service on attaining

the age of superannuation on 31.03.2012, no order of dismissal could have been passed after his retirement, hence, the order dated 26.09.2016, is bad.

28. It may be noticed that the first order of dismissal was passed on 24.09.2014 which was challenged in the present suit and the said order has already been set aside with liberty to pass a fresh order, hence, no grievance can be raised qua the said order. With regard to the fresh order which has been passed on 26.09.2016, the same is not the subject matter of the present appeal and any argument qua the order dated 26.09.2016 will only be considered as and when the said order come before scrutiny before any competent Court of law.

29. Once the fresh order of punishment dated 26.09.2016 is not the subject matter of the present appeal, no findings can be recorded qua the said order. In case, the appellant was aggrieved in any manner with regard to the fresh order of dismissal passed by the Department, he was at liberty to challenge the same.

30. Keeping in view the above, the appeal which has been preferred by the appellant challenging the judgments and decrees of the Courts below, are perfectly valid and legal and are in accordance with the settled principle of law, hence, no ground is made out for any interference by this Court in the present appeal.

31. Dismissed.

May 19, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No