

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

314

RSA-1500-2002 (O&M)
Date of decision: 10.01.2024

Jawala Singh

....Appellant

Versus

State of Punjab and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Atul Gaur, Legal Aid Counsel for the appellant

Mr. Manipal Singh Atwal, DAG Punjab

AMAN CHAUDHARY, J.

1. Challenge in the present regular second appeal is to the concurrent findings of facts returned by the Courts below in favour of the defendant-respondents in a suit filed by plaintiff-appellant for declaration. For the sake of convenience, parties shall be referred as per their original status.
2. The facts in brief that led to the filing of the suit for declaration are that when the plaintiff was working as a Senior Assistant, he had sanctioned and disbursed the pensionary benefits to a wrong person and sent the same to the Treasury Officer for approval. The Department served him with a chargesheet on 08.11.1993, which was incomplete and not in accordance with law. In addition to it, despite several requests, the record of the enquiry was not supplied to him. However, vide an order dated 27.04.1995 punishment of stoppage of one increment with cumulative effect, was awarded to him, without following the principles of natural justice and also in contravention of the Punjab Civil Services

(P&A) Rules, 1970 (hereinafter, referred to as '1970 Rules').

3. Contesting the same primarily on the ground that the suit was not maintainable for want of service of notice under Section 80 CPC, being bad for non-joinder of necessary parties, the defendant-Department also resisted the suit on merits by pleading that the plaintiff had himself admitted to the irregularities caused, before the enquiry officer, thus cannot challenge the same, as he was charge sheeted under Rule 8 of 1970 Rules, along with the list of allegations documents which were required to be given to him. No request was made by him for a copy of the record. He was also provided with ample opportunities during enquiry to present his defence.

4. The trial Court after framing the issues and on the basis of the evidence, dismissed the suit by observing that, in a zimni order of the enquiry proceedings dated 22.04.1994, as produced by the plaintiff, it was noted that the presiding officer had delivered all the documents to the plaintiff, who himself, stated that he did not wish to produce any evidence. It was also held that he was afforded several opportunities of being heard and due show cause notice was served upon him.

5. Aggrieved plaintiff filed a civil appeal before the appellate Court, which also came to be dismissed, while holding that the punishment imposed on him was proper by taking into consideration his own statement made before the Enquiry Officer. There was no apparent illegality on part of the lower Court, while returning the findings regarding the issues raised by the plaintiff, thus, the same were affirmed.

6. Hence, the present regular second appeal.

7. Learned counsel contends that no regular enquiry has been conducted under 1970 Rules. The charges against the plaintiff, were not duly substantiated, as no Prosecution Witness was produced by the presiding officer. The factum that the punishing authority while passing impugned order did not provide any basis for not finding the reply satisfactory, was also ignored along with the principle of natural justice that was not followed. Thus, prays that the appeal be allowed.

8. Quite to the contrary, learned State counsel has submitted that the Courts below had rightly dismissed the case of the plaintiff, since the enquiry was conducted in accordance with the provisions of the 1970 Rules. There were sufficient opportunities granted to him for filing a reply to the charge sheet as also to go through the documents relied upon by the department. Therefore, the appeal is liable to be dismissed.

9. Heard learned counsel for the parties.

10. As is evincible, the plaintiff, while working as Senior Assistant, was chargesheeted on 08.11.1993 under Rule 8 of 1970 Rules, for disbursing the pensionary benefits to a wrong person, for which the punishment of stoppage on one increment with cumulative effect was imposed on him vide order dated 27.04.1995. In the concurrent findings recorded by the Courts below, it was noticed that the plaintiff had himself opted out from producing any evidence in his defence, when asked by the presiding officer. Moreover, Manohar Singh, Treasury Officer, while appearing as DW-1, had deposed that all the documents were supplied to the plaintiff and no requests for the same were ever made by him. Thus, the suit had been correctly adjudicated upon and rightly affirmed by the lower Appellate Court.

11. The learned counsel for the plaintiff-appellant, during the course of hearing, has not been able to point out any jurisdictional error or infirmity visible on the record of the case so as to convince this Court to take a different view than the one taken by the Courts below. They have, after carefully examining and sifting through the evidence before recording their respective findings, arrived at a judicious conclusion by dismissing his case. There is no misreading or disregard of evidence made out.

12. Regarding the scope of interference at the hands of this Court while exercising jurisdiction at the stage of second appeal, Hon'ble the Supreme Court in **Randhir Kaur vs. Prithvi Pal Singh**, (2019) 17 SCC 71, observed and held that, "A perusal of the aforesaid judgments would show that the jurisdiction in second appeal is not to interfere with the findings of fact on the ground that findings are erroneous, however, gross or inexcusable the error may seem to be. The findings of fact will also include the findings on the basis of documentary evidence. The jurisdiction to interfere in the second appeal is only where there is an error in law or procedure and not merely an error on a question of fact... In view of the above, we find that the High Court could not interfere with the findings of fact recorded after appreciation of evidence merely because the High Court thought that another view would be a better view..."

13. In **Satyender vs. Saroj**, 2022 SCC OnLine SC 1026, Hon'ble the Supreme Court has held that, "Be that as it may, though the requirement of formulation of a substantial question of law was not necessary, yet Section 41 of the Punjab Courts Act, requires that only such decisions are to be considered in second appeal which are contrary to law or to some custom or usage having the

force of law or the court below have failed to determine some material issue of law or custom or usage having the force of law. Therefore, what is important is still a “question of law”. In other words, second appeal is not a forum where court has to re-examine or re-appreciate questions of fact settled by the Trial Court and the Appellate Court”.

14. As a sequel thereto, in the absence of any question of law being involved, nor there being any perversity in the impugned judgments and decrees, the present appeal being meritless, is accordingly dismissed.

(AMAN CHAUDHARY)
JUDGE

10.01.2024
M.Kamra

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