

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

106

RSA-743-2021
Date of Decision : 16.02.2024

Darshan SinghAppellant

Versus

Area Manager/District Manager,
Food Corporation of India and othersRespondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. R.S. Sidhu, Advocate for the appellant.
Mr. R.K. Gupta, Advocate for the respondents.

NAMIT KUMAR, J. (ORAL)

1. The instant regular second appeal has been filed by the appellant impugning the judgment and decree dated 15.12.2016 passed by learned Additional Civil Judge (Senior Division), Ferozepur, whereby a suit for declaration filed by the appellant/plaintiff has been dismissed and the judgment and decree dated 14.11.2019 passed by learned Additional District Judge, Ferozepur, whereby appeal preferred against the judgment and decree dated 15.12.2016, has been dismissed.
2. Brief facts of the case are that the appellant/plaintiff joined service of respondent/defendant-department as A.G.-III(D) on 17.07.1991 under the District Manager, Ferozepur, F.C.I. He was further promoted as AG-II(D) on 19.09.1977 and later on retired on 31.10.2008. The appellant/plaintiff filed a suit for declaration to the effect that the order dated 26.10.2005 read with order dated 10/13.03.2006 passed by

respondent/defendant No.3 read with order dated 22.10.2008, passed by the Managing Director, F.C.I., imposing penalty of stoppage of 03 increments for a period of 03 years with cumulative effect and recovery of Rs.2,00,000/- upon the appellant/plaintiff and the order dated 25.08.2009, whereby the intervening period from the date of dismissal from service till the date of rejoining/retirement of the appellant/plaintiff was treated as leave of kind due are wrong, illegal, perverse and unconstitutional as well as against the principles of natural justice. In nutshell, on the basis of enquiry held against the appellant/plaintiff in pursuance to issuance of charge-sheet dated 11.12.2004, the punishment of dismissal, recovery of Rs.2,00,000/- and forfeiture of whole gratuity was inflicted upon the appellant/plaintiff vide order dated 26.10.2005 against which he preferred an appeal which was dismissed vide order dated 10/13.03.2006 and review application preferred by him against the said orders was accepted by the Reviewing Authority vide order dated 22.10.2008 and the awarded punishment was modified to the extent of 'stoppage of 03 increments for a period of 03 years with cumulative effect and recovery of Rs.2,00,000/-'. Thereafter, vide order dated 25.08.2009, passed by the respondents, the intervening period from the date of his dismissal from service to the date of rejoining/retirement was treated as leave of kind due. Hence, the suit.

3. Upon notice, defendants appeared and filed written statement by raising preliminary objection that present suit is not maintainable in the present form. On merits, the orders dated

26.10.2005 read with order dated 10/13.03.2006 read with order dated 22.10.2008 and order dated 25.08.2009 are legal, valid and effective on the rights of the plaintiff. That statement of article of charges framed against the plaintiff, statement of imputation of misconduct framed against the plaintiff, list of documents by which the articles of charges framed and proposed against the plaintiff and list of witnesses by whom the articles of charges framed against the plaintiff were duly supplied to the plaintiff along with the charge sheet memo dated 11.12.2004. The plaintiff was provided full opportunity to produce the witnesses and documents in defence. On the representation of the plaintiff which was forwarded to the competent authority, the competent authority passed the order dated 25.08.2009 and accorded approval of regularization of intervening period. The plaintiff is not entitled to full pay and allowances for the said intervening period. Denying remaining all material averments of the plaint, a prayer for dismissal of the suit has been made. Replication to the written statement was not filed. From the pleadings of the parties, following issues were framed :-

- 1. Whether the plaintiff is entitled for declaration as prayed for ? OPP*
- 2. Whether order dated 26.10.2005 and order dated 22.10.2008 as well as order dated 25.08.2009 are illegal, null and void, if so its effect ? OPP*
- 3. Whether plaintiff is entitled to all the consequential service benefits as if the impugned order was never passed ? OPP*
- 4. Whether the suit of the plaintiff is not maintainable in the present form ? OPP*
- 5. Relief.*

4. Both the parties were given due opportunities for leading their respective evidence.

5. Learned trial Court after appreciating the evidence, dismissed the suit of the appellant/plaintiff vide judgment and decree dated 15.12.2016 and appeal preferred by him against the said judgment had also met the same fate vide judgment and decree dated 14.11.2019.

6. Learned counsel for the appellant submits that judgments and decrees passed by the Courts below are against the facts and settled principles of law as well as against the provisions of Food Corporation of India (Staff) Regulations, 1971 and therefore, liable to be set aside. He further submits that enquiry officer had no jurisdiction to conduct the enquiry and the same was conducted in gross violation of the mandatory provisions of Food Corporation of India (Staff) Regulations, 1971. No reasons have been assigned for holding the appellant guilty and he was not served with any show cause notice. The loss attributed to the appellant was not on account of any act or omission on the part of the appellant, therefore, appellant is not liable for any penalty or recovery. He also submits that similarly placed other employees have been given lesser punishment as compared to the appellant. He also submits that order dated 25.08.2009, whereby intervening period has been treated as leave of kind due, is illegal and bad in law.

7. Per contra, learned counsel representing the respondents contended that judgments and decrees under challenge do not suffer from any illegality and the same have been passed in accordance with law and has prayed for dismissal of the appeal.

8. I have heard learned counsel for the parties and perused the record.

9. During the course of hearing, the only point which has been strongly argued by learned counsel for the appellant is that the order dated 25.08.2009, whereby the intervening period has been treated as leave of kind due, is unsustainable and bad in law.

10. Before proceeding further in the matter, it is apposite to reproduce the penalty given in the Food Corporation of India (Staff) Regulations, 1971, which reads as under :-

“Minor penalties

- i) Censure;*
- ii) Withholding of his promotion;*
- iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Corporation by negligence or breach of orders;*
- (iii)(a) Reduction to a lower stage in the time scale of pay for a period not exceeding 3 years without cumulative effect and not adversely affecting his pension.*
- iv) Withholding of Increments of pay.*

Major penalties

- v) Save as provided for in Regulation (iii)(a) above, reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the employee of the Corporation will earn increments of pay during the period such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;*
- vi) Reduction to a lower time-scale of pay or post*

which shall ordinarily be a bar to the promotion of the employee to the time-scale of pay or post from which he was reduced, with or without further directions regarding conditions of restoration to the post from which the employee of the Corporation was reduced and his seniority and pay on such restoration to that post;

- vii) Compulsory retirement;*
- viii) Removal from service which shall not be a disqualification for future employment under the Corporation;*
- ix) Dismissal from service which shall ordinarily be a disqualification for future employment under the Corporation.”*

11. Ex-facie, the plaintiff was initially imposed the penalty of dismissal from service along with recovery of Rs.2,00,000/- and forfeiture of whole gratuity, thereafter, he preferred appeal which stood rejected. That afterwards, he filed review application which was partly allowed and order dated 26.10.2005 and 10/13.03.2006 were modified to the extent of stoppage of 03 increments for a period of 03 years with cumulative effect and recovery of Rs.2,00,000/- only vide order dated 22.10.2008. No appeal was filed against the said order and now at this stage, the argument raised by learned counsel for the appellant with regard to passing of order dated 25.08.2009 cannot be countenanced with because of the fact that once the major punishment of dismissal, recovery of Rs.2,00,000/- and forfeiture of whole amount of gratuity has been modified with another major penalty of stoppage of 03 increments for 03 years with cumulative effect and recovery of Rs.2,00,000/-, in this situation, the intervening period from the date of dismissal till

reinstatement/retirement of the appellant cannot be treated as duty period.

12. The Hon'ble Supreme Court in its judgment passed in ***Managing Director, Uttar Pradesh Sahkari Gram Vikas Bank Limited Lucknow and another Vs. Chandra Bhan Singh (Dead) and others : 2020(1) S.C.T. 312*** has held as under :-

“6. The punishment meted out to the first respondent has not been effaced. It is only the quantum of punishment which has been reduced. Reduction of punishment is completely different from exoneration of the charge. So long as the punishment remains the question of full payment of salary for the period of suspension or salary for the period from dismissal till reinstatement does not arise. The principle of “no work no pay” shall also apply.”

This Hon'ble Court in ***Surinder Paul Vs. Punjab State and others : 2019(3) PLR 54***, has held as under :-

“6. As far as the plea of the counsel for the appellant that the appellant was entitled to pay for the period of his suspension, suffice it to say that the appellant-plaintiff has not been exonerated in the departmental enquiry which was initiated against him. Merely because the appellate authority has reduced the punishment, which was imposed by the punishing authority i.e. stoppage of two annual grade increments to one annual grade increment, does not mean that the appellant-plaintiff has been exonerated of the charges which had been levelled against him. The authority, in the light of the punishment order, is competent to pass orders with regard to treating the period of suspension in the manner which would be befitting keeping

in view the facts and circumstances of the case. The said authority has ordered treatment of the suspension period as leave of the kind due, which is in accordance with law and the statutory Rules governing the service, therefore, no interference in this regard is required to be made by this Court.”

13. Moreso, no rule which supports the claim of the appellant has been shown by learned counsel for the appellant particularly when such argument was not raised and, therefore, not gone into by the Courts below.

14. Concurrent findings have been recorded by both the Courts below and learned counsel for the appellant has failed to show that the same are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record.

15. No question of law, muchless substantial question of law has been raised or arises for consideration in the present appeal. No other point has been urged.

16. In view of the above, the present appeal, being devoid of merit, is hereby dismissed.

16.02.2024
Kothiyal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned
Whether Reportable

Yes/No
Yes/No