

RSA-2279 of 1993 (O&M)

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

RSA-2279 of 1993 (O&M)
Reserved on: 16.04.2024
Pronounced on: 26.04.2024

The State of Punjab

.....Appellant

Versus

Harbans Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Rajesh Sehgal, Addl. A.G., Punjab.

Mr. Gurmeet Singh Saini, Advocate,
for Mr. S.C. Chhabra, Advocate,
for the respondent.

NAMIT KUMAR, J.

1. This Regular Second Appeal is directed against the judgment and decree dated 04.03.1991, passed by the Court of learned Senior Sub Judge, Ferozepur, whereby suit for declaration filed by the respondent-plaintiff was decreed as well as against the judgment and decree dated 18.05.1993, passed by the Court of learned Additional District Judge, Ferozepur, whereby appeal preferred by the appellant-defendant against the judgment and decree dated 04.03.1991, has been dismissed.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. Brief facts of the case are that plaintiff filed a suit for declaration to the effect that order dated 15.04.1985, vide which he was reduced to time scale by five increments by the General Manager, Punjab Roadways, Ferozepur, is

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illegal, null and void and not binding on him. It was pleaded that plaintiff was employed as Conductor in the Punjab Roadways, Ferozepur Depot and he is governed by Punjab Civil Services (Punishment and Appeal) Rules, 1970.

3. Upon notice, defendants appeared and filed written statement denying the allegations and claim of the plaintiff. It was stated that punishment was awarded to the plaintiff after holding enquiry according to rules and the impugned order is legal and valid.

4. From the pleadings of the pleadings of the parties, following issues were framed: -

1. Whether the impugned order is illegal and is liable to be set aside? OPP
2. Whether a valid notice under Section 80 CPC was served upon the defendant by the plaintiff before filing the present suit? If not its effect? OPP
3. Relief.

5. After hearing arguments and appreciating evidence on record, trial Court decreed the suit of the plaintiff vide judgment and decree dated 04.03.1991.

6. Aggrieved against the judgment and decree of the trial Court, defendant-State preferred an appeal before the lower appellate Court, which has been dismissed, vide judgment and decree dated 18.05.1993. Hence this appeal.

7. Learned counsel for the appellant contended that judgments and decrees of both the Courts below are erroneous and perverse as they are against the facts on record and the rules. He

further contended that impugned order was passed after following the due procedure and rules governing the service of the respondent. He further contended that if there was any technical error or procedural irregularity in the impugned order, the matter should have been remanded back to the authorities, which has not been done by Courts below. He contended that the judgments/decrees of Courts below are based on surmises and conjectures, therefore, same are liable to be set aside and suit of the plaintiff be dismissed.

8. On the other hand, learned counsel for the respondent submitted that impugned order was passed in violation of Rules 8.11 and 4.12 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970. He contended that judgments of the Courts below are perfectly valid and legal, therefore, same do not require any interference by this Court and present appeal is liable to be dismissed.

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

10. Both the Courts below decreed the suit of the plaintiff on the ground that there was violation of Rules 8.11 and 4.12 of the 1970 Rules. It was observed by the Courts below that plaintiff-respondent did not plead guilty, therefore, under Rule 8.11 of the Rules, it was mandatory on the part of the enquiry officer to pass an order for producing evidence by the prosecution and adjourn the case at least for 30 days and the enquiry officer did not pass any such order and it has not been specified whether the plaintiff will earn future increment or

not, thus, the impugned order was bad under Rule 4.12 of the 1970 Rules.

11. Rule 8.11 of the Rules reads as under: -

“The inquiring authority shall if the Government employee fails to appear within the specified time or refuses or omits to plead, require the Officer to produce the evidence by which he proposes to prove the articles of charges, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Government employee may for the purpose of preparing his defence-

- (i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list referred to in sub-rule (3);*
- (ii) submit a list of witnesses to be examined on his behalf;*
- (iii) Apply orally or in writing for the supply of copies of the statements, if any recorded, of witness mentioned in the list referred to in sub-rule (3), in which case the inquiring authority shall furnish to him such copies as early as possible and in any case not later than three days before the commencement of the examination of the witnesses on behalf of the punishing authority; and*
- (iv) Give a notice within ten days of the order or within such further time not exceeding ten days, as the inquiring authority may allow for the discovery or production of any documents which is in the possession of Government, but not mentioned in the list referred to in sub-rule (3) and the Government employee shall also indicate the relevance of the document required by him to be discovered or produced by the Government.”*

12. Perusal of Rule 8.11 makes it clear that inquiring authority shall adjourn the case to a later date not exceeding thirty days, in case the employee fails to appear within the specified time or refuses or omits to plead. However, in the present case respondent-plaintiff pleaded not guilty, hence, there is no violation of Rule 8.11 in the present case and the Courts below have mis-interpreted this Rule. Further, the punishment awarded to the respondent-plaintiff was forfeiture of five annual grade increments from the time scale of pay, which would be covered under Sub-Clause 2 of Rule 4.12 of the Rules. According to Rule 4.12(2), if a Government employee is reduced as a measure of penalty to a lower service, grade or post, or to a lower time-scale, the authority ordering the reduction may or may not specify the period for which the reduction shall be effective. Since in the case of the respondent-plaintiff, five annual grade increments have been forfeited, therefore, punishing authority was not required to give the duration of the punishment as per Rule 4.12(2) of the Rules.

13. Further, the Courts below should have remanded the case back to the authority concerned, if there was any technical error or procedural irregularity but the same was not done and the punishment order was set aside. 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 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]).”

14. In view of the above, present appeal is allowed. Judgments and decrees of the Courts below are set aside and suit of the respondent-plaintiff is dismissed. Decree-sheet be prepared accordingly.

15. Pending application(s), if any, stand disposed of accordingly.

26.04.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether Reportable

:

Yes/No