

RSA-1682 of 1992

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

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Reserved on: 14.02.2024

Pronounced on: 21.03.2024

Punjab State Civil Supplies Corporation Limited, Chandigarh
.....Appellant

Versus

Shri Dev Raj Kalsi and another
.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Ms. Aashna Gill, Advocate,
for the appellant.

Mr. S.K. Bawa, Advocate,
for respondent No.1.

NAMIT KUMAR, J.

1. This regular second appeal is directed against the judgment and decree dated 07.02.1992, passed by Sub Judge IInd Class, Jalandhar, whereby suit for declaration filed by the respondent-plaintiff, has been decreed, as well as against the judgment and decree dated 15.05.1992, passed by the Additional District Judge, Jalandhar, whereby appeal filed by the appellant-defendant has been dismissed.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. The facts relevant for disposal of this regular second appeal are that the plaintiff-Dev Raj Kalsi instituted a suit for declaration to the effect that the order dated 29.04.1985, passed

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by the Managing Director, PUNSUP, terminating the services of the plaintiff and thereafter, rejecting his appeal by the Appellate Authority, vide order dated 17.09.1986, are illegal, void and against the principles of natural justice. It is pleaded in the plaint that the plaintiff joined as Sub Inspector in the PUNSUP, in the year 1976 and since then, he served in Ferozepur District till his services were terminated on 29.04.1985, despite the fact that the plaintiff had performed his duties with due diligence. It is further pleaded that on the basis of false allegations, after preliminary inquiry conducted into the matter by Sh. Inder Pal Singh, Assistant Manager, and Darshan Singh Mann, Assistant Manager, Flying Squad, the Managing Director ordered departmental inquiry against the plaintiff. As a result thereof, Sh. B.S.Basur was appointed as inquiry officer, who conducted the inquiry against the provisions of law. The aforesaid inquiry was vitiated on the ground alone, for the reason that the plaintiff could not be held guilty on the basis of allegations, which did not relate to his duties as Sub Inspector.

3. It is further pleaded in the plaint that the allegations of temporary embezzlements levelled against the plaintiff, were baseless, because he had not personally made use of any amount. Furthermore, the plaintiff was denied the opportunity to defend his case and two witnesses, namely, Yadvinder Singh and Satwant Singh to whom the plaintiff wanted to get examined in his defence, were never summoned by the Inquiry Officer. It is also pleaded that no sufficient and justifiable reasons were given by the Inquiry Officer while concluding

the reports to arrive at a particular decision. It is further pleaded that the plaintiff had never ever been provided an opportunity of hearing, as envisaged under Article 311(2) of the Constitution. It is also pleaded that the punishing authority had recorded in his order that he had also considered comments of the District Manager, but it has not been made clear that as to what prompted him to get comments of the District Manager, as no copy of the comments was ever given to the plaintiff. The plaintiff has also got issued notice under Section 80 CPC served upon the defendants, but no reply to the same had been given. Hence, this suit.

4. Upon issuance of notice, the defendants appeared through counsel and filed the written statement controverting all the averments made in the plaint by taking preliminary objections on the grounds of jurisdiction; non-joinder and mis-joinder of the parties. On merits, the relevant averments made in the plaint were denied. It is pleaded that upon receipt of the preliminary inquiry report, a charge-sheet was served upon the plaintiff, alongwith allegations of charges, list of witnesses. The allegations levelled against the plaintiff qua embezzlement of stock at PUNSUP Centre, Zira, were inquired into by Sh. B.S.Basur, the then Manager, Commercial and Distribution, in accordance with the provisions of law, who had found the plaintiff guilty in respect of the charges levelled against him. Thereafter, a show-cause notice was served upon the plaintiff and after perusing the reply filed by him, the order terminating the services of the plaintiff was passed, vide order dated 29.04.1985. The plaintiff being Incharge of

Distribution of goods at the PUNSUP Centre, as made vide DM order dated 20.07.1981, was responsible for the sale of cement, sugar and pulses. It is further pleaded that the Inquiry Officer summoned all the witnesses in defence, which had been mentioned by the plaintiff in the list. As such, the plaintiff had been given adequate opportunity of hearing to defend himself in the inquiry. The inquiry report as well as the plea taken by the plaintiff in his defence, were duly considered and thereafter, the order had been passed by the punishing authority. As such, the orders dated 29.04.1985 and 17.09.1986 have rightly been passed by the authorities. During inquiry, the plaintiff had been afforded an opportunity of hearing in accordance with law.

5. Replication was filed by the plaintiff wherein he controverted the averments made in the written statement and reiterated those of the plaint.

6. From the pleadings of the parties, the learned trial court framed the following issues :-

1. Whether the impugned order dated 29.04.1985 passed by the Managing Director, PUNSUP, is illegal, void etc. etc., as alleged in the plaint? OPP
2. Whether civil court at Jalandhar has no territorial jurisdiction to entertain and try this suit? OPD
3. Whether suit is bad for mis-joinder and non-joinder of parties? OPD
4. Whether suit is not properly filed as alleged? OPD
5. Relief.

7. The parties led their respective evidence. The Court of first instance, after appreciating evidence on record, decreed the suit filed by the plaintiff.

8. Feeling aggrieved against the said judgment and decree of the trial Court, the defendants preferred an appeal before the lower appellate Court, which has been dismissed vide judgment and decree dated 15.05.1992.

9. Learned counsel for the appellants contended that the judgments and decrees passed by both the Courts below are against law and the evidence on record. She further contended that both the courts below have not appreciated the evidence in right perspective. In fact, the orders dated 29.04.1985 and 17.09.1986 have been passed after affording due opportunity of hearing to the plaintiff. Even personal hearing had been given to plaintiff before the aforesaid orders. She further contended that after applying its mind, the appellate authority had dismissed the appeal of the plaintiff, and where the disciplinary authority agrees with the findings of the inquiry officer, the disciplinary authority is not bound to record reasons in every case.

10. Learned counsel for the appellants has further contended that the respondent was serving at Zira, District Ferozepur, when his services had been terminated, therefore, the Civil Court at Zira had got the jurisdiction to entertain and try the present suit. Learned counsel for the appellant further submitted that copy of enquiry report was supplied to the plaintiff and the finding recorded by the appellate Court is wrong, as there was no mention in the plaint filed by the plaintiff to

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this effect and no evidence was even led by either party. She further submitted that the plea taken with regard to non-summoning of witnesses during the enquiry proceedings does not carry much weight as the same is in exclusion to the pleadings and not causing prejudice to the plaintiff. In support of her contention that the Civil Court, Jalandhar, has no jurisdiction to entertain the suit, she has relied upon the judgments rendered in *Oil and Natural Gas Commission Vs. Utpal Kumar Basu and others (1994) 4 Supreme Court Cases 711*, *Alchemist Ltd. and another Vs. State Bank of Sikkim and others (2007) 11 Supreme Court Cases 335*, *National Textile Corpn. Ltd. And others Vs. Haribox Swalram and others (2004) 9 Supreme Court Cases 786*, *Manish Kumar Mishra Vs. Union of India and others (2020) 143 ALR 127*, *Prem Kumar Handa Vs. National Housing Bank and another 2010 (1) I.L.R, Punjab and Haryana, 745*, *N.K.Sharma Vs. M.D., the Gurgaon Central Cooperative Bank Ltd. And others 2009 SCC Online P & H 8749*, *Harvinder Singh Vs. Food Corporation of India & Ors. (2003) I.L.R P & H 689*, *Gurdial Singh Vs. Food Corporation of India and Ors. (2006) 2 I.L.R. P & H 59*. She has also submitted that the competent authority has agreed with the findings of the Enquiry Officer and thus the orders cannot be termed to be non-speaking as has been held by the Courts below. She has placed reliance upon the judgments in *Tara Chand Khatri Vs. Municipal Corporation of Delhi (1977) 1 Supreme Court Cases 472* and *State of Haryana and others Vs. Shri Ram Chander 1977(1) I.L.R. Punjab and Haryana 24*.

11. On the other hand, learned counsel for the respondent contended that both the courts below have rightly appreciated the evidence in right perspective and the judgments and decrees passed by the courts below are liable to be upheld. He further submitted that the department had examined three more witnesses whose names did not find mention in the list submitted by the department. The examination of such witnesses had caused a prejudice to the plaintiff in his defence. The witnesses sought to be produced in defence by the plaintiff, had not been summoned by the Inquiry Officer, which amounts to denial of opportunity to adduce defence evidence. As such, provisions of Rule 8 of Punishment and Appeal Rules had been violated by the Inquiry Officer. Particularly the enquiry officer has himself admitted that the list of witnesses was furnished by the employee but he had not made any efforts to summon the witnesses as detailed in the list and, therefore, had been deprived from bringing on record the best evidence available to him in his defence and further it is vitiated by violation of principles of natural justice. Even, the copy of complaint made by Chowkidar; preliminary report submitted by the Flying Squad and the comments of D.M. PUNSUP, Ferozepur, had not been furnished to the plaintiff since it is mandatory in terms of Rule 11 of the Punishment and Appeal Rules, causing prejudice to the employee. Furthermore, no opportunity of inspecting the documents had been shown on the record, having been given to the plaintiff. He further submitted that the factual and procedural pleas raised by the plaintiff in his reply to the show cause notice, had not been considered by the competent authority

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before passing the impugned order. He further submitted that the provisions of Rule 19(2) of Punishment and Appeal Rules had not been complied with by the Appellate Authority, while rejecting the appeal and, therefore, the orders dated 29.04.1985 and 17.09.1986 are not reasoned one. In support of his contentions, learned counsel relied upon the judgments in *Shiv Datt Sharma Vs. State of Punjab and others 1962 (1) L.L.J. 570*, *Union of India and others Vs. Prakash Kumar Tandon 2009 AIR (Supreme Court) 1375*, *Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and others 2009(4) SCC 240*, *Mahesh Dahiya and others Vs. Himachal Pradesh State Electricity Board through its Secretary, Viduty Bhawan 2012 (5) SCT 377*, *Jit Singh Vs. State of Punjab 2002(1) SCT 628*, *Soma Das (Mallick) Vs. State of West Bengal and others 2019(1) Cal. H.C.N. 731*, *Managing Director ECIL Hyderabad etc. Vs. B. Karunakar Etc., 1994(1) SCT 319* and *Gurucharan Singh Vs. Kamla Singh and others 1977 AIR (Supreme Court) 5*.

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

13. A perusal of the record would show that while passing the order dated 29.04.1985, concededly, the competent authority has not considered several pleas raised by the plaintiff in his defence as enumerated above. Furthermore, the appellate authority has dismissed the appeal consisting of 13 pages, by passing the order dated 17.09.1986, which apparently seems to be cryptic and non-speaking.

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Both the courts below have rightly appreciated the fact that the principles of natural justice have not been followed by the authorities concerned, while passing the orders dated 29.04.1985 and 17.09.1986. Both the courts below have rightly appreciated the fact that the inquiry officer was within his competence to summon the witnesses to whom the plaintiff wanted to get examined, and he should not have left it to the plaintiff to summon his own witnesses. Both the courts below have also rightly arrived at a conclusion that no opportunity was afforded to the plaintiff to controvert the comments of D.M. PUNSUP, Ferozepur.

14. Indisputably, an employer has inherent power to suitably punish a delinquent employee. However, the said inherent power is subjected to certain restrictions so as to protect an employee against any sort of vindictive or capricious action. As such, the employer is required to follow certain principles and procedures before awarding any punishment to the employee. The correct procedure is required to be followed by the employer.

15. At this stage, this Court is not inclined to go into the point of jurisdiction as the appeal pertains to the year 1992 and is pending for more than 31 years particularly when no prejudice has been suffered by the appellant. Reliance is placed upon the judgment of the Hon'ble Supreme Court in ***Bikash Bhushan Ghosh and others v. M/s Novartis India Limited and another, 2007(3) S.C.T. 486*** and judgment of this Court in ***Arjan Singh v. Surjit Singh and others, 2007(1) R.C.R.(Civil) 522***. Undoubtedly, the purpose of jurisdiction of the Courts is to safeguard honest litigants and to prevent harassment of plaintiffs who

have commenced actions in good faith before a Court. Keeping in view the provisions of Section 21 CPC, unless respondent suffered any prejudice, it could not have questioned the jurisdiction of the Court as held in the aforesaid judgments.

16. No benefit of the judgment in *Tara Chand Khatri* and *Shri Ram Chander's* case (supra) can be given to the appellant in the peculiar facts and circumstances of the case as Enquiry Officer was expected to go deeply into the pleas raised by the respondent and required to conclude the enquiry with detailed logical reasons after due application of mind when career of the respondent was at stake. By not giving a reasoned decision, the principles of natural justice have been violated. The appellate authority in two line order has also rejected his appeal without assigning any reason and grounds taken in the detailed appeal were not even duly considered by the appellate authority before rejecting it.

17. Concurrent findings have been recorded by both the Courts below that the principles of natural justice have not been followed while punishing the plaintiff. Learned counsel for the appellant has failed to show that the findings recorded by Courts below are perverse or illegal or based on misreading, non-reading or misappreciation of the material evidence on record.

18. In view of above, no question of law, muchless substantial question of law arises for consideration in the present appeal. No other point has been urged.

19. Dismissed.

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

21.03.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether Reportable

:

Yes/No