

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

RSA-1316 of 1994 (O&M)
Reserved on: 16.04.2024
Pronounced on: 24.04.2024

Rachhpal Singh

.....Appellant

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. J.S. Maanipur, Advocate,
for the appellant.

Mr. Teevar Sharma, AAG, Punjab.

NAMIT KUMAR, J.

1. This Regular Second Appeal is directed against the judgment and decree 25.09.1993, passed by the Court of learned Additional District Judge, Amritsar, whereby appeal preferred by the respondents-defendants against the judgment and decree dated 04.12.1992, passed by the Court of learned Sub Judge Ist Class, Amritsar, has been accepted and suit of the appellant-plaintiff for declaration, has been dismissed.

2. Parties to the *lis* are being referred as per their status before the trial Court. Brief facts of the case are that plaintiff filed a suit for declaration to the effect the order dated 19.01.1989 passed by defendant No.3, whereby his four annual increments with future effect have been withheld and the order dated 09.12.1988 passed by

defendant No.3 whereby two annual increments of the plaintiff were withheld are illegal, null and void, arbitrary, unconstitutional and are liable to be set aside, and the plaintiff is entitled to be paid all arrears of pay and emoluments, illegally withheld by the defendants. The plaintiff has alleged in the plaint that on 17.08.1988, he was deployed on bus No.PJC 146 which was coming from Paunta Sahib to Amritsar and it was checked by the General Manager, Punjab Roadways, Amritsar-I and Inspector Shri Mudhal at village Manawala, and the General Manager issued chits for change and replacement of tyres to bus conductor Sewinder Singh No.85 who had submitted complaint against the plaintiff under pressure of the officers that said Bus No.PJC-146 was driven by a driver of private company i.e. Majha Transport Company but actually the plaintiff was driving the bus and even at the time of above said inspection by General Manager. Subsequently, the plaintiff was charge sheeted vide No. 2045/TA dated 01.08.1988 and inquiry was held by the Inquiry Officer D.W. Ferozepur, Lal Singh, that the plaintiff is innocent of the charges vide report dated 28.11.1988. General Manager, Punjab Roadways, Amritsar vide his orders ignored the report of the Inquiry Officer and rather issued a show cause notice vide No.4123/Steno dated 27.12.1988 to the plaintiff. The General Manager, vide his order dated 19.01.1989, withheld four annual increments of the plaintiff with future effect and vide the same order he has held that the plaintiff is not entitled to any arrears of pay for the suspension period. The said order is illegal, null and void and unconstitutional and is liable to be cancelled and the plaintiff is entitled

to draw his increments and also arrears of pay and emoluments for the suspension period. The order dated 08.12.1988, passed by defendant No.3, whereby he has withheld two annual increments on 21.05.1986 is also illegal null and void, unconstitutional and the same is liable to be cancelled and the plaintiff is entitled to draw his annual increments and arrears of pay upto date. The plaintiff has served a notice under Section 80 CPC before filing of the present suit on 05.04.1989. The plaintiff prayed that the suit of the plaintiff be decreed.

3. Notice of the suit was given to the defendants. The defendant appeared in the Court and filed written statement alleging that the plaint was not well drafted and as such the suit is liable to be dismissed. The Civil Court has got no jurisdiction to entertain and try the present suit as the provisions of Industrial Disputes Act are applicable in the present case. The plaintiff has not served a valid notice under CPC before filing of the present suit. The defendants have further alleged that the chargesheet dated 21.08.1988 was served upon the plaintiff, the Inquiry Officer was appointed by the Punishing Authority and the report of the Inquiry Officer dated 28.11.1988 was received. The plaintiff was served a show cause notice dated 27.12.1988, on the basis of the report and dissenting note by the Punishing Authority with the report of the Inquiry Officer. The order dated 19.01.1987 is wrongly mentioned, in fact four increments of the plaintiff were stopped vide order dated 19.01.1989, and the said order is legal and valid and binding on the plaintiff. The said order was passed after adopting the procedure laid down in the rules and after

giving full opportunity to the plaintiff to defend his case. There is no order dated 21.07.1988 by which two increments of the plaintiff were withheld. The order dated 09.12.1988, was passed by the Punishing Authority, after adopting the proper procedure and full opportunity was afforded to the plaintiff before passing the aforesaid order. The said order is legal and is binding on the plaintiff.

4. The plaintiff filed the replication denying the allegations of the defendants. On the pleadings of the parties the following issues were framed: -

1. Whether the orders dt. 19.1.87, 21.7.88, 9.12.88 and 21.5.86 are illegal , void and inoperative against the rights of the plaintiff and are thus liable to be set aside ? OPP
2. Whether the Civil Courts have no jurisdiction to entertain and try the present suit? OPD
- 2A. Whether a legal and valid notice u/s 80 CPC was served upon the defendants before filling the present suit. If not to what effect ? OPP
3. Relief.

5. The parties led their respective evidence. The Court of the first instance, after appreciating evidence on record decreed the suit filed by the plaintiff *qua* order dated 19.01.1989 and dismissed the same with regard to order dated 09.12.1988.

6. Feeling aggrieved against the said judgment and decree of the trial Court, respondents preferred an appeal before the lower appellate Court, which has been accepted vide judgment and decree dated 25.09.1993. Hence, this appeal.

7. Learned counsel for the appellant contended that the learned lower Appellate Court wrongly reversed the well-reasoned judgment of the trial Court. He further contended that appellant was found innocent by the enquiry officer, however, punishing authority without following the proper procedure illegally withheld four annual increments of the appellant vide order dated 19.01.1989. He further contended that judgment and decree of the learned lower Appellate Court being based on surmises and conjectures is liable to be reversed.

8. On the other hand, learned counsel for the respondents-State has contended that appeal of the respondents has rightly been accepted by the learned lower Appellate Court as the petitioner did not challenge the order dated 19.01.1989.

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

10. Perusal of the record shows that chargesheet dated 21.08.1988 was served upon the plaintiff; Inquiry Officer was appointed by the punishing Authority. The plaintiff was served a show cause notice dated 27.12.1988, on the basis of the report of the Inquiry Officer and dissenting note by the punishing Authority with the report of the Inquiry Officer. Thereafter, the Punishing Authority passed the order dated 19.01.1989 stopping four annual increments of the appellant-plaintiff. The said order was passed after following the procedure laid down in the rules and after giving full opportunity to the plaintiff to defend his case. When the disciplinary enquiry is conducted for the alleged misconduct against the public servant, the Court is to

examine and determine: (i) whether the enquiry was held by the competent authority; (ii) whether rules of natural justice are complied with; (iii) whether the findings or conclusions are based on some evidence and authority has power and jurisdiction to reach finding of fact or conclusion. It is well-settled law that punishing authority may or may not agree with the findings recorded by the inquiry officer. In the present case, this Court does not find any fault with the procedure followed by the department while punishing the appellant-plaintiff. Moreover, appellant has not placed on record the order of punishment dated 19.01.1989, therefore, the same was wrongly set aside by the trial Court.

11. No question of law muchless substantial question of law arises for consideration in the present appeal.
12. Dismissed.
13. Pending application(s), if any, stand disposed of accordingly.

24.04.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No