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RSA-2292-1994

Date of decision:18.01.2024

STATE OF PUNJAB

... APPELLANT

VS.

PREM CHAND

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Vikas Arora, AAG, Punjab,
for the appellant.

None for the respondent.

SUVIR SEHGAL J. (ORAL)

1. State-defendant is in second appeal before this Court challenging the judgment and decree dated 20.01.1994 passed by the First Appellate Court.
2. Brief facts may be noticed.
3. Plaintiff-respondent, who was working as a Conductor with the Punjab Roadways was served with a charge-sheet dated 07.01.1987, to which he submitted a reply refuting the allegations levelled against him. As his reply was not found to be satisfactory, enquiry was initiated by the punishing authority under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, (for short “the Rules”). After conclusion of enquiry, a show cause notice was served to him on 24.12.1987 imposing penalty of removal from service to which he

submitted a detailed reply, which was found to be dis-satisfactory and after hearing him by order dated 24.02.1988, punishment of stoppage of three increments with cumulative effect was imposed. Plaintiff-respondent filed a suit for declaration to the effect that the punishment order is illegal, null and void with consequential relief of restoration of monetary benefit. Upon being served, State-defendant filed a written statement defending the action taken by them. On the basis of the pleadings of the parties, issues were framed and after trial, by judgment and decree dated 13.09.1991, suit was dismissed by the Trial Court. Appeal preferred by the respondent-plaintiff was accepted by the First Appellate Court holding that the plaintiff-respondent was found to be innocent in the enquiry report, but the General Manager did not agree with the report of the Enquiry Officer and without assigning any reasons, recorded a dissenting note on the basis of which, a show cause notice was issued to the plaintiff-respondent and punishment was imposed.

4. As per office report, counsel for the respondent has been informed telephonically. However, there is no representation on his behalf.

5. State counsel has been heard and the record has been perused with his able assistance.

6. The punishing order has been passed by the authorities under Rule 5 of the Rules. The order is appealable under Rule 15, *ibid*. There is nothing on the record to show that the plaintiff-respondent had availed the remedy available to him under the Rules before filing the suit. Once an alternate remedy has been provided in the Rules, the aggrieved

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employee is mandatorily required to take recourse to the remedy provided in the applicable service rules before approaching the Courts. In view of this serious lapse, this Court has no hesitation in coming to the conclusion that the suit was not maintainable.

7. Consequently, finding merit in the appeal, it is accepted. Judgment and decree passed by the Lower Appellate Court is set aside. Liberty is given to the plaintiff-respondent to challenge the punishment order by filing an appeal under Rule 15, *ibid*, in accordance with law. He may take the benefit of Section 14 of the Limitation Act, 1963, if so advised.

18.01.2024
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(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No