

RSA-644 of 1994 (O&M)

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

RSA-644 of 1994 (O&M)
Reserved on: 03.04.2024
Pronounced on: 26.04.2024

Pepsu Road Transport Corporation, Patiala and others
.....Appellants

Versus

Jarnail Singh
.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. Anupam Singla, Advocate,
for the appellants.

Mr. Rohit Singla, Advocate,
for the respondent.

NAMIT KUMAR, J.

1. This Regular Second Appeal has been filed against the judgment and decree dated 22.05.1992 passed by the Court of learned Senior Sub Judge, Bathinda, whereby suit filed by the respondent-plaintiff for declaration was decreed as well as against the judgment and decree dated 08.10.1993 passed by the Court of learned Additional District Judge, Bathinda, whereby appeal filed by the appellants against the judgment and decree dated 22.05.1992, has been dismissed.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. Briefly, plaintiff filed a suit for

declaration pleading therein that he was permanently posted as
RAVINDER SINGH
2024.05.01 18:05
I attest to the accuracy and
integrity of this document

RSA-644 of 1994 (O&M)

Conductor No. B-196 and served under Depot Manager, P.R.T.C., Bathinda-1 (defendant No. 6). His services were terminated by Depot Manager, P.R.T.C., Barnala (defendant No. 5) vide order dated 30.03.1988, which is illegal, unconstitutional and ultravires. It is pleaded that he has committed no wrong and no charge has been proved against him; no proper and fair enquiry was conducted against him according to the rules and regulations and the alleged enquiry was illegal and ultravires based on mere conjectures and surmises; no document, notice, charge-sheet or copy of the report of the inspectorate was supplied to him to defend himself; no statement of any passenger or driver had been recorded nor cash of the plaintiff was checked by the raiding staff; the order has not been passed by the competent authority and is neither speaking one; no proper opportunity was afforded to the plaintiff to prove his case nor he was heard in person and the punishment awarded was excessive and un-justified. He filed an appeal against the said order to the higher authorities which was dismissed by the Deputy General Manager (defendant No. 3) conveyed through letter dated 10.01.1989 of the Administrative Officer, P.R.T.C. Patiala. The appellate order, according to the plaintiff, is also illegal and ultravires as the same has been passed without taking into consideration the above said illegalities and irregularities and without going through the relevant facts and record and without hearing the plaintiff. With these allegations, the plaintiff sought a decree of declaration that the impugned orders are illegal and ultravires and he continues to be in the service of the defendants entitled to all service benefits.

RSA-644 of 1994 (O&M)

3. The defendants resisted the suit in their written statement. The employment of the plaintiff as Conductor was admitted but it was denied that he had un-blemished service record. It was admitted that the services of the plaintiff were terminated by the Depot Manager, Barnala. The said order was, however, stated to be legal and valid passed after observing the rules and regulations. It was denied that the plaintiff was not afforded any opportunity to defend himself or the order suffered from any infirmity. It was further admitted that the plaintiff filed an appeal against the said order which was dismissed. It was added that the plaintiff was provided every opportunity to defend himself and was also heard in person. The past service record of the plaintiff was also perused which showed that he was warned for 35 times, censured 5 times, suspended 7 times, and increments stopped for 17 times and he also once resigned and keeping in view this service record, the punishment of removal from service was commensurate with the misconduct. Two preliminary objections were raised that trial court had no territorial jurisdiction to try the suit and the suit was not maintainable in the present form.

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

- 1) Whether the orders dated 30.3.88 passed by defendant No. 5 and order of defendant No. 3 conveyed to the plaintiff through the Administrative Officer, defendant No. 4 vide letter dated 10.1.1989 are illegal, null and void and not binding upon the plaintiff? OPP.
- 2) Whether this court has no jurisdiction to try this suit? OPD.

RSA-644 of 1994 (O&M)

- 3) Whether the suit is not maintainable in the present form? OPD.
- 4) Whether the plaintiff is entitled to the declaration prayed for? OPD.
- 5) Relief.

5. Parties led oral as well as documentary evidence in support of their respective contentions.

6. Learned Trial Court vide judgment and decree dated 22.05.1992 after appreciating the evidence on the file, decreed the suit of the plaintiff-respondent.

7. Feeling aggrieved, the appellants preferred appeal before the Appellate Court, which has been dismissed vide judgment and decree dated 08.10.1993.

8. Learned counsel for the appellants contended that judgments and decrees of both the Courts below are based on conjectures and surmises. He further contended that both the Courts below have failed to appreciate the evidence available on record that a proper enquiry was conducted and show-cause notice was served upon the respondent. He further contended that all the legal norms and rules were adhered to while making enquiry against the respondent. He further contended that judgments and decrees of the Courts below being against law are liable to be set aside and suit of the respondent-plaintiff be dismissed. It has been wrongly held by the Courts below that the Courts at Bathinda has the jurisdiction to try the suit.

9. Since no one appeared on behalf of the respondent, despite service, the matter was heard on 03.04.2024 and the judgment was

RSA-644 of 1994 (O&M)

reserved. Thereafter, an application being CM-3871-C of 2024 was preferred by the legal representatives of the respondent and the same has been allowed by this Court vide order dated 20.04.2024 and legal representatives of the respondent have been brought on record.

9-A. Learned counsel for the respondent submitted that the whole action has been taken by the appellants with pre-determined mind as the appeal preferred by the plaintiff was considered by the same authority i.e. Deputy General Manager, who issued first charge-sheet to the plaintiff.

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

11. Admittedly, respondent was working as Conductor with the appellants-PRTC and on 01.01.1987, he was deputed on bus No.PJG-7417 from Barnala to Delhi. The said bus was checked at bypass Rohtak. Perusal of the record shows that six passengers travelling from Julana to Rohtak and five passengers travelling from Lakhan Majra to Rohtak were found travelling without tickets from whom the respondent-plaintiff had charged full fare. On the report of the Inspectorate, Deputy General Manager, PRTC, Patiala, served charge-sheet upon the plaintiff accompanied by statement of allegations and list of witnesses. Respondent-plaintiff did not file any reply and the Deputy General Manager appointed Sh. G.S. Mela, Legal Advisor, as enquiry officer to hold enquiry against the respondent-plaintiff. The enquiry officer recorded the statements of three Inspectors and gave his report holding the charges proved. Thereafter, Deputy General

RSA-644 of 1994 (O&M)

Manager issued show-cause notice to the respondent-plaintiff, to which he filed reply. Respondent-plaintiff was called for personal hearing. He raised the objection that Depot Manager, Barnala, was the appointing authority, therefore, Depot Manager was supposed to issue the charge-sheet. Hence, the Depot Manager was asked to issue fresh charge-sheet. Thereafter, fresh charge-sheet was issued by the Depot Manager. Respondent-plaintiff did not file any reply to the said charge-sheet. Enquiry officer was appointed, who recorded the statements of the checking staff and they were cross-examined by the respondent-plaintiff. Respondent-plaintiff did not lead any evidence and on consideration of the evidence, enquiry officer held the charges established. Number of letters were issued to the respondent-plaintiff for personal hearing, but he did not respond. Thereafter, Depot Manager issued show-cause notice to the plaintiff for removal/termination from service. However, respondent-plaintiff failed to respond and his services were terminated by the Depot Manager vide order dated 30.03.1988. Thereafter, respondent-plaintiff filed departmental appeal, which has been rejected by the Deputy General Manager, vide order dated 10.01.1989. It is apparent from the record that all the legal norms and rules were followed while making enquiry against the respondent-plaintiff. Respondent-plaintiff failed to prove that due procedure was not followed while holding him guilty. Rather, lower Appellate Court has observed that a proper enquiry was conducted by the department.

12. Even otherwise, the past record of the plaintiff shows that he was warned for 35 times, censured 5 times, suspended 7 times, increments were stopped for 17 times and he also once resigned. Further, the scope of interference by the Courts in disciplinary matters is very limited. The Hon'ble Supreme Court in ***Union of India and others v. P. Gunasekaran, 2015(1) S.C.T. 5*** has considered the scope of judicial review in the matter of disciplinary proceedings and has held as under: -

“13. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge No. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether :

- a. the enquiry is held by a competent authority;*
- b. the enquiry is held according to the procedure prescribed in that behalf;*
- c. there is violation of the principles of natural justice in conducting the proceedings;*
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*

f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;

h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

i. the finding of fact is based on no evidence.

Under Article 226/227 of the Constitution of India, the High Court shall not:

(i). re-appreciate the evidence;

(ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii). go into the adequacy of the evidence;

(iv). go into the reliability of the evidence;

(v). interfere, if there be some legal evidence on which findings can be based.

(vi). correct the error of fact however grave it may appear to be;

(vii). go into the proportionality of punishment unless it shocks its conscience.

14. In one of the earliest decisions in State of Andhra Pradesh and others v. S. Sree Rama Rao, AIR 1963 Supreme Court 1723, many of the above principles have been discussed and it has been concluded thus :

"7. ... The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed

in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."

15. In State of Andhra Pradesh and others v. Chitra Venkata Rao, (1975)2 SCC 557, the principles have been further discussed at paragraph-21 to 24, which read as follows :

"21. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in State of A.P. v. S. Sree Rama Rao. First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the

authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

22. Again, this Court in Railway Board, representing the Union of India, New Delhi v. Niranjana Singh said that the High Court does not interfere with the conclusion of the disciplinary authority unless the finding is not supported by any evidence or it can be said that no reasonable person could have reached such a finding. In Niranjana Singh case this Court held that the High Court exceeded its powers in interfering with the findings of the disciplinary authority on the charge that the respondent was instrumental in compelling the shut-down of an air compressor at about 8.15 a.m. on May 31, 1956. This Court said that the Enquiry Committee felt that the evidence of two persons that the respondent led a group of strikers and compelled them to close down their compressor could not be accepted at its face value. The General Manager did not agree with the Enquiry Committee on that point. The General Manager accepted the evidence. This Court said that it was open to the

General Manager to do so and he was not bound by the conclusion reached by the committee. This Court held that the conclusion reached by the disciplinary authority should prevail and the High Court should not have interfered with the conclusion.

23. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. See Syed Yakoob v. K.S. Radhakrishnan.

24. The High Court in the present case assessed the entire evidence and came to its own conclusion. The

High Court was not justified to do so. Apart from the aspect that the High Court does not correct a finding of fact on the ground that the evidence is not sufficient or adequate, the evidence in the present case which was considered by the Tribunal cannot be scanned by the High Court to justify the conclusion that there is no evidence which would justify the finding of the Tribunal that the respondent did not make the journey. The Tribunal gave reasons for its conclusions. It is not possible for the High Court to say that no reasonable person could have arrived at these conclusions. The High Court reviewed the evidence, reassessed the evidence and then rejected the evidence as no evidence. That is precisely what the High Court in exercising jurisdiction to issue a writ of certiorari should not do."

These principles have been succinctly summed-up by the living legend and centenarian Justice V. R. Krishna Iyer in State of Haryana and another v. Rattan Singh, (1977) 2 SCC 491. To quote the unparalleled and inimitable expressions:

"4. in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books,

although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. ...”

16. In all the subsequent decisions of this Court upto the latest in Chennai Water Supply and Sewarage Board v. T.T. Murali Babu, 2014(2) S.C.T. 193 : (2014)4 SCC 108, these principles have been consistently followed adding practically nothing more or altering anything.

17. On Article I, the disciplinary authority, while imposing the punishment of compulsory retirement in the impugned order dated 28.02.2000, had arrived at the following findings:

"Article-I was held as proved by the Inquiry authority after evaluating the evidence adduced in the case. Under the circumstances of the case, the evidence relied on viz., letter dated 11.12.92 written by Shri P. Gunasekaran, provides a reasonable nexus to the charge framed against him and he did not controvert the contents of the said letter dated 11.12.92 during the time of inquiry. Nor did he produce any defence witness during the inquiry to support his claims including that on 23.11.92 he left the office on permission. There is nothing to indicate that he was handicapped in producing his defence witness. ..."

18. The disciplinary authority, on scanning the inquiry report and having accepted it, after discussing the

available and admissible evidence on the charge, and the Central Administrative Tribunal having endorsed the view of the disciplinary authority, it was not at all open to the High Court to re-appreciate the evidence in exercise of its jurisdiction under Article 226/227 of the Constitution of India.

19. Equally, it was not open to the High Court, in exercise of its jurisdiction under Article 226/227 of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the court. In the instant case, the disciplinary authority has come to the conclusion that the respondent lacked integrity. No doubt, there are no measurable standards as to what is integrity in service jurisprudence but certainly there are indicators for such assessment. Integrity according to Oxford dictionary is "moral uprightness; honesty". It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence etc. In short, it depicts sterling character with firm adherence to a code of moral values."

13. The said judgment has been followed by a Division Bench of this Court in ***Union of India and others v. Sushil Kumar Vashisht and another, 2016(4) S.C.T. 77.***

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

RSA-644 of 1994 (O&M)

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