

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. RSA-1611-1995
Reserved on: 14.11.2023
Date of decision: 18.01.2024

STATE OF HARYANA AND ANOTHER
Versus
RAM SARAN
..Appellants
..Respondent

2. RSA-477-2008 (O&M)

STATE OF HARYANA AND ANOTHER
Versus
RAM SARAN
..Appellants
..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Jaspal Singh Pannu, AAG, Haryana
for the appellants (in RSA-1611-1995).

Mr. Dhruv Kaushik, Advocate
for Mr. Balkar Singh, Advocate
for the appellant (in RSA-2321-2008).

Mr. Shailendra Jain, Sr. Advocate
with Ms. Saachi Mahajan, Advocate
for the respondent (in RSA-1611-1995).

ANIL KSHETARPAL, J.

1. With the consent of the learned counsel representing the parties, two above referred regular second appeals shall stand disposed of.
2. In order to comprehend the issue involved in these cases, the relevant facts, in brief, are required to be noticed.
3. The plaintiff (respondent herein), filed a suit for declaration that the order terminating his services on 27.06.1988, is illegal, null and void. After having been appointed on ad-hoc basis, the plaintiff's services

Rohtak. On 22.04.1987, he was issued a charge-sheet under Rule 7 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, on the following grounds:-

*“a. The Head of the Department of Physiology vide letter dated 13.03.1987, intimated that the plaintiff was **absent from duty w.e.f. 11.03.1987 to 13.03.1987.***

*b. The Head of the Department of Physiology vide letter dated 14.03.1987, further intimated that the **plaintiff came to the Department for a few minutes and marked his presence for 11, 12, 13 and 14.03.1987.** It was further stated that, the **plaintiff marked his presence for 15.03.1987 to 20.03.1987 in advance.***

*c. **19.03.1987-** The plaintiff was **suspended** on account of the above allegations including tampering of records.”*

4. After holding the departmental inquiry, he was given a show cause notice and the plaintiff was given an opportunity of personal hearing, however, he did not avail the same, ultimately, the disciplinary authority dismissed him from service. He filed CWP-5164-1989 before the High Court challenging his termination order, which was dismissed on 06.12.1989. Thereafter, he filed the suit on 07.06.1991, which, on appreciation of evidence was dismissed by the trial Court on 29.07.1994. However, the First Appellate Court reversed the judgment of the trial Court. On 19.04.1996, the regular second appeal was taken up for consideration and operation of the judgment of the First Appellate Court was stayed.

5. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with the synopsis submitted by them.

6. The learned counsel representing the appellants in summary of his arguments has stated as under:-

*“1. That the Ld. First Appellate Court vide **Para No.10 of its impugned judgment, has taken note of the fact that the parties to the Civil Suit** and parties in the Civil Writ Petition filed before the Hon’ble Punjab and Haryana High Court in CWP-5164-1989, are the same.*

*Most importantly, it has also been noticed that the **relief sought in both the matters is the same.***

*2. That the Ld. First Appellate Court vide **Para nos.11 and 15** of its impugned judgment, has erroneously concluded that since the Hon'ble High Court has simply "dismissed" the CWP, without providing any detailed order, the same cannot be said to have been adjudicated upon merits.*

*3. That the Ld. First Appellate Court vide **Para nos.17 to 21** of its impugned judgment, has **wrongly interpreted Ex.P-9** i.e. application dated 27.2.1987 addressed by the Plaintiff to the Director/Principal, Medical College, Rohtak, seeking change of enquiry officer, and the order dated 31.3.1987 rejecting the application. The grounds stated in the application dated 27.2.1987 in **no manner whatsoever demonstrates a bona fide concern/defence of the plaintiff**, rather the language of the said document reveals the **devious objective of the plaintiff to scuttle the issue** of tampering of records undertaken by him in a brazen manner.*

*4. That the Ld. First Appellate Court vide **Para nos.25** of its impugned judgment, has erroneously held that non-supply of the statements of witnesses to the plaintiff, was in violation of the principles of natural justice. The said finding is contrary to the Large Bench judgment of the Hon'ble Supreme Court of India in the matter of **Managing Director, ECIL, Hyderabad v. B. Karunankar dated 01.10.1993 [1994 AIR SC 1074]**, specifically at Paragraph nos. 30 and 31.*

*5. Lastly, that the Ld. First Appellate Court vide **Para nos.27 and 28** of its impugned judgment, has wrongly concluded that non-disclosure of the factum of dismissal of the CWP by the Hon'ble High Court does not amount to suppression of material facts. The said conduct of the plaintiff further demonstrates the mala fides of the plaintiff."*

7. On the other hand, the learned counsel representing the respondent has submitted that the reply submitted by the plaintiff to the charge-sheet was disposed of by a non-speaking order, which does not reflect the application of mind. He further submits that the statements of the witnesses were not supplied to the plaintiff while supplying report of the inquiry officer. He further submits that the disciplinary authority did not change the inquiry officer despite application by the plaintiff.

This Court has analysed the arguments of the learned counsel

representing the parties.

9. With respect to the first argument of the learned counsel on the issue of *res judicata*, this Court is unable to agree with the learned counsel representing the State of Haryana. Though, the learned counsel representing the appellant has relied upon **State of Punjab Vs. Nand Kishore, AIR 1974 (P&H) 303**, however, he has overlooked that there is a Five Judge Bench judgment in **Teja Singh Vs. Union Territory of Chandigarh, AIR 1982 (P&H) 169**. It was held that simplicitor one word order dismissing the writ petition will not operate as *res judicata*. In fact, a Larger Bench of the Supreme Court in **Daryao and others Vs. State of Uttar Pradesh and others, 1961 (SC) 1457**, has held that dismissal of the writ petition by single word shall not operate *res judicata* in a subsequent suit. Recently, the Hon'ble Supreme Court in **National Confederation of Association of Central Public Sector Enterprises Vs. Union of India, 2022(4) SCC 764**, has also reiterated the aforesaid view. In **Karam Singh Vs. Jagta and others, AIR 1982 (P&H) 51**, the Court took the same view. Hence, there is no substance in the argument of the learned counsel representing the State of Haryana.

10. This Court finds substance in the argument of the learned counsel representing the respondent that refusal to change the inquiry officer has prejudiced the employee. The First Appellate Court has reproduced the request made by the plaintiff, wherein, he states that he apprehends injustice at the hands of Dr. S.P. Chhibber, who is personally annoyed with him over certain matters. It is evident that the plaintiff has not disclosed the reasons of such apprehension. He further states that Dr. S.P. Chhibber's daughter has been a student of dentistry under Sh. Y.S. Chawla, the Principal of the Dental College. In the considered view of the Court, it is

not sufficient to expect bias particularly when the Principal was the disciplinary authority. The plaintiff was working in the medical college. If the inquiry officer's daughter was a student of dentistry under the Principal it would not be sufficient to expect that impartial inquiry would not be held. It may be noted here that in the beginning Dr. R.N. Jain was appointed as an inquiry officer. He showed his inability, thereafter, Dr. S.P. Chhibber was appointed as an inquiry officer in his place. The plaintiff despite repeated opportunities did not participate in the inquiry. After the inquiry report was submitted, a show cause notice was given to the plaintiff, however, he failed to avail the same. Moreover, the scope of jurisdiction of the Civil Court in disciplinary proceedings is limited. The delinquent employee cannot be expected to have an inquiry officer of his choice. The First Appellate Court has relied upon the judgment passed by the Division Bench of Jammu and Kashmir High Court in **Zonal Manager, LIC of India and others Vs. Mohan Lal Saraf, 1978 (2) SLR 868**. This Court has carefully read the judgment, however, the same is distinguishable because in peculiar facts of that case, the Court held that there was a likelihood of bias on the part of the inquiry officer.

11. The next reason assigned by the First Appellate Court also lacks substance as while taking a decision to hold the departmental inquiry, the authority was not required to pass a speaking order. The competent authority on the basis of reply to the explanation submitted by the plaintiff sought comment from the Principal, Dental College, Rohtak, and thereafter, took a decision to proceed with the inquiry. At that stage, detailed reasons were not required to be recorded for proceeding with the inquiry. The First Appellate Court has relied upon the judgment passed in **Chuni Lal Vyas Vs. State of Gujarat, 1977 (2) SLR 270**. This Court has carefully read the

judgment. The Gujarat High Court came to conclusion in the peculiar facts of the case and therefore, the Court does not lay down that judgment as a *ratio decidendi*.

12. The last reason assigned by the First Appellate Court is also erroneous because the statement of the witnesses were not required to be supplied along with the copy of the inquiry report. This is neither provided in the rules nor expected from the disciplinary authority. In this case, the plaintiff did not participate in the inquiry because if he would have participated, the statements would have been recorded in his presence. The plaintiff cannot be allowed to take benefit of his wilful decision to abstain from departmental proceedings.

13. The plaintiff (respondent herein) was reinstated in service on 17.07.1995, and posted in the Department of Pathology, thereafter, he continued to serve the appellant. Hence, neither the appellants nor the respondent shall be entitled to recover any amount because of peculiar development which has taken place.

14. Keeping in view the aforesaid facts and discussion, the judgment of the First Appellate Court is set aside and that of the trial Court is restored.

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15. In this regular second appeal, the State of Haryana assails the correctness of judgment and decree passed by the First Appellate Court, which is turn reversed the judgment passed by the trial Court. On account of repeated absence of the respondent herein (plaintiff), he was dismissed from service, which has been upheld by this Court in the aforesaid appeal. The respondent instituted a suit for declaration that he is entitled to interest on arrears of pay of Rs.3,93,141/- which was paid on 11.07.2002, pursuant to

the judgment passed by the First Appellate Court. It may be noted here that the respondent was reinstated in service on 17.07.1995, whereas, the RSA-1611-1995, came up for hearing on 19.04.1996, when the operation of the impugned judgment of the First Appellate Court was stayed. Since, the dismissal of the respondent has been upheld, there is no occasion to grant the respondent interest on the delayed payment.

16. Hence, the appeal is accepted.
17. All the pending miscellaneous applications, if any, are also disposed of.

January 18th, 2024

Ay

Whether speaking/reasoned

Whether reportable

(ANIL KSHETARPAL)

JUDGE

: Yes/No

: Yes/No