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IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH

(201)

RSA-1697-1996 (O&M)  
Date of decision:- 31.01.2024

Haryana State ... Appellant  
Versus  
Jaswant Singh Dua ... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Sharad Aggarwal, DAG, Haryana.

None for the respondent.  
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SUVIR SEHGAL, J. (ORAL)

1. State-defendant is in second appeal before this Court challenging the concurrent finding of fact recorded by both the Courts below.
2. Plaintiff-respondent is aggrieved with memo dated 08.07.1988 received from Deputy Commissioner, Karnal, whereby entry of doubtful integrity recorded in his ACR for the year 1987-88 has been intimated to him and order dated 11.09.1989 passed by Commissioner, Ambala Division, whereby appeal there against have been dismissed. He filed a suit for declaring both the orders as illegal, arbitrary, violative of principles of natural justice and not binding upon him. It has been pleaded by him that the damning remarks were recorded as the Deputy Commissioner was annoyed with him since he was the President of the Employees Union and was even placed under suspension. He claimed that his entire service record was untainted.
3. Upon notice, defendant filed a written statement contesting the suit by taking various preliminary objections. On merits, it was submitted

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that the plaintiff-respondent was in the habit of delaying official files and even though, he was advised to improve his conduct, there was no change. A stand has been taken that in view of the lapses committed by him, the Assessing Authority made the remarks in the ACR for the year 1987-88. Allegations of prejudice levelled against the Deputy Commissioner were denied and it was submitted that the Government instructions were duly followed. Plaintiff-respondent filed a replication controverting the stand taken in the written statement. Issues were framed and after the parties led evidence, Trial Court by judgment and decree dated 02.04.1993, set aside both the orders and held that the plaintiff-respondent is entitled to all the consequential benefits. State-defendant remained unsuccessful in the first appeal, which was rejected by the learned Additional District Judge, Karnal by judgment and decree dated 30.03.1996. Hence, the second appeal.

4. State counsel has urged that the instructions dated 12.12.1985, upon which reliance has been placed by the Courts below while decreeing the suit came up for discussion before this Court in ***Davinder Singh Versus State of Haryana and others, 2011 (4) R.S.J. 186*** and it has been held that they are not binding.

5. I have heard the State counsel and examined the record with his able assistance.

6. A perusal of the judgment by a Division Bench in ***Davinder Singh's*** case (supra) shows that after referring to a catena of judgments and discussing the said instructions, it has been held that the instructions are not justiciable and cannot be relied upon in a Court of law. This Court observed that the instructions are meant for the internal use of the department and are

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merely in the nature of guidelines for the internal consumption of the officers, who are engaged in recording the ACRs. Still further, it has been held as follows:-

“10. It, thus, stands established that the instructions concerning recording of ACR are not justiciable and enforceable in the Courts of law, which in fact, are meant for internal use of the department.

11. Apart from the view of the Letters Patent Bench and the Division Bench, Hon'ble the Supreme Court in the case of **State of U.P. v. Yamuna Shanker Misra, (1997) 4 SCC 7**, has categorically laid down that the entry in the Annual Confidential Report with regard to the doubtful integrity need not be supported by any accompanying record or detailed reasons and such an entry can be based on personal knowledge of the Reporting/Reviewing Officer. It is, thus, established that the view taken by the learned Single Judge suffers from inherent malady of imposing restriction on the Reporting Officer for recording integrity doubtful entry. It is trite to mention that in a large number of cases there is lack of proof and material to reach a conclusion that the integrity of the employee is doubtful. More than often it is seen that the interest of the State are marginalised at the instance of a beneficiary of an illegal act which is facilitated by the public servant on extraneous consideration including acceptance of illegal gratification from the public and no one comes forward because there are no adversary to the public servant and the person who has obtained undue favour by paying illegal gratification. If a magistrate acquits an accused on extraneous consideration who would come forward. The accused would be happy. The State represented by a Public Prosecutor would feel helpless. However, the Reporting Officer during the reporting period keep on hearing such illegal activities of the public

*servant and on the basis of his subjective satisfaction he may have to reach an extreme conclusion that the public servant is indulging in corruption. In fact, this is the precise reason that expression 'doubtful' has been added with the expression 'integrity'. Had it been the case that there is material to impeach the integrity of the officer then a full-fledged departmental inquiry or criminal action could be initiated and the result in such cases would be dismissal of the employee not simple pre-mature retirement which earns him all retiral benefits. For the aforesaid view we place reliance on the observation of the Division Bench of this Court in the case of **Puran Singh v. State of Punjab, 1981 (1) SLR 338**. The nature, substance, purpose and scope of ACR is fundamentally different than the departmental inquiry. Speaking for a Division Bench of this Court, Chief Justice S.S. Sandhawalia made following learned observations:*

*"Whilst the former is specifically for the internal assessment or estimate of the performance of a public servant by his superiors over the period of one year, the latter is intrinsically intended as the foundation for taking a punitive action against him if the charges come to be proved. The very nature and purpose of the two are consequently distinct and separate and to confuse them as either identical or similar, would to my mind be patently erroneous. An annual confidential report is in essence subjective and administrative whilst a departmental enquiry is inevitably objective and quasi-judicial."*

12. *Therefore to insist on material, objectivity and reasons for recording 'integrity doubtful entry' is not within the legal parameters. Hence, the view taken by the learned Single Judge would not be sustainable."*

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7. It is, therefore, evident from the above that both the Courts below have erred in placing reliance upon the Government instructions dated 12.12.1985 as they are merely advisory in nature. For this reason alone, this Court is of the view that the judgments and decrees under challenge cannot be sustained and deserve to be set aside.
8. Appeal is accordingly allowed. Judgments and decrees assailed by the defendant-appellant are set aside and the suit filed by the plaintiff-respondent is dismissed through out with no order as to costs.
9. Pending misc. application(s), if any, stands disposed of.

31.01.2024  
Kamal

(SUVIR SEHGAL)  
JUDGE

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|---------------------------|--------|
| Whether Speaking/Reasoned | Yes/No |
| Whether Reportable        | Yes/No |