

RSA-2425-1997 (O&M)
Date of decision-27.02.2024

...Appellants

 $V_S.$

...Respondent

CORAM:- HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

None for the respondent.

HARSIMRAN SINGH SETHI, J. (ORAL)

1 The present appeal has been filed against the judgment and
decree of the Courts below whereby, the suit filed by the respondent-plaintiff
challenging the punishment of stoppage of one increment without cumulative
effect, was decreed, which judgment of the trial Court was upheld by the
Lower Appellate Court.

2 Learned counsel for the appellants argues that the trial Court granted the relief to the respondent-plaintiff on the ground that there was some cuttings in the statements which were recorded before the enquiry officer and the finding given by the enquiry officer was held to be bad after appreciating the evidence which had come before the punishing authority while conducting the disciplinary proceedings. Learned counsel for the appellants argues that the trial Court cannot appreciate the evidence which has come on record so as to treat itself as an appellate authority and only requirement to be seen is whether the procedure envisaged for conducting the departmental proceedings was followed or not. Learned counsel for the

appellants submits that the Lower Appellate Court upheld the judgment and decree of the trial Court on the ground that no enquiry report was given to the employee concerned which is in violation of the rules of natural justice whereas, for imposing the minor punishment, no departmental enquiry is needed to be conducted as, the action can be taken after serving a show cause notice, which fact has been ignored by the Lower Appellate Court while upholding the judgment of the trial Court.

3 No one has appeared on behalf of the respondent. On the last date of hearing, it was mentioned that in case no one appears on behalf of the respondent/plaintiff, appropriate order on the appeal will be passed on the basis of the record available. It may be noticed that while issuing notice of motion, the operation of the judgment and decree of the Courts below was stayed.

4 I have heard learned counsel for the appellants and have gone through the record with his able assistance.

5 It may be noticed that the jurisdiction of a Court in respect of the departmental enquiry is very limited. The same is only restricted to ensure that the procedure envisaged under the rules for conducting the disciplinary proceedings is followed. The Courts cannot be an appellate authority so as to re-appreciate the evidence which has come on record before the enquiry officer in the disciplinary proceedings so as to opine whether, the findings of the enquiry officer on the allegations is correct or not. In the present case, the Courts while setting aside the minor punishment of stoppage of one increment without cumulative effect had re-appreciated the fact which had come before the enquiry officer so as to hold that the findings of the guilt

recorded by the enquiry officer is not supported by the evidence. The sufficiency of the evidence cannot be gone into by the Courts keeping in view the settled principle of law settled by Supreme Court of India in case of ***The State of Karnataka and Anr. Vs. N. Gangaraj*** decided on 14.02.2020. The Court can only interfere in case, it is a case of no evidence, which is not the situation in the present case. The relevant paragraph of the judgment is as under:-

*“15. The disciplinary authority agreed with the findings of the enquiry officer and had passed an order of punishment. An appeal before the State Government was also dismissed. Once the evidence has been accepted by the departmental authority, in exercise of power of judicial review, the Tribunal or the High Court could not interfere with the findings of facts recorded by reappreciating evidence as if the Courts are the Appellate Authority. We may notice that the said judgment has not noticed larger bench judgments in ***S. Sree Rama Rao and B.C. Chaturvedi*** as mentioned above. Therefore, the orders passed by the Tribunal and the High Court suffer from patent illegality and thus cannot be sustained in law. Accordingly, appeal is allowed and orders passed by the Tribunal and the High Court are set aside and the order of punishment imposed is restored.”*

6 Further, as per the rules, for imposing the minor punishment, no enquiry is needed to be conducted as, the order can be passed by the punishing authority after serving a show cause notice. The said facts have also been ignored by the Courts below while holding that the enquiry report was not given to the respondent-plaintiff before passing the order of punishment. Even otherwise, the action was taken against the respondent-

plaintiff prior to November, 1991, when the judgment of the Hon’ble Supreme Court of India in **Union of India Vs. Mohammad Ramzan Khan, (1991) 1 SCC, 588**, was made effective to hold that where any departmental proceedings are conducted for the imposition of the major punishment, the enquiry report should be given to the delinquent. Further, the said judgment was prospective in nature and was not to be implemented qua the punishment already imposed.

7 Keeping in view the above, the findings which have been recorded by the Courts below are perverse to the rules governing the service as well as settled principles of law. Hence, the same cannot sustain, the appeal is accordingly allowed and the judgment and decree of the Courts below are set aside.

8. Any miscellaneous application, if pending, stand also disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

27.02.2024
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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No