

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

(104)

RSA No. 3308 of 1996 (O&M)

Date of Decision : 18.01.2024

State of Haryana and others

...Appellants

Versus

Vijay Kumar Chopra

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Harish Nain, Assistant Advocate General, Haryana

for the appellants-defendants.

Mr. Balkar Singh, Advocate for the respondent-plaintiff.

Harsimran Singh Sethi J. (Oral)

1. The present regular second appeal has been filed challenging the judgment and decree of the trial court dated 31.03.1994 by which suit filed by the respondent-plaintiff was decreed as well as judgment and decree of the lower appellate court dated 29.08.1996 by which the appeal filed by the appellants-defendants was dismissed.
2. Certain facts needs to be mentioned herein for correct appreciation of the issue in hand.
3. The respondent-plaintiff was working as a Clerk with the appellants-defendants since the year 1978. His work and conduct remained unblemished during the entire service career. On 18.11.1985 when the respondent-plaintiff was posted at Gohana as family planning

Clerk, he had withdrawn a sum of Rs. 7480.77 paise from the Government Chest so as to distribute the same to the entitled under the family planning cases or their motivators. Suddenly, on the said date, due to an urgent work, the respondent-plaintiff had to go to Sonapat and out of the sum of Rs. 7480.77 paise, a sum of Rs. 3,000/- was handed over by the respondent-plaintiff to a colleague - Dharambir Singh, Clerk for the payment to the concerned in his absence and the remaining amount of Rs. 4480.77 paise was kept in a lock in Almirah. The said fact was informed to the C.M.O., who was busy in operation theater due to which the said amount could not be kept in the Government Chest. On the next day when the respondent-plaintiff joined the duties, he found that the lock of the Almirah was broken and a sum of Rs. 4480.77 paise was missing for which act, an FIR No. 34 dated 19.11.1985 was registered. After investigating, the police recorded an untraced report and the FIR was cancelled on 30.04.1986.

4. Thereafter, the appellants-defendants started disciplinary proceedings against the respondent-plaintiff as well as against one Medical Officer qua the negligence of keeping the amount of Rs. 4480.77 paise in locked Almirah rather than depositing the same in the Government Chest. The enquiry was held against both the employees and both the employees were found guilty of the allegation of negligence in keeping the amount in locked Almirah rather than depositing the same in Government Chest.

5. Surprisingly, the respondent-plaintiff was punished with the punishment of stoppage of his next two increments with cumulative effect as well as the recovery of the amount in question whereas, the Medical Officer got off scotfree.

6. The said punishment was challenged by the respondent-plaintiff by filing a civil suit, which civil suit was decreed by the trial Court on 31.03.1994 on the ground that the enquiry proceedings were not held in a manner required and no enquiry report was given to the respondent-plaintiff for his objection and straightway the punishment order was passed as well as the imposition of punishment upon the respondent-plaintiff was discriminatory as no punishment was imposed upon the Medical Officer, who was also found guilty.

7. The said judgment and decree was assailed in the appeal, which appeal also came to be dismissed on 29.08.1996 by the lower appellate court, which decrees of the courts below have been impugned in the present regular second appeal.

8. Learned counsel for the appellants-defendants argues that the findings, which have been recorded by the courts below that the enquiry proceedings were not held as per the settled principle of law, according to which, the enquiry report should be given to the delinquent employee before passing an order of punishment, is bad in law.

9. On being asked to cite any law, which permits the passing of the order of punishment without giving the enquiry report to the charged

employee, learned counsel for the appellants-defendants has not been able to cite any law.

10. Learned counsel for the respondent-plaintiff submits that rather the judgment of the Hon'ble Supreme Court of India in ***Union of India and others Vs. Mohd. Ramzan Khan***, AIR 1991 Vol. 78 SC page 471, clearly holds that even where the rule does not provide the grant of copy of the enquiry report, still it is incumbent upon the punishing authority to furnish the enquiry report for the comments of the delinquent officer and thereafter, pass an order keeping in view the objections raised.

11. Learned counsel for the appellants-defendants has not been able to distinguish the judgment of ***Mohd. Ramzan Khan's case (supra)***, not to be applicable in any manner upon the case of the respondent-plaintiff. That being so, the ground given by the courts below to set-aside the punishment need not to be interfered with.

12. Faced with this situation, learned counsel for the appellants-defendants submits that even if, the copy of the enquiry report was not given to the delinquent employee, the authorities concerned should have been given another chance for passing a fresh order from the stage of serving of enquiry report. Though, the said argument has a force but keeping in view the facts and circumstances of the present case, when the impugned order was passed in the year 1991 for an amount of Rs. 4480.77 paise and the respondent-plaintiff has already retired from service and is presently 72 years old, making a retired employee to face a departmental proceeding at this stage of his life, will not be in the

interest of justice, hence, by keeping the question of law on the said issue open, in the facts and circumstances of the case, the appellants-defendants cannot be allowed to restart the enquiry from the stage of giving the enquiry report, especially when another Medical Officer, who was also found guilty along with the respondent-plaintiff, in the same enquiry report, has been allowed to go scotfree.

13. That being so, once another Officer has not been imposed any punishment, the order imposing punishment upon the respondent-plaintiff will also be discriminatory in nature as on the same facts, two different actions have been taken by the appellants-defendants, which is not permissible.

14. The last arguments, which has been raised by learned counsel for the appellants-defendants is that the order challenged before the civil court was appealable order, hence, no suit could have been entertained.

15. At this stage, when the order of punishment was passed in the year 1991 and 34 years have passed, allowing the plea of the appellants-defendants will be too harsh for an employee concerned at his stage of life though, the employee should have availed the remedy of appeal first against the order of punishment but once, the findings have already been recorded by the two courts qua the validity of the enquiry proceedings, which have been found to be deficient, no interference is called for by this Court in the present regular second appeal, especially

when, no perversity has been point out in the orders passed by the courts below.

16. No other argument was raised.

17. Dismissed.

Any miscellaneous application, if any pending, is also dismissed.

January 18th, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No