

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

203

RSA-3530-1997 (O&M)
Date of Decision :09.02.2024Conservator of Forests, Jalandhar and
another

...Appellants

Versus

Murat Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rohit Ahuja, DAG, Punjab for appellant-State.

Mr. R.L. Sharma, Advocate for respondent-plaintiff.

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Harsimran Singh Sethi, J. (Oral)

1. In the present regular second appeal, challenge is to the judgment and decree of the trial Court dated 09.12.1992 as well as lower Appellate Court dated 16.05.1997 by which, the order dated 04.05.1984 passed by the respondent-department dismissing the respondent-plaintiff from service on account of his conviction in criminal case registered under Sections 307, 324 and 34 of the IPC, has been set aside.

2. As per the facts, which have come on record, respondent-plaintiff was appointed as Forester on 11.09.1961 and while working on the said post, an FIR under Sections 307, 324 and 34 of the IPC was registered against him and he was arrested on 15.03.1980. Thereafter, respondent-plaintiff was convicted by the competent Court of law under Sections 307, 324 and 34 of the IPC and was sentenced to undergo imprisonment for a period of 03 years along with fine of Rs.1000/-.

3. The said conviction has attained finality upto the Hon'ble Supreme Court of India . Keeping in view the fact that the respondent-

plaintiff was convicted under Section 307 of the IPC and he had undergone imprisonment for a period of 03 years, a show cause notice was given to the respondent-plaintiff on 16.10.1983 to show cause as to why, he should not be dismissed from service keeping in view his conviction under Section 307 of the IPC, which conviction reflects upon his moral turpitude. No reply was filed by the respondent-plaintiff to the said show cause notice and he was dismissed from service vide order dated 04.05.1984. In the said order, it was mentioned that as the conduct of the respondent-plaintiff due to which he was convicted by the competent Court of law and has been awarded sentence to under go imprisonment for a period of 03 years reflects upon his moral turpitude, his retention in service is undesirable hence, he was dismissed from service.

4. The said dismissal order was made subject matter of a civil suit filed by the respondent-plaintiff, which suit was decreed by the trial Court vide its judgment and decree dated 09.12.1992 holding that the department was under an obligation to conduct an enquiry as to whether the fact which had come before the criminal Court which led to the conviction of the respondent-plaintiff, required his dismissal from service or not and as the conviction was result of a fight of respondent-plaintiff with civilian, the said fact should have been given due weightage before passing the dismissal order.

5. Feeling aggrieved against the said judgment and decree dated 09.12.1992 of the trial Court, an appeal was preferred by the department before the lower appellate Court, which appeal came to be dismissed on 16.05.1997, which judgment of the Courts below have impugned in the present regular second appeal.

6. Learned counsel for the appellant submits that once, the conviction of the respondent-plaintiff under Section 307 of the IPC has attained finality upto the Hon'ble Supreme Court of India and he was awarded imprisonment for a period of 03 years, department was well within its right to pass an appropriate order keeping in view Article 311 of the Constitution of India.

7. Learned counsel for the appellant further submits that no enquiry was required to be conducted by the department after the conviction and department was only required to see as to whether the conviction of the respondent-plaintiff under a particular section of the IPC reflects upon the moral turpitude of the respondent-plaintiff or not. Learned counsel for the appellant submits that in the impugned order, it has been clearly mentioned that conviction under Section 307 of the IPC, which relates to attempt to murder duly reflects upon the moral turpitude of the respondent-plaintiff and there is no rule under which an enquiry is required to be conducted after the conviction in order to pass the order of dismissal from service.

8. Learned counsel for the appellant further submits that Courts below had wrongly recorded a finding that department was required to look into the conduct of the petitioner by holding an enquiry as to whether in the facts and circumstance of the present case, the respondent-plaintiff was required to be dismissed from service or not.

9. Learned counsel for the appellant submits that the findings recorded by the Courts below are contrary to the settled principle of law wherein, it has been held that any employee who has been convicted in a criminal case and the conviction is under the provision of law which reflects upon the moral turpitude of the employee, department is well within its

jurisdiction to pass an appropriate order on the basis of the conviction and role attributed to the employee concerned.

10. Learned counsel for the respondent-plaintiff concedes the factum that respondent-plaintiff has been convicted under Sections 307, 324 and 34 of the IPC but submits that as the conviction and the incident was not related to the employment, the said conviction cannot be made a ground to dismiss the respondent-plaintiff from service and the Courts below have rightly recorded a finding that department should have conducted a departmental enquiry in case respondent-plaintiff was to be dismissed from service.

11. I have heard learned counsel for the parties and have gone through the record with their able assistance.

12. It may be noticed that while issuing notice of motion in the present regular second appeal, execution of the judgment and decree of the Courts below was stayed.

13. It may be further noticed that under Article 311 of the Constitution of India an employee can be dismissed from service in case he/she has been convicted by a competent Court of law. Learned counsel for the respondent-plaintiff concedes the said factum.

14. As per the settled principle of law, upon conviction, before taking any action, the department is only to adjudge as to whether the conviction of an employee is under provision of law, which reflects upon moral turpitude of the employee or not. It is a settled principle of law that in case any action is to be taken upon conviction of an employee, no departmental enquiry is required to be conducted.

15. Keeping in view the fact that respondent-plaintiff has been

convicted under Section 307 read with Section 34 of the IPC, the same reflects upon the moral of the respondent-plaintiff. In the impugned order, appellant-department has recorded a finding that conviction against the respondent-plaintiff reflects upon his moral turpitude hence, all the requirements of taking action against the respondent-plaintiff upon his conviction were carried out by the respondent-department before passing impugned order of dismissal of respondent-plaintiff from service.

16. At this stage, learned counsel for the respondent-plaintiff has argued that present appeal has been filed by the Conservator of Forests and Divisional Forest Officer and not by the State hence, the same is not maintainable.

17. It may be noticed that impugned order was passed by the appellants. It is also a conceded position that respondent-plaintiff had impleaded the appellants as party to the suit. Once, the appellants were party to the civil suit, they are well within their right to file an appeal.

18. No other argument has been raised.

19. Keeping in view the facts and circumstances recorded hereinbefore, judgment and decree of the trial Court dated 09.12.1992 as well as lower Appellate Court dated 16.05.1997 being contrary to the settled principle of law cannot sustain in the eyes of law and are accordingly set aside and the civil suit filed by the respondent-plaintiff is dismissed.

20. Civil miscellaneous application pending if any is also dismissed.

February 09, 2024

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(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No