

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

205

RSA-622-1997 (O&M)
Decided on : 12.03.2024

STATE OF PUNJAB

...Appellant

Versus

KRISHAN KUMAR

... Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. Rohit Ahuja, DAG, Punjab.

Mr. Sarabjit Singh Khaira, Advocate for the respondent.

HARSIMRAN SINGH SETHI, J. (Oral)

1. The present appeal has been filed by the State of Punjab challenging the judgments and decrees of the Courts below by which, the suit filed by the respondent-plaintiff challenging the punishment order dated 20/30.10.1992 by which, his two increments without cumulative effect were stopped, has been allowed.
2. It may be noticed that the respondent-plaintiff, was working as a bus conductor in Punjab Roadways. While working on the said post, disciplinary proceedings for imposing the minor punishment were initiated against the respondent-plaintiff and he was charge- sheeted with the allegations that on 29.07.1992, when the bus was checked, two passengers were found traveling without ticket though they had made the payments towards the fare, which amounts to embezzlement.
3. The show cause notice was issued to the respondent-plaintiff and ultimately, his two increments without cumulative effect were stopped by the impugned punishment order dated 20/30.10.1992, which order was

made the subject matter of the civil suit. The trial Court, vide judgment dated 27.03.1995 held that the impugned order of punishment dated 20/30.10.1992 is a non-speaking order as nothing has come on record as to why the punishment of stoppage of two increments was imposed and the suit filed by the respondent-plaintiff was allowed, which judgment has been upheld by the lower Appellate Court vide judgment and decree dated 20.09.1996.

4. Learned counsel for the appellant submits that both the Courts below have erred in recording the findings that the order imposing the punishment upon the respondent-plaintiff is a non-speaking order.

5. Learned counsel for the appellant argues that once the minor punishment of stoppage of two increments without cumulative effect has been imposed, the same could have been imposed at the time of the issuance of the show cause notice and in the present case, it has already come on record that the respondent-plaintiff had embezzled the amount while performing the duties of the bus conductor and keeping in view the report of the inspecting party, his two increments without commutative effect were stopped which is a minor punishment, hence, no grievance can be raised by the respondent-plaintiff and the judgments and decrees passed by the Courts below on the ground that the punishment order was non-speaking order, is contrary to the facts and evidence which came on record and the said judgments and decrees of the Courts below are liable to be set-aside.

6. On the other hand learned counsel for the respondent-plaintiff submits that once the reply to the show cause notice was filed, the respondent-department was under obligation to go through the said reply and thereafter, pass an order which fact is missing in the present case and the same has rightly been appreciated by the courts below in allowing the claim of the respondent-plaintiff.

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

8. The punishment order dated 20/30.10.1992 is on record. A bare perusal of the said order would show that only the facts have been mentioned and the reply of the respondent-plaintiff has been declined as unsatisfactory. Once, certain objections were taken by the respondent-plaintiff in the reply, the same were required to be adjudicated by the authorities concerned while passing the punishment order.

9. It is also a settled principle of law as settled by the Hon'ble Supreme Court of India by passing an order in Civil Appeal No.457 of 1970 titled as '**Mahabir Prasad Santosh Kumar v. State of U.P. and others**', decided on 02.04.1970 wherein it has been held that every order passed by the authority concerned needs to be reasoned and speaking order. The relevant paragraph of said judgment of **Mahabir Prasad Santosh Kumar** **case (Supra)** is as under :-

"5. *The case discloses a disturbing state of affairs. The authorities have disclosed by their conduct a reckless disregard of the rights of the appellants. The order passed by the District Magistrate cancelling the licences was quasi-judicial; it could be made only on a consideration of the charges and the explanation given by the appellants. That necessarily implied that the District Magistrate had to give some reasons why he held the charges proved, and the explanation unacceptable. When the matter was carried in appeal, the State Government could at least have acted with some awareness that citizens have rights which must be protected against possible arbitrary action by subordinate officials. The District Magistrate is not made the final authority in cancelling the licence. The appellants had a right to carry on their business, and as they held a licence to carry on*

their business they could be deprived of their right by an executive order supported by good and adequate reasons. The relevant rules granted a right of appeal to the State Government against that order, and that implied that the aggrieved party must have an opportunity to convince the State Government that the order passed by District Magistrate was erroneous. That right could be effectively exercised if reasons be recorded by the District Magistrate and supplied to the aggrieved party. If the aggrieved party is not supplied the reasons, the right to appeal is an empty formality.

6. *From the materials on the record it cannot be determined as to who considered the appeal addressed to the State Government, and what was considered by the authority exercising power on behalf of the State Government. The practice of the executive authority dismissing statutory appeals against orders which prima facie seriously prejudice the rights of the aggrieved party without giving reasons is a negation of the rule of law. This Court had occasion to protest against this practice in several decisions : See Madhya Pradesh Industries Ltd. v. Union of India, (1966)1 SCR 466 (per Subba Rao, J.); Bhagat Raja v. Union of India, (1967)3 SCR 302; State of Madhya Pradesh v. Narsinghdas Jankidas Mehta, C.A. No. 681 of 1966, decided on 29-4-1969(SC); State of Gujarat v. Patel Raghav Nath, C.A. No. 723 of 1966, decided on 21-4-1969 and Prag Das Umar Vaishya v. Union India, C.A. No. 657 of 1965, decided on 17-8-1967 (SC). The power of the District Magistrate was quasi-judicial : exercise of the power of the State Government was subject to the supervisory power of the High Court under Article 227 of the Constitution and of the appellate power of this Court under Article 136 of the Constitution. The High Court and this Court would be placed under a great disadvantage if no reasons are given, and the appeal is dismissed without recording and*

communicating any reasons".

10. The impugned order dated 20/30.10.1992 which does not give any reasons for imposing the punishment upon the respondent-plaintiff, being cryptic in nature cannot sustain in the eyes of law and the said impugned order dated 20/30.10.1992 has rightly been set aside by the Courts below being a cryptic in nature and non-speaking order. No perversity in the judgments and decrees of the Courts below has been pointed out keeping in view the evidence on record. Hence, no ground is made out for any interference by this Court in the present regular second appeal, hence, the same stands dismissed.

11. Pending civil miscellaneous application, if any, also stands disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

12.03.2024
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<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>