

Neutral Citation No. 2024:PHHC:059245

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH
204

RSA-1249-1999 (O&M)
Date of Decision:30.04.2024

The Haryana State through Collector, Hisar
Vs
.... Appellant

ASI Lal Chand (since deceased) through LRs.
..... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Aman Bahri, Addl. A.G. Haryana.
for the appellant.

Mr. Aditya Yadav, Advocate for the respondent.

SUVIR SEHGAL, J. (ORAL)

1. Defendant-appellant is in second appeal before this Court challenging the concurrent finding of fact recorded by both the courts below.
2. Pleaded case of the plaintiff-respondent, who was working as an ASI, is that disciplinary proceedings were initiated against him on the allegation that under the influence of liquor, he misbehaved with a Priest of Durga Mandir, Ratia, and demanded illegal gratification from him. On conclusion of enquiry, he was found guilty of the charges and vide order dated 04.01.1994, punishment of stoppage of two future annual increments with permanent effect was imposed. Departmental appeal filed by him was rejected on 19.04.1994. Challenging both the orders, he filed a suit for declaration and consequential relief.

3. Upon notice, suit was contested by the defendant-appellant by filing a written statement wherein it was stated that enquiry was conducted in accordance with the rules and principles of natural justice were duly complied with. It was further submitted that the plaintiff-respondent was given ample opportunity to defend himself. Plaintiff filed a replication reiterating the averments of the plaint. On the basis of the pleadings of the parties, issues were framed and after they led evidence, trial Court by judgment dated 30.09.1997 decreed the suit and set aside both the impugned orders. However, defendant was given an opportunity to initiate fresh departmental proceedings against plaintiff. Defendant remained unsuccessful in the first appeal, which was dismissed by the learned District Judge, Hisar, vide judgment dated 30.09.1998. They have approached this Court in the above background.

4. I have heard counsel for the parties and have considered their respective submissions besides examining the record with their able assistance.

5. In his cross-examination, Balwant Singh (DW-1) has admitted that the Inquiry Officer questioned and cross-examined the witnesses of the parties. It is, therefore, evident that he has actively participated in the inquiry proceedings. An Inquiry Officer has to be non-partisan. He has to act as a quasi-judicial authority and his role is that of a Judge. Under no circumstance can he act both as a judge and as a prosecutor and cross-examine the witnesses adduced either by the Department or the delinquent employee. He may

put a question or two, to the witnesses to clarify a statement or document, but he cannot be permitted to conduct a detailed cross-examination of the witnesses as has done in the present case. The entire approach of the Inquiry Officer is faulty and clearly establishes that he was biased. Reference can be made to judgment of this Court in *State of Punjab versus Mam Chand* 1993 (3) RSJ 238. Inquiry report submitted by him cannot form the basis of penal action.

6. Plaintiff has proved on the record that no opportunity of personal hearing was given to him before passing the punishment order. Hearing of an employee is an essential component of principle of natural justice, particularly, when an order, which is adverse to his interest, is being passed. It is, therefore, evident that the punishment order has been passed in the flagrant violation of principle of natural justice. Therefore, there is no infirmity with the impugned judgments and decrees passed by both the courts.

7. Finding no merit in the appeal, it is hereby dismissed with no order as to costs.

8. At this stage, counsel for the plaintiff-respondent submits that the respondent has unfortunately expired during the pendency of the appeal. In the light of this development, the liberty given by the trial Court to the appellant to initiate the fresh inquiry would also be a futile exercise and the liberty is hereby withdrawn.

30.04.2024

pooja saini

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No