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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(204-A)

RSA-4382-2000 (O&M)

Date of Decision : May 21, 2024

State of Haryana and others

.. Appellants

Versus

Mohinder Singh (since deceased) through his LRs .. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Vibha Tewari, Assistant Advocate General, Haryana.

Mr. Manoj Kumar Sood, Advocate, for the respondent.

HARSIMRAN SINGH SETHI J. (ORAL)

1. Present regular second appeal has been filed challenging the judgment and decree of the lower Appellate Court dated 31.07.2000 by which, the order dated 11.05.1993 by which the respondent-plaintiff has been dismissed from service as well as the order dated 20.11.1993 by which, his appeal filed against the order of punishment has been rejected, has been set aside in an appeal filed against judgment and decree dated 23.03.1996 passed by the trial Court wherein, civil suit filed by the respondent-plaintiff was dismissed and the suit filed by the respondent-plaintiff has been allowed.

2. Learned counsel for the appellants argues that the punishment was imposed upon the respondent-plaintiff after holding a due departmental enquiry and the allegations related to a fact that the respondent-plaintiff was

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having a civil dispute with somebody and by misusing his position, he has made the said person sell his house to the respondent-plaintiff which allegation has already been proved on the basis of which, the punishment order against the respondent-plaintiff was passed and his appeal was dismissed and the Civil Court has no authority to be an Appellate Authority so as to decide whether, the punishment imposed upon the respondent-plaintiff is disproportionate or not.

3. Learned counsel for the appellants submits that once the trial Court vide judgment and decree dated 23.03.1996 upheld the impugned order, merely on the ground that the respondent-plaintiff had 22 years of service to his credit at the time of passing of the impugned order, could not have set aside the punishment.

4. Learned counsel for the appellants submits that even if it is assumed that the punishment imposed upon the respondent-plaintiff was disproportionate to the charges alleged and proved in the departmental enquiry, then also, the matter should have been remanded back to the State for passing a fresh order however, no such liberty was given by the lower Appellate Court while passing the impugned judgment dated 31.07.2000 hence, on this ground also, the judgment and decree of the lower Appellate Court is liable to be set aside.

5. Learned counsel for the respondent-plaintiff further submits that in a case of private dispute, the departmental proceedings have been initiated against the respondent-plaintiff and despite having more than 22 years of service to his credit, he has been dismissed from service vide order

dated 11.05.1993 and in the facts and circumstances of the present case, the

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punishment imposed upon the respondent-plaintiff is totally disproportionate to the charges alleged and proved hence, the judgment and decree of the lower Appellate Court is perfectly valid and legal and liable to be upheld.

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

7. From the facts which has come on record, the allegation alleged against the respondent-plaintiff was that in a private dispute with someone, he had misused his position of working in the Department of Police so as to coerce the said person to sell his house in order to recover the alleged loan amount due to which, the order dated 11.05.1993 dismissing the respondent-plaintiff from service was passed. It has also come on record that the said person, who had allegedly sold his house to the respondent-plaintiff, never raised any grievance with regard to the selling of his house to the respondent-plaintiff on any ground much less he was coerced by the respondent-plaintiff to do so. In the absence of any such proceedings undertaken by the person aggrieved of the selling of his house to the respondent-plaintiff, the Department though, was very much within jurisdiction to decide whether, the petitioner has misused his official position to the detriment of somebody so as to cause prejudice or not. In the disciplinary proceedings, the said misuse of his position as a Police Officer has already come on record. Once the said finding has already come on record, the State was within the jurisdiction to pass appropriate order of punishment.

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8. The question which arise is whether, the respondent-plaintiff, who had 22 years of service to his credit, could have been given another punishment keeping in view the gravity of the allegations alleged against him and proved in the departmental enquiry. The Courts below has recorded a finding that his past record as well as the fact that he had 22 years of service to his credit and was entitled for pensionary benefits, he could not have been dismissed from service but even while deciding the punishment of the respondent-plaintiff, the lower Appellate Court should have remanded the case back in case, as per the lower Appellate Court, the punishment imposed was disproportionate to the charges alleged and proved, which was not done as it is only the jurisdiction of the employer to impose the punishment even if the excessive punishment imposed is set aside.

9. It has already come on record that the respondent-plaintiff has already died. Once the respondent-plaintiff has already died, it will not be appropriate to remand the case back to the authorities concerned to pass a fresh order of punishment as this Court is also of the view that the punishment of dismissal imposed upon the respondent-plaintiff is not proportionate to the charges alleged and proved. The charges did not relate to the discharge of the official duties but only related to misuse of his position as a police official in a civil dispute with another person. By keeping the said allegation in mind coupled with the fact that the respondent-plaintiff had more than 22 years of service to his credit and as of now, the respondent-plaintiff has already died rather than remanding the case back to the State to pass a fresh order of punishment, this Court feels

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that the interest of justice will be served in case, the order of dismissal is converted into the order of compulsory retirement so that the respondent-plaintiff is able to get pensionary benefits and after his death, the family is able to get the family pension.

10. The order of the lower Appellate Court is accordingly modified that the order of dismissal dated 11.05.1993 will be treated as an order of compulsory retirement from the date it was passed with all consequential benefits to be extended to the respondent-plaintiff by treating him the retired employee from the said date. Let the benefits for which the respondent-plaintiff becomes entitled for under this order by treating him as retired employee, be calculated and released in favour of the legal heirs of the respondent-plaintiff who have been brought on record within a period of three months of the receipt of copy of this order.

11. The present appeal is disposed of in above terms.

12. Any civil miscellaneous application pending if any, also stands disposed of.

May 21, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No