



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

204

RSA-2172-1999 (O&M)
Decided on :21.05.2024

STATE OF HARYANA

Versus

. .Appellant

MOHINDER SINGH

. . . Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Ms. Vibha Tewari, AAG, Haryana,
for the appellant-State.

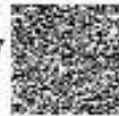
Mr. Manoj Kumar Sood, Advocate for the respondent.

HARSIMRAN SINGH SETHI, J. (Oral)

In the present regular second appeal, the challenge is to the judgment and decree dated 28.11.1998 passed by Lower Appellate Court vide which, the judgment and decree of the trial Court dated 10.12.1994 has been set-aside and the suit filed by the respondent-plaintiff has been allowed.

Certain facts needs to be mentioned for correct appreciation of the issue in hand.

While the respondent-plaintiff was working as a head constable in Police Lines, Hisar, on 01.11.1989 he was transferred to the police station, Bhattu. Rather than joining on the said post, the respondent-plaintiff applied for a leave from 08.11.1989 to 14.11.1989. It is the case of the respondent-plaintiff that his leave for the said period was sanctioned by the competent authority but the appellants/plaintiffs stated that no leave has been sanctioned by the competent authority and departmental proceedings were initiated against the respondent-plaintiff for unauthorized absence from duty.



RSA-2172-1999 (O&M) -2-

Keeping in view the departmental enquiry conducted against the respondent-plaintiff, the allegations of unauthorized absent from service alleged against the respondent-plaintiff were proved against him and an order of punishment was passed by the appellants on 29.06.1980 awarding the punishment of stoppage of five increments with cumulative effect. Against the said order of punishment dated 29.06.1980, the respondent-plaintiff filed an appeal which was dismissed by the appellate authority and even the revision filed by the respondent-plaintiff was also dismissed.

Thereafter, the civil suit was filed by the respondent-plaintiff challenging all the orders passed including in appeal as well as in the revision.

The suit was contested. Keeping in view the evidence and facts which had come on record, the trial Court came to the conclusion that the departmental proceedings initiated against the respondent-plaintiff were conducted in a manner required and no irregularity has been pointed out and rather in the evidence, the respondent-plaintiff conceded that all the opportunity to cross examine the witnesses were provided, the suit was dismissed by the trial Court vide order dated 10.12.1994.

Aggrieved against the said order, the respondent-plaintiff filed an appeal before the lower Appellate Court and the Lower appellate Court allowed the appeal on the ground that the punishment could have been only be imposed upon the respondent-plaintiff after the permission of the District Magistrate.

The lower appellate Court allowed the appeal of the respondent-plaintiff vide judgment and decree dated 28.11.1998 which judgment is under challenge in the present appeal.

Learned counsel for the appellant submits that it is the case of



RSA-2172-1999 (O&M) -3-

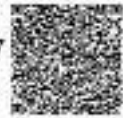
imposing the punishment upon respondent-plaintiff in the departmental enquiry initiated against the respondent-plaintiff, hence, there is no such rule available that even for initiating the departmental enquiry, the concurrence of the District Magistrate is required.

Learned counsel for the appellant further submits that without there being any fact or evidence on record that the concurrence of the District Magistrate was needed, the order dated 28.11.1998 passed by the Lower appellate Court is perverse to the facts and evidence available on record.

Learned counsel for the appellant further submits that no rule which directs that even for conducting the enquiry qua unauthorized absent from service the concurrence of the District Magistrate is needed, has been brought on record or even cited in the impugned order while setting-aside the judgment of the trial Court so as to allow the suit filed by the respondent-plaintiff.

Learned counsel for the appellant further submits that the unauthorized absent from service is a grave misconduct for which, the action has rightly been taken by the appellants including the termination of service of the respondent-plaintiff and the reliance is being placed upon the judgment of the Hon'ble Supreme Court of India in **Civil Appeal No. 9997 of 1995 titled as State of Uttar Pradesh and others v. Ashok Kumar Singh and another** decided on 10.11.1995 to hold that the imposing the punishment of stoppage of five increments with cumulative effect was in consonance to the allegations alleged against an employee.

Learned counsel for the respondent-plaintiff argues that the judgment and decree of the lower Appellate Court dated 28.11.1998 is perfectly valid and legal and the same should be upheld.



RSA-2172-1999 (O&M) -4-

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

It may be noticed that the trial Court keeping in view the factual position as well as evidence on record held that the departmental proceedings initiated against the respondent-plaintiff were conducted in a manner required hence, the trial Court being not an appellate authority will not go into the factual aspect and hence, the suit filed by the respondent-plaintiff, challenging the order of punishment dated 29.06.1990 as well as order passed in the revision was dismissed. The said judgment of the trial Court has been set-aside by the Lower Appellate Court only on the ground that the order in disciplinary proceedings could not have been passed without seeking the concurrence or approval of the District Magistrate. It is clear from the judgment and decree of the Lower Appellate Court that no rule has been cited which direct the punishing authority that while holding the disciplinary proceedings, on the ground of allegations of unauthorized absent, the concurrence of the District Magistrate is required.

In the absence of any such fact on record or even cited in the judgment, the judgment of the lower appellate Court and findings recorded therein are to be treated as perverse to the fact and evidence available on record.

Learned counsel for the respondent-plaintiff has also not been able to show any rule which demands that qua the disciplinary proceedings initiated against the respondent-plaintiff on the allegation of unauthorized absent from service, the concurrence of District Magistrate is needed.

In the absence of any such rule being brought to the notice of this Court, or having been brought on record, the findings recorded by the Lower Appellate Court cannot be upheld and the same are treated to be per-



RSA-2172-1999 (O&M) -5-

versed.

Further as per the judgment of the Hon'ble Supreme Court India in *Ashok Kumar Singh's case (Supra)*, the absence from service is a grave misconduct for which , the major punishment can be imposed by the authority concerned.

Hence, the imposition of the punishment on the respondent-plaintiff in the departmental proceedings qua the allegations of unauthorized absence from service has rightly been dealt by the trial Court which judgment was wrongly set-aside by the Lower Appellate Court.

Hence, keeping in view the facts and circumstances recorded herein before, the judgment and decree of the lower Appellate Court dated 28.11.1998 is set-aside and the present regular second appeal is allowed and the judgment and decree passed by the trial Court dated 10.12.1994 is hereby upheld and accordingly, the suit filed by the respondent-plaintiff stands dismissed.

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

(HARSIMRAN SINGH SETHI)
JUDGE

21.05.2024

Riya

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No