

2024:PHHC:071470



CM-5295-C-2024 in/&
RSA-2441-1999 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CM-5295-C-2024 in/&
RSA-2441-1999 (O&M)
Date of Decision :20.05.2024

Mauji Ram

...Appellant

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. K.K. Saini, Advocate for the appellant.

Mr. Harish Nain, AAG, Haryana.

* * *

Harsimran Singh Sethi, J. (Oral)

CM-5295-C-2024

Present application has been filed for recalling the order dated 04.04.2024 passed by this Court by which, the main regular second appeal was dismissed for non-prosecution.

Keeping in view the averments made in the application, which are duly supported by an affidavit, application is allowed. Order dated 04.04.2024 passed by this Court is recalled and the main regular second appeal is ordered to be restored to its original number and status and is taken up for hearing today itself.

RSA-2441-1999

In the present regular second appeal, challenge is to the



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judgment and decree of the lower Appellate Court dated 21.11.1998 by which, while setting aside the judgment and decree of the trial Court dated 26.02.1994 by which suit filed by the appellant-plaintiff was dismissed, only partial relief of reinstatement in service has been given but without back wages.

Learned counsel for the appellant submits that in the judgment dated 21.11.1998, lower Appellate Court had recorded a finding that after the enquiry report was submitted, the punishment of dismissal was imposed upon the appellant without giving any show cause notice, which act on the part of the respondent-department was contrary to the settled principle of law. Learned counsel for the appellant further submits that once, the order terminating the services of the plaintiff-appellant has been set aside and reinstatement in service was ordered by the lower Appellate Court, it was incumbent upon the lower Appellate Court to grant the consequential benefit of back wages also.

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

It may be noticed that qua the discussions with regard to the grant of back wages, due reasons have been given by the lower Appellate Court in para-14 of the judgment by placing reliance upon the judgment of the Hon'ble Supreme Court of India in **Government of Tamil Nadu vs. K. Raja Ram AIR 1997 SC 2439** as well as in **Mandip Kumar vs. State of Haryana 1996(2) S.C.T. 306** that though the allegations alleged were proved against the appellant in the departmental enquiry but as the



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termination order was passed without giving a show cause notice hence, the same was set aside and ordered reinstatement in service but without back wages.

Learned counsel for the appellant has not been able to rebut that the settled principle of law noticed by the lower Appellate Court in para-14 of the judgment covers the case of the appellant against him.

Not only this, even otherwise, as per the latest judgment of the Hon'ble Supreme Court of India in **Civil Appeal No.6776-2022 decided 23.09.2022, titled as The Inspector of Panchayats and District Collector, Salem vs. S. Arichandran and others**, when a benefit of reinstatement is granted while setting aside the order of dismissal on the ground that same violates the principle of nature justice, case has to be remanded back to the authorities concerned for fresh decision. Relevant paragraphs of the judgment are as under:-

“6.2 Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and as the order of dismissal has been set aside on the ground that the same was in breach of principles of Natural Justice, the High Court ought to have remitted the case concerned to the Disciplinary Authority to conduct the inquiry from the point that it stood vitiated and to conclude the same after furnishing a copy of the Inquiry Report to the delinquent and to give opportunity to the delinquent to submit his comments on the Inquiry Officer's Report.

7. In view of the above and for the reasons stated above, present appeal succeeds in part. The impugned judgment(s) and order(s) passed by the Division Bench



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as well as learned Single Judge of the High Court ordering reinstatement with back wages are hereby quashed and set aside. The case concerned is remitted to the Disciplinary Authority to conduct the inquiry from the point that it stood vitiated and to conclude the same after furnishing a copy of the Inquiry Officer's Report and after giving an opportunity to the delinquent to submit his comments on the Inquiry Officer's Report. The aforesaid exercise be completed within a period of six months from today."

As the appellant has already retired from service and judgment and decree of the lower Appellate Court has already been executed, keeping in view the facts and circumstances recorded hereinbefore, as no perversity in the findings so recorded by the lower Appellate Court has been pointed by the learned counsel for the appellant, no ground for interference by this Court is made out and the present regular second appeal is accordingly dismissed.

Civil miscellaneous application pending, if any, is also disposed of.

May 20, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

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