

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

386

RSA-2676-2007 (O&M)
Date of Decision: 04.01.2024

State of Haryana and Others

...Appellants

versus

Anant Ram

...Respondent

CORAM : HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Jagdish Manchanda, Addl. AG Haryana

None for the respondent

AMAN CHAUDHARY, J

1. Challenge in the present regular second appeal is to the concurrent findings of facts returned by Courts below in favour of the plaintiff-respondent in a suit filed for seeking a decree for declaration and permanent injunction.

2. Summarily, the facts of the case are that the plaintiff-respondent, while working at the post of Superintendent, was chargesheeted on 19.01.2001, under Rule 8 of Haryana Civil Services (P&A) Rules, 1987 for causing loss to the State Exchequer to the tune of Rs.44,637/-. Thereafter, vide order dated 20.11.2002, punishment of stoppage of one grade increment without future effect, in addition to the recovery of Rs.22,319/- from his salary was awarded to him. He challenged the same by filing a suit for declaration and permanent injunction, on the ground that he was not afforded an opportunity of personal hearing.

3. The defendant-State, resisted the same by filing a written statement and apart from taking of the preliminary objections, it had been submitted that the plaintiff-respondent had changed the date of validity period of the

tender set to expire on 29.05.1996 and was duty bound to promptly present the case to the Executive Engineer, which he having failed to do the same, was charged-sheeted. As per proper procedure reply submitted to the charge-sheet was duly considered, hence, order of punishment was legal.

4. The learned trial Court after framing the issues, decreed the suit in favour of the plaintiff-respondent by setting aside the impugned order dated 20.11.2002, on the ground that it was against the principles of natural justice. Since nothing tenable could be produced suggesting any sort of tampering with the official record, thus, it was concluded that there was no inordinate delay in dealing with the case by him and despite the request for an opportunity to be personally heard, he was not granted one. Consequently, the suit was decreed restraining recovery of any amount.

5. Aggrieved defendant-State filed an appeal, asserting that order was as justified, since he had to make good the loss suffered due to the negligence on his part and a fair opportunity had been accorded even when there was no necessity to grant the same. The lower Appellate Court however returned a concurrent finding by taking notice of letter Ex. PY, whereby it was disclosed that the then Executive Engineer was responsible for the lapse proving the fact that the file had been put up on time to him on 12.05.1996, which was further concretely established from the admission of DW1- SDO Shakti Pal Saroha. Moreover, non-consideration of the reply to the charge-sheet, thus in turn, rendered the right of being heard by way of filing the reply atrophied.

6. Learned State counsel submits that the Courts below have fallen in error in allowing the suit of the plaintiff-respondent, on the ground that opportunity of personal hearing before imposition of penalty of one

increment without future effect was not granted, it being not a case of major penalty.

7. Heard.

8. Notably, in the case at hand the right of being heard of the plaintiff-respondent was atrophied as has been the correct conclusion which was arrived at by the Courts below as well as the plea urged that the imposition of minor penalty did not require adherence of the principles of natural justice by affording an opportunity of being personally heard. The above stands strengthened from the judgment of Hon'ble the Supreme Court in **O.K. Bhardwaj vs. Union of India and Others**, (2001) 9 SCC 180, the relevant para of the same reads thus, "While we agree with the first proposition of the High Court having regard to the rule position which expressly says that "withholding increments of pay with or without cumulative effect" is a minor penalty, we find it not possible to agree with the second proposition. Even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with." Likewise even on the merits of the case, there is apparently no error in the finding recorded that owing to negligence on his part, loss was caused, it having not been established by leading cogent evidence.

9. During the course of hearing, learned State counsel has not been able to point out any jurisdictional error or illegality apparent on the record of the case.

10. The learned Courts below have meticulously analysed and sifted through the evidence adduced, arriving at a judicious conclusion by allowing the suit and dismissing the appeal, thus are aligned in their decisions and findings. Furthermore, no instances of misreading or ignoring of evidence can be pointed out, so as to convince this Court to take a view different.

11. In **Satyender vs. Saroj**, 2022 SCC OnLine SC 1026, Hon’ble the Supreme Court has held that, “Be that as it may, though the requirement of formulation of a substantial question of law was not necessary, yet Section 41 of the Punjab Courts Act, requires that only such decisions are to be considered in second appeal which are contrary to law or to some custom or usage having the force of law or the court below have failed to determine some material issue of law or custom or usage having the force of law. Therefore, what is important is still a “question of law”. In other words, second appeal is not a forum where court has to re-examine or re-appreciate questions of fact settled by the Trial Court and the Appellate Court”.

12. From the above conspectus, there being neither question of law involved nor any infirmity or perversity in the impugned judgments and decrees, the present appeal is sans merit and accordingly dismissed.

(AMAN CHAUDHARY)
JUDGE

04.01.2024

M.Kamra

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