



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1) RSA No.1906 of 2006 (O&M)
Reserved on:27.11.2024
Pronounced on:16.12.2024

State of Punjab and othersAppellants

Versus

Dilbag Singh ...Respondent

2) RSA No.3365 of 2006 (O&M)

Dilbag Singh ...Appellant

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Nitesh Sharma, DAG, Punjab
for appellants in RSA No.1906 of 2006
for respondents in RSA No.3365 of 2006.

Mr. Baljeet Singh Sidhu, Advocate
for the appellant in RSA No.3365 of 2006
for the respondent in RSA No.1906 of 2006.

HARPREET SINGH BRAR, J.

C.M. No.8299-C of 2006 in RSA No.3365 of 2006

The instant application has been filed under Section 151 CPC seeking condonation of delay of 46 days in re-filing the appeal on the ground that certain objections were raised by the registry and in removing the same, delay of aforesaid days occurred in re-filing the appeal.



For the reasons stated in the application, the same is allowed and delay of 46 days in re-filing the appeal is hereby condoned.

Main Case

1. This order of mine shall dispose two regular second appeals bearing Nos.1906 of 2006 and 3365 of 2006. The former is preferred by the defendants-State of Punjab and the latter is preferred by the plaintiff against the judgment and decree dated 22.12.2005 passed by the lower Appellate Court whereby the appeal preferred by the plaintiff was partly allowed and order of his dismissal from service dated 22.12.1997 was declared as illegal, null and void, however, the consequential benefits were denied to him. Further, it was held that the disciplinary authority is competent to pass an appropriate order after holding a departmental enquiry as per rules, within six months from the receipt of copy of the judgment and decree passed by the lower Appellate Court. Aggrieved against the aforesaid judgment and decree passed by the lower Appellate Court, both the plaintiff and defendants are in second appeal before this Court vide regular second appeals as mentioned above. For the sake of brevity, facts are being enumerated from RSA No.3365 of 2006.

2. In brief, the facts are that the appellant-plaintiff in RSA No.3365 of 2006 had joined service as a Constable with the respondents-defendants on 01.01.1994. At the time of his appointment, he had submitted his matriculation certificate, which was sent to the Secretary, Punjab School Education Board, Mohali for verification, who vide his letter dated 11.09.1997 intimated that particulars shown in the said Matriculation Certificate do not tally with the record of the Education Board. Thereafter, a departmental enquiry was ordered to be conducted, which started on 10.10.1997. However, vide order dated



04.12.1997 passed by the Commandant 5th IRB, Amritsar, it was stated that since production of a bogus certificate at the time of seeking appointment is a criminal offence, it was decided to register a criminal case against him and therefore, the departmental enquiry was stopped. On the very next day i.e. 05.12.1997 without holding proper departmental enquiry and affording any opportunity to cross-examine the witnesses and lead defence evidence, a show cause notice was issued proposing the penalty of dismissal from service and ultimately, he was dismissed from service vide order dated 22.12.1997. Hence, the suit was filed, which was dismissed by the learned trial Court vide judgment and decree dated 17.08.2002, however, in appeal preferred by the appellant-plaintiff against aforesaid judgment and decree of the learned trial Court, the lower Appellate Court while partly allowing the appeal, declared the impugned order dated 22.12.1997 as illegal, null and void but declined the consequential benefits. Aggrieved by the judgment and decree passed by the lower Appellate Court, separate appeals have been filed by the plaintiff and defendants as mentioned above.

3. The respondents-defendants appeared and contested the suit. Parties led their respective evidence and on appreciation of the documentary as well as oral evidence, learned trial Court dismissed the suit of the appellant-plaintiff. However, in appeal preferred by the appellant-plaintiff, the learned lower Appellate Court set aside the judgment and decree of the learned trial Court and consequently, suit of the appellant-plaintiff was partly allowed.

Learned counsel appearing for the appellant-plaintiff in RSA No.3365 of 2006 and respondent in RSA No.1906 of 2006 submitted that the learned lower Appellate Court gravely erred in declining the consequential benefits to him after declaring the impugned order dated 22.12.1997 vide which he was



dismissed from service as illegal, null and void and further allowing the respondents-defendants to conduct a departmental enquiry and pass an appropriate order, within six months from the receipt of copy of the judgment and decree passed by it. Once the impugned order was declared as illegal, null and void, the appellant-plaintiff was entitled to all consequential benefits.

4. Per contra, learned State counsel appearing for the appellants-defendants in RSA No.1906 of 2006 and for respondents in RSA No.3365 of 2006 argued that once the matriculation certificate on the basis of which he obtained appointment was found bogus, he was rightly dismissed from service vide order dated 22.12.1997 and there was no need to even hold a departmental enquiry. Therefore, the judgment and decree passed by the learned lower Appellate Court is liable to be set aside.

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

6. This Court on 27.11.2006 while admitting RSA No.1906 of 2006 has passed the following order:-

*“Learned counsel for the appellants states that it is clear from the report of Punjab School Education Board Ex.P3 and certificate issued by the School that neither the plaintiff had taken matriculation examination nor he had studied in the school and the certificate of matriculation is obviously false and in those circumstances, there is no need to hold a regular departmental enquiry. This question gives rise to a substantial question of law which requires consideration.
Admitted.”*

7. As per the principles of equity, it is crystallized that ‘he who seeks equity must do equity’. It is often stated that one who comes into equity must come with clean hands. In the case at hand, a show-cause notice was served upon Dilbag Singh to which he submitted his written reply. It was after his justification was found unsatisfactory that the impugned order of dismissal was



passed by the department. In no way can his appointment be justified, especially, when Dilbag Singh did not possess the basic qualification to join as a Constable and instead of following a just and proper path to obtain the necessary qualification, he chose to submit a fake certificate. In addition, Dilbag Singh-plaintiff failed to lead any evidence before the learned trial Court to show that he had the basic qualification for enlisting as a Constable and further could not controvert the report submitted by Punjab School Education Board, Mohali (Ex.RA). In the case of **M/s Indian Oil Corporation Ltd. v. Shri Rajendra D. Harmalkar, 2022 SCC Online SC 486** a two-Judge Bench of the Hon'ble Supreme Court has taken notice of the gravity of submission of fake documents by candidates at the time of their appointment and made following observations: -

“7.1 In the present case, the original writ petitioner was dismissed from service by the Disciplinary Authority for producing the fabricated/fake/forged SSLC. Producing the false/fake certificate is a grave misconduct. The question is one of a TRUST. How can an employee who has produced a fake and forged marksheet/certificate, that too, at the initial stage of appointment be trusted by the employer? Whether such a certificate was material or not and/or had any bearing on the employment or not is immaterial. The question is not of having an intention or mens rea. The question is producing the fake/forged certificate. Therefore, in our view, the Disciplinary Authority was justified in imposing the punishment of dismissal from service.”

8. From the perusal of record, it is evident beyond the pale of doubt that petitioner was dismissed from service without conducting enquiry as contemplated by rule 16.24 of Punjab police rules, 1934, read with article 311 of the Constitution of India. It is however noted here that an inquiry under Article 311(2) of the Constitution of India is a rule and dispensing with the



inquiry is an exception. The same can be dispensed only in exceptional circumstances. A perusal of Article 311 (2) of the Constitution of India makes it crystal clear that an inquiry can be dispensed with in case of conviction, and where it is not reasonably practicable to hold such inquiry. When the appointment of Dilbag Singh is *non-est* and *void ab initio*, it is held that the appellant-department was well justified in dispensing away with regular inquiry in the present case. In view of the peculiar facts and circumstances of the present case, this court has no hesitation to hold that the appellant-department has rightly dispensed away with enquiry contemplated under the relevant provisions. In the backdrop of conclusive proof that the certificate produced by Dilbag Singh at the time of his appointment was fake, a fact which he has been unable to controvert, once upon verification from the concerned issuing authority there was no necessity for the appellant-department to hold any inquiry to re-affirm the same.

9. In view of the judgments passed by the Hon'ble Supreme Court in ***Pankajakshi (Dead) through Legal Representatives and others Vs. Chandrika and others (2016) 6 SCC 157, Randhir Kaur Vs. Prithvi Pal Singh and others (2019) 17 SCC 71*** and ***Gurbachan Singh (dead) through LRs Vs. Gurcharan Singh (dead) through LRs and others, 2023 SCC Online SC 875*** questions of law are not required to be framed in second appeal before the Punjab and Haryana High Court whose jurisdiction is circumscribed by provisions of Section 41 of the Punjab Courts Act, 1918, however, since this Court vide order dated 31.08.2006 has already framed the substantial question of law as reproduced above, the same is answered in aforesaid terms.



10. As an upshot of above discussion, the judgment and decree passed by the lower Appellate Court is set aside and the judgment and decree passed by the learned trial Court is upheld.
11. The regular second appeal filed by the State is allowed whereas the regular second appeal filed by plaintiff-Dilbag Singh stands dismissed.
12. Fresh decree sheet be prepared accordingly.

(HARPREET SINGH BRAR)
JUDGE

16.12.2024
Neha

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