

2024:PHHC:172556



HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-1939-2012.doc (O&M)

Decided on 09.12.2024

SALTI AGNIHOTRI

... APPELLANT

VS.

M/S. RANBAXY LABORATORIES LTD. AND ANR.

... RESPONDENTS

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Dharam Vir Sharma, Senior Advocate with
Mr. Sunder Kumari, Advocate for the appellant

Mr. M.P.S. Mann, Advocate for respondents

Sandeep Moudgil, J.

(1). This regular second appeal under Section 100 CPC has been brought by the appellant-Salti Agnihotri against judgment and decree dated 24.12.2011 passed by Additional District Judge, SAS Nagar Mohali whereby it was upheld the judgment and decree passed by the trial court dated 03.09.2008 passed by Additional Civil Judge, Sr. Division SAS Nagar, Mohali with a concrete finding arising out of a suit for declaration to the effect that the termination order of the appellant from the service dated 26.11.1998 is illegal and against the law and facts as well as violative of principle of natural justice alongwith damages to the tune of Rs.5,00,000/- (rupees five lacs).

(2). The facts leading to the filing of suit before the trial Court can be culled out on perusal of the record that the plaintiff-appellant joined the services as Production Chemist by the defendant/respondent company namely

M/s Ranbaxy Laboratories Ltd. on 21.11.1989, who after having earned appreciation letter dated 10.01.1991 was promoted as Supervisor as Grade-S-II in the year 1992. Thereafter he earned another promotion to the post of Production's Supervisor Grade-S-III vide order dated 18.03.1996 with w.e.f. 1.1.1996. The pleadings would further reflect that plaintiff's/appellant relations brought sour with one Sh. Dalbir Singh, Production Manager under the surmise that he is having good relationship with Sh. S.R. Wadhwa with whom Sh. Dalbir Singh was not on good terms. It was immediately after transfer of Sh. S.R. Wadhwa, it is alleged that a false report has been prepared against him, though the plaintiff/appellant pleads no connection whatsoever in the said alleged report whatsoever, who asserted that Sh. S. R. Wadhwa as well as Sh. Dalbir Singh are much Senior Officer to the plaintiff/appellant. It is on that account a show cause notice dated 22.06.1998 was issued with the allegation that the plaintiff/appellant was responsible for powder processing activity of Amoxy Plant, wherein various complaints have been received from the customers qua that product. The plaintiff/appellant was asked to give explanation/reply within 48 hours, which was received on 26.06.1998. The plaintiff/appellant submitted a detailed reply to the said show cause notice, which went unnoticed and another letter dated 02.09.1998 was issued with the same allegations and was called upon to explain the same within 24 hours. At the same time, he was placed under suspension on 03.09.1998 and the explanation was submitted on 04.09.1998 denying the allegations.

(3). The plaintiff/appellant preferred a Civil Writ Petition before this Court bearing No.CWP-1371-1999, which was dismissed on the ground that

respondent/company is not a state within the meaning of Article 12 of the Constitution of India.

(4). The termination of service vide letter dated 26.11.1998 came into picture, which was assailed after dismissal of the writ petition, before the trial Court by way of instant suit for declaration primarily on the ground that the respondent/company has acted without holding an inquiry and the action of terminating services of the plaintiff is being without an opportunity of hearing, therefore, is illegal and liable to be declared as such.

(5). The defendants appeared on notice by the trial Court and denied the case of plaintiff/appellant in *toto* with additional objection to the effect that the suit is not maintainable in the present form, he has not complied with Order 7 Rule 7 of Civil Procedure Code and his all dues stand settled vide two cheques of Rs. 969.18/- and Rs.22007/-, which has been accepted by him and, therefore, is now estopped by his action conduct for filing the suit. On merits it has been contended by the respondent/company that he was found guilty of gross negligence in his working by violating the SOPs a performing malpractices, which resulted into loss to the defendant/respondent-company. On the aspect of holding a departmental inquiry, the defendant/respondent has submitted that an inquiry was ordered, though the plaintiff/appellant himself did not associate and remained absent. It is only after giving reasonable opportunity to appear, which was not availed by the plaintiff/appellant, his services were ordered to be terminated, while following the Rules and Regulations of the Company governing the service conditions of its employee including the terms of appointment.

(6). On the basis of such pleadings between the parties to the lis following issues were framed on 17.07.2002:-

1. *Whether Plaintiff is entitled to declaration as prayed for? OPP*
2. *Whether plaintiff is entitled to damages as prayed for? OPP*
3. *Whether the suit of the plaintiff is not maintainable in its present form? OPD*
4. *Relief*

(7). The trial Court issue Nos. 1 & 2 being inter connected taking up together and decided against the plaintiff. As a result thereof, issue No.3 also failed merit, whereby consequential relief was sought and issue No.4 was not pressed at the time of arguments and, therefore, the same was decided against the defendant, as the onus was upon him for relief.

(8). The foremost question before this Court in inviting adjudication would be that the findings of the trial Court on issue No.1 is correct or is against law, whereby the order of termination is found to be legal and valid, as per Clause 13 of the appointment letter. It is also a finding written by the trial Court that the principle of natural justice has been complied with since the defendant/respondent served a notice dated 02.09.1998 (Ex.D-3) and investigation was conducted by AP Gupta, DW-1 and Vikram Joshi, DW-3, the report of which has been proved on record as Ex.DW-1/3.

(9). To buttress his pleadings, Mr. D.V. Sharma, learned Sr. Advocate has relied upon “***A.K. Kriapak & Ors. vs. Union of India & Ors.***”, ***AIR 1970 SC 150*** referring to the observation that Rules of natural justice are applicable to administrative inquiries as the concept of natural justice is expanding. The Hon’ble Constitutional Bench, while dealing with the question as to whether the principle of natural justice would apply, if the inquiries are administrative in nature, it is not necessary to examine those

decisions as there is a great deal of fresh thinking on the subject. The horizon of natural justice is constantly expanding.

(10). The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it.-The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely (1) no one shall be a judge in his own case (*Hemo debt index propria causal*) and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasi- judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice.

(11). Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi- judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may

have more far reaching effect than a decision in a quasi-judicial enquiry.. In another judgments “*Jagseer Singh vs. State of Punjab & Ors.*”, 1983 (2) *SLR 65* was referred to argue that where no inquiry could be proved from the file in documentary evidence, it would tantamount to hold that actually no such inquiry has taken place. In that case, the inquiry file was produced but signatures on the inquiry either of the Inquiry Officer or of the delinquent employee could not be proved.

(12). In another enunciated case law, “*Union of India & Ors. vs. Mohd. Ramzan Khan*”, 1991 (1) *SLR, 195*, the plaintiff/appellant has relied upon to the observation in support of argument that if inquiry report has not been supplied alongwith recommendations, if any qua the proposed punishment, it amounts to violation of principle of natural justice.

(13). The trial Court did not agree with the aforesaid case laws, while deciding issue Nos. 1 & 2 against the plaintiff/appellant on the reason that these judgments are in the context of Civil Services Rules, whereas in the instant case the defendant/respondent is a company, wherein terms of appointment are governed by the conditions stipulated in the appointment letter. It relied upon the judgment of the Hon’ble Apex Court in “*Kendriya Vidyalaya Sangathan vs Arunkumar Madhavrao Sinddhaye & Anr*”, 2007, *Apex Court Judgments-160*, wherein it was held as under:-

“Order of termination of services in accordance with terms of appointment- it did not cast any stigma- Merely because it was proceeded by a fact finding inquiry into a complaint against delinquent, it would mean that termination of service was by way of punishment.”

(14). Another reasoning given by both the Courts below in their return of concurrent findings is that since clause 13 of the appointment letter dated 27.11.1989 Ex.P-1 mandates only a one month notice or salary in lieu thereof, which has been complied with by the defendant company.

(15). While deciding issue Nos.1 & 2 against the plaintiff/appellant, the above-said findings do not find favour with this Court for the reasons that the principle of natural justice with the appointment letter does not elaborate the nature of termination, if it is on account of material allegations, which may turn to be stigmatic for an employee.

(16). Clause 13 of the appointment letter dated 27.11.1989 Ex.P-1 would read as under:-

“On successful completion of the probationary period, this contract of employment is terminable by one month’s notice or payment of salary in lieu thereof and either party is not bound to give any reason thereof.”

(17). A bare reading of the above clause clearly establish that it is not dealing with a case where disciplinary proceedings have been initiated. In the instant case admittedly a show cause notice was issued calling upon the plaintiff/appellant to submit reply. Thereafter, according to the defendant/respondens on case set up before the Courts below is that a regular inquiry was conducted and the allegations were investigated by A.P. Gupta, DW-1 and Vikram Joshi, DW-3 vide report Ex.DW-1/3, however, the said report was never communicated to the plaintiff/appellant what to talk of a final show-cause notice calling upon for explanation from the delinquent employee with the proposed punishment to be inflicted.

(18). Another glaring aspect that was come forth while perusal of the judgment of the trial Court wherein, the trial Court has acknowledged the report Ex-DW-1/3, which is opined as under:-

“These are serious violations of Standard Operating Procedures as prescribed to be followed on shop floor, systems and goods manufacturing Practices on their report.”

On a close scrutiny of the above-mentioned report, it is crystal clear that the report has been prepared in a haphazard manner, wherein the concerned authority have not bothered to elaborate the violations for not following Standard Operating Procedures. Rather, the concerned Authority should have been categorical in mentioning the nature of violations and merely alleging the appellant to have violated SOPs and performed malpractices would not suffice to rely upon.

A disciplinary authority is not expected to dispense with the inquiry lightly or arbitrarily on merely in order to avoid the cumbersome process.

The outcome of the inquiry report should not be based on certain objective facts or of the whim or caprice of the concerned Officer.

(19). In the light of absence of such procedure, the whole disciplinary proceedings would stand vitiated, wherein the plaintiff/appellant never got an opportunity to go through the investigation report and put forward his defence. Moreover, it is also an admitted fact that defendant/respondent could not prove that the plaintiff/appellant was ever intimated about such investigation and to join the proceedings therein. It is on the basis of such alleged material, the plaintiff/appellant has been terminated from the service without sufficient cogent evidence available on record as well as any chance to defend himself.

(20). The Apex Court in *CCT v. Shukla & Bros., (2010) 4 SCC 785*, has observed that:

10. The increasing institution of cases in all courts in India and its resultant burden upon the courts has invited attention of all concerned in the justice administration system. Despite heavy quantum of cases in courts, in our view, it would neither be permissible nor possible to state as a principle of law, that while exercising power of judicial review on administrative action and more particularly judgment of courts in appeal before the higher court, providing of reasons can never be dispensed with. The doctrine of audi alteram partem has three basic essentials. Firstly, a person against whom an order is required to be passed or whose rights are likely to be affected adversely must be granted an opportunity of being heard. Secondly, the authority concerned should provide a fair and transparent procedure and lastly, the authority concerned must apply its mind and dispose of the matter by a reasoned or speaking order. This has been uniformly applied by courts in India and abroad.

(21). The Hon'ble Supreme Court in another case titled as [*D.K. Yadav vs J.M.A. Industries Ltd., \(1993\) 3 SCC 259*](#), enumerated the cardinal principle of reasonable opportunity of being heard. The Court stated that the major advantage of this principle is the prevention of an arbitrary action on behalf of the authority while adjudicating a case. The Court discussed the principles of reasonableness, non-arbitrariness and natural justice under [Article 14](#) of the Constitution of India, 1950 observing that:

"8. The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act

judicially but is to act fairly, namely, the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority from acting arbitrarily affecting the rights of the concerned person.

In [State of Orissa v. \(Miss\) Binapani Dei](#) [(1967) 2 SCR 625 : AIR 1967 SC 1269 : (1967) 2 LLJ 266] the Court held that even an administrative order which involves civil consequences must be made consistently with the rules of natural justice. The person concerned must be informed of the case, the evidence in support thereof supplied and must be given a fair opportunity to meet the case before an adverse decision is taken. Since no such opportunity was given it was held that superannuation was in violation of principles of natural justice.

(22). In the light of above, the regular second appeal is allowed and the Judgements and decree passed by both the Courts below are hereby set aside and

suit of the plaintiff/appellant is ordered to be decreed. The plaintiff/appellant is held entitled to be reinstated in service w.e.f., 26.08.1998 i.e. date of termination 26.08.1998. He is also held entitled for consequential benefits.

(23). The decree-sheet be prepared accordingly.

09.12.2024
Meenu

1. Whether speaking/reasoned?
2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No