

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

(205)

RSA-4130-2012

Date of Decision : May 07, 2024

Mahinder Singh**.. Appellant****Versus****State of Haryana and others****.. Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. B.S. Walia, Advocate and
Mr. Deep Inder Singh Walia, Advocate, for the appellant.

Ms. Vibha Tewari, Assistant Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present appeal, the challenge is to the judgment of the lower Appellate Court dated 31.05.2012 by which, the judgment and decree of the trial Court dated 17.11.2007 has been set aside and the suit filed by the appellant-plaintiff has been dismissed.

2. Learned counsel for the appellant argues that the appellant-plaintiff filed civil suit challenging the orders of punishment dated 25.02.1999 and 28.05.1999 which were imposed upon the appellant-plaintiff imposing recovery as well as the order dated 21.06.1999 and 20.12.1999 passed in appeal by which, the appeal filed by the appellant was rejected by the respondents. Learned counsel for the appellant submits that the lower Appellate Court has wrongly overturned the findings recorded by the trial Court wherein, it has already been held that the rules of natural justice were violated while conducting the disciplinary proceedings against the appellant-plaintiff. Learned counsel for the appellant-plaintiff further

submits that the appeals filed by the appellant-plaintiff have been dismissed by a totally cryptic and non-speaking order without giving any reason as to why the grounds raised in the appeal did not convince the Appellate Authority. Learned counsel for the appellant-plaintiff further submits that the orders in appeal have been passed in violation of the settled principle of law hence, the appeals of the appellant-plaintiff are liable to be decided afresh.

3. Learned counsel for the respondents, on the other hand, submits that once, detailed orders have been passed while imposing the punishment, it was not necessary to pass a detailed order in appeal hence, the orders passed in appeal dated 21.06.1999 and 20.12.1999 are perfectly valid and legal.

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

5. The argument which has been raised by the learned counsel for the appellant-plaintiff is that the orders passed in appeal cannot be sustained as the same are cryptic and non-speaking and the appeals have been rejected without giving any reason as to why, the ground raised by the appellant-plaintiff against the order of punishment did not convince the Appellate Authority.

6. It may be noticed that as per the settled principle of law settled by the Hon'ble Supreme Court of India in ***Civil Appeal No.457 of 1970 titled as Mahabir Prasad Santosh Kumar vs. State of U.P and others, decided on 02.04.1970***, the order in appeal should be speaking order so as to discuss every objection taken by the officer concerned against the order of punishment. Relevant paragraphs of the said judgment are as under:-

"5. *The case discloses a disturbing state of affairs. The*

authorities have disclosed by their conduct a reckless disregard of the rights of the appellants. The order passed by the District Magistrate cancelling the licences was quasi-judicial; it could be made only on a consideration of the charges and the explanation given by the appellants. That necessarily implied that the District Magistrate had to give some reasons why he held the charges proved, and the explanation unacceptable. When the matter was carried in appeal, the State Government could at least have acted with some awareness that citizens have rights which must be protected against possible arbitrary action by subordinate officials. The District Magistrate is not made the final authority in cancelling the licence. The appellants had a right to carry on their business, and as they held a licence to carry on their business they could be deprived of their right by an executive order supported by good and adequate reasons. The relevant rules granted a right of appeal to the State Government against that order, and that implied that the aggrieved party must have an opportunity to convince the State Government that the order passed by District Magistrate was erroneous. That right could be effectively exercised if reasons be recorded by the District Magistrate and supplied to the aggrieved party. If the aggrieved party is not supplied the reasons, the right to appeal is an empty formality.

6. *From the materials on the record it cannot be determined as to who considered the appeal addressed to the State Government, and what was considered by the authority exercising power on behalf of the State Government. The practice of the executive authority dismissing statutory appeals against orders which prima facie seriously prejudice the rights of the aggrieved party without giving reasons is a negation of the rule of law. This Court had occasion to protest against this practice in several decisions : See Madhya Pradesh Industries Ltd. v. Union of India, (1966)1 SCR 466 (per Subba Rao, J.); Bhagat Raja v. Union of India, (1967)3 SCR 302; State of Madhya Pradesh v. Narsinghdas Jankidas Mehta, C.A. No. 681*

of 1966, decided on 29-4-1969(SC); State of Gujarat v. Patel Raghav Nath, C.A. No. 723 of 1966, decided on 21-4-1969 and Prag Das UmarVaishya v. Union India, C.A. No. 657 of 1965, decided on 17-8-1967 (SC). The power of the District Magistrate was quasi-judicial : exercise of the power of the State Government was subject to the supervisory power of the High Court under Article 227 of the Constitution and of the appellate power of this Court under Article 136 of the Constitution. The High Court and this Court would be placed under a great disadvantage if no reasons are given, and the appeal is dismissed without recording and communicating any reasons".

7. A bare perusal of the above reproduction would show that a reasoned order is to be passed in appeal so that the delinquent officer should know as to what weighed with the Appellate Authority so as to reject the appeal.

8. In the present case, learned counsel for the respondents has conceded that the orders passed in appeal are cryptic and non-speaking and do not give any reason for arriving at the conclusion so as to dismiss the said appeals.

9. Keeping in view the above as well as the settled principle of law, the order dated 21.06.1999 and 20.12.1999 passed in appeal are set aside and the case is remanded back to the Appellate Authority to pass a fresh order within a period of eight weeks of the receipt of copy of this order. Let the appellant-plaintiff be also given a personal hearing before passing the order in appeal so that the Appellate Authority is in position to pass appropriate speaking order on the appeal. The judgment and decree of the lower Appellate Court is accordingly modified.

10. The present appeal is disposed of in above terms.

May 07, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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