

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(207)

RSA-2272-2016 (O&M)
Date of Decision: 24.04.2024

Rajinder KaurAppellant

Versus

Punjab Agricultural University and othersRespondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Bhupinder Kaur, Advocate, for the appellant.

Mr. Sanjeev Sharma, Advocate, for the respondents.

HARSIMRAN SINGH SETHI, J.(ORAL)

CM-10768-C-2019

1. This is an application for fixing some actual date of hearing in the present appeal which has been adjourned *sine die*.
2. Application is allowed and present appeal is fixed for today i.e. 24.04.2024 and the same is taken up on board today itself.

Main Case

1. In the present appeal, challenge is to the judgment and decree of the trial Court dated 16.05.2014 by which, the civil suit filed by the appellant-plaintiff challenging the order dated 09.07.2003 by which, adverse confidential report of the appellant-plaintiff for the year 2002-03, was challenged, had been dismissed.
2. The appeal preferred by the appellant-plaintiff against the judgment and decree of the trial Court dated 16.05.2014 has also been

rejected by the lower appellate Court vide judgment and decree dated 20.01.2016.

3. Learned counsel for the appellant-plaintiff argues that the judgment and decree of the Courts below are perverse as, no opportunity of personal hearing was given to the appellant-plaintiff before recording the adverse confidential report and further, there was no ground available with the head of the department to record adverse report of the appellant-plaintiff, hence, as the Courts below have failed to appreciate the said fact, both the judgments and decrees of the Courts below are liable to be set aside.

4. Learned counsel for the respondent on the other hand submits that the suit which was filed by the appellant/plaintiff challenging the order dated 09.07.2003, was time barred as, the said suit was filed on 04.01.2007 which is beyond the period of 3 years, hence, keeping in view the judgment of the Hon'ble Supreme Court of India in ***Civil Appeal No.1852-1989 with Civil Appeal No.4772-1989*** titled as ***State of Punjab and Ors. Vs. Gurdev Singh and Ashok Kumar***, decided on 21.08.1991, any order not challenged within the period of limitation, even if the same is void, the said order is liable to be dismissed on account of limitation. Learned counsel for the respondent further submits that no opportunity of personal hearing is to be given before recording the adverse remarks but as the said adverse remarks was recorded, the same was conveyed and the plaintiff/appellant filed a representation against the said remarks, which was also dismissed by the competent authority on 28.10.2003 and even if, the period of limitation is taken from the said date, still, the suit is beyond the period of limitation.

5. Learned counsel for the respondent further submits that as the order of head of the department merges with the order of the Vice Chancellor who had rejected the representation, once the order dated 28.10.2003 has not been challenged by the appellant-plaintiff, no relief can be extended to the appellant/plaintiff. Learned counsel for the respondent further submits that Civil Court will have no jurisdiction to go into the recording of the ACR as, the same is based upon the subjective assessment of the officer concerned, who is recording the annual confidential reports.

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

7. First of all, the issue is whether the suit is maintainable as the same was filed within the period of limitation provided or not. Though, the respondent had not pressed the said issue before the trial Court and the lower appellate Court as the suit filed by the appellant/plaintiff was dismissed on merits, during the hearing, the learned counsel for the respondent submits that the issue whether the suit is within the period of limitation needs to be decided. It is a conceded position that in the suit, the order dated 09.07.2003 has been challenged by which, the adverse confidential remarks were conveyed to the appellant/plaintiff. The limitation to challenge the said order is within the period of 3 years which expired in July, 2006, whereas, the suit was filed on 04.01.2007 which is a conceded position. Hence, on the date when the suit was filed, the limitation to challenge the order dated 09.07.2003 had already expired. As per the settled principle of law, settled by the Hon'ble Supreme Court of India in ***Gurdev Singh (supra)***, in the suit, order which are within limitation period of 3 years can only be challenged and any order

challenged beyond the said date, even if the said order is void, the suit is liable to be dismissed on the ground of limitation. Learned counsel for the appellant has not been able to dispute the said facts that the suit filed by the appellant/plaintiff challenging the order dated 09.07.2003, was barred by limitation on the date when the same was filed on 04.01.2007, hence, the suit was beyond the period of limitation and could not have been entertained by the Courts below.

8. Even otherwise, the Civil Court has no jurisdiction to entertain a dispute with regard to the recording of adverse remarks in the ACR as the same is a subjective opinion of the concerned officer. The only argument raised that the appellant had worked before two officers qua the year in question and as the appellant had only worked for a period of 4 months with under the respondent No.4, he could not have written an adverse report.

9. It may be noticed that if any employee has worked for more than 3 months under an officer, the ACR can be recorded. Further, it cannot be said that the behaviour of the appellant-plaintiff, will remain the same under both the officers. It is a possibility that appellant-plaintiff's behaviour was not the same when the ACR was recorded for a period of 7 months while working under another officer where she was adjudged as a good officer. Hence, the Court, cannot substitute its opinion with that of an officer who is watching the performance of an employee. No *mala fide* have been proved on record qua the said officer. Hence, the Courts below have rightly not interfered with the adverse report recorded against the appellant.

10. Further, the argument raised that appellant/plaintiff was not given hearing before recording the adverse remark, no rule has been cited or, has been brought on record to show that before recording an adverse remarks, an opportunity of hearing is to be given.

11. In the absence of any such prescription, the recording of the ACR cannot be termed as bad; hence, the said argument cannot be accepted so as to set aside the judgments of the Courts below. No other arguments have been raised. Keeping in view the above, no ground is made out to interfere with the judgments of the Courts below and accordingly, present appeal is dismissed.

(HARSIMRAN SINGH SETHI)
JUDGE

24.04.2024
anil

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