

2024:PHHC:172339



IN THE HIGH

COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

202

RSA-4438-2015 (O&M)
DECIDED ON:05.12.2024

ROSHAN LAL (DEAD) THOURGH LRS

.....APPELLANT

VERSUS

EXECUTIVE OFFICER PANCHAYAT SAMITI KAHNUWAN AND
OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Ajay Pal Singh Rehan, Advocate
for the appellant.

Mr. B.S. Jaswal, Advocate
for respondent No.1.

Mr. J.S. Guru, AAG, Punjab.

SANDEEP MOUDGIL, J

1. The present Regular Second Appeal has been preferred by the appellant Roshan Lal (since deceased) through his LRs against the judgment and decree dated 07.08.2014 passed by learned Additional District Judge (Adhoc), Fast Track Court, Gurdaspur whereby, a well reasoned judgment and decree dated 09.05.2012 passed by Civil Judge (Jr. Division), Gurdaspur has been reversed and the suit of the plaintiff-appellant stands dismissed with no order as to costs.

2. The brief facts of the present case is that Roshan Lal (since deceased) was appointed in the department of respondent No.1 against a permanent post where he had been discharging his duties efficiently, diligently and to the entire satisfaction of his superiors. While serving as Clerk at Panchayat Samiti Office, Gurdaspur, he was dismissed from service on the allegation that he was convicted by the Court of learned Chief Judicial Magistrate, Gurdaspur in a criminal case under FIR No. 100, dated 23-10-1997, under Sections 420, 465, 467, 468, 471, 120-B IPC, Police Station Vigilance Bureau, Jalandhar and was sentenced for two years imprisonment along-with fine to the tune of Rs.2000/-. Aggrieved against the judgment of conviction and order of sentence, he filed an appeal and without waiting the result of his criminal appeal he was dismissed by respondent No.2 vide order dated 31.12.2004. In his criminal appeal, the conviction was modified and he was released on probation and was directed to pay Rs.10,000/- as costs to the prosecution. As per Section 12 of Probation of Offenders Act, the appellant became entitled for his reinstatement in service from the date of his dismissal. He requested respondent no.2 in this regard but he refused to withdraw the impugned order and to take him on duty. Order dated 31-12-2004 hence is illegal, unlawful and unconstitutional because no charge sheet was served upon him, no enquiry was conducted, he was not given reasonable opportunity to defend himself, his reply to show cause notice was not considered, after setting-aside of his conviction by the learned Appellant Court nothing adverse remains against him and his name for pension was also not considered while passing impugned order. Plaintiff, therefore, served upon defendants legal notice under Section 80 CPC but to no avail. Hence, the suit.

3. Learned counsel for the appellant has argued that the trial court correctly determined that the appellant, as an employee of the Panchayat Samiti in Kahnuwan, is entitled to protection under Article 311 of the Constitution of India. This protection prohibits dismissal by an authority subordinate to the one that appointed him. However, the Lower Appellate Court made a significant error by asserting that employees of the Panchayat Samiti do not qualify as civil servants, thereby denying them the constitutional safeguards provided under Article 311. Furthermore, the Lower Appellate Court failed to recognize that once the appellant was released on probation during the appeal process, he should have been reinstated. Additionally, it overlooked critical testimony from Yudhvir Singh, the Executive Officer, who acknowledged during cross-examination that the appointing authority for a Clerk is the Director, not the Executive Officer; thus, the dismissal order issued by the Executive Officer was invalid.

4. Learned counsel for respondent No. 1 has argued that the appellant concealed crucial information from the Court regarding his employment with the Panchayat Samiti, which was obtained through a fraudulent SC/ST certificate. A criminal case, identified as FIR No. 100, was registered against the appellant on 23.10.1997, leading to his conviction and sentencing by the Chief Judicial Magistrate in Gurdaspur on 21.05.2004. As a consequence of this conviction, he was dismissed from his position on December 31, 2004; however, he was later granted probation upon appeal. The argument raised by learned counsel for the appellant regarding his removal from service by an officer of lower rank than the appointing authority lacks foundation, as this point was never raised in the initial pleadings. The appellant did not include

this claim in the plaint. Furthermore, it is acknowledged that the appellant passed away during the pendency of suit, rendering the trial court's directive for the defendants to reconsider the appellant's case unfounded, as no orders can be issued against a deceased individual. The counsel also contended that the mere acceptance of the appellant on probation does not absolve him from the charges against him; thus, the department retained the authority to act against him and to terminate his employment following his conviction, which has been upheld by legal standards. Based on these arguments, the counsel for respondent No. 1 prays for dismissal of the present appeal.

5. Heard learned counsel for the respective parties.

6. The pleadings in the plaint do not indicate that the appellant sought setting aside the dismissal order 31.12.2004, on the grounds that it was issued by respondent No.1/defendant no. 2, who was allegedly incompetent and lower in rank than the appointing authority. Furthermore, the testimony of PW-1-widow of appellant, the sole witness for the appellant, did not address this issue. It was only during the cross-examination of DW-1 that it emerged that the appellant's appointing authority was the Director, and that respondent No.1, was not authorized to act in this capacity. The trial Court has relied heavily on this testimony from DW1 while neglecting to consider that such evidence exceeded the scope of the parties' pleadings. Moreover, Exhibit DW1/B indicates that an Under Secretary had authorized respondent No.1/defendant no. 2 to initiate dismissal proceedings against the appellant following a letter 05.08.1998. Therefore, respondent no.1/defendant no. 2 possessed the necessary authority to act in this matter. Additionally, the appellant failed to provide evidence of his appointment order to substantiate his claim that he was

appointed by the Director rather than by respondent No.1/defendant no. 2. The trial Court also made a grave error by directing the defendants to reconsider the matter after the appellant had already passed away.

7. In view of afore-said discussions, this Court does not find any merit in the present appeal, hence, the same is dismissed being devoid of any merit with no order as to costs.

8. Dismissed.

(SANDEEP MOUDGIL)
JUDGE

05.12.2024
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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No