

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

(216)

**CM-14462-C-2019 and
CM-14463-C-2019 in/and
RSA-5095-2019
Date of Decision : March 06, 2024**

State of Haryana and others

.. Appellants

Versus

Sandeep Kumar

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Vibha Tewari, Assistant Advocate General, Haryana,
for the appellant-State.

Mr. Rakesh Nagpal, Advocate, for the respondent.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-14462-C-2019

Present application has been filed for condonation of delay of 82 days in filing the present appeal.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the application is allowed. Delay of 82 days in filing the appeal is condoned.

RSA-5095-2019

1. Present appeal has been filed against the judgment and decree passed by the lower Appellate Court dated 01.05.2019 by which, the judgment and decree of the trial Court dated 30.08.2018 has been set aside and the suit filed by the respondent-plaintiff has been allowed.
2. Certain facts may be noticed for the correct appreciation of the issue in hand.

3. The disciplinary proceedings were initiated against the respondent-plaintiff and an order was passed on 05.02.2014 holding the respondent-plaintiff guilty of certain allegations of not sending the wheat to the FCI in a time bound manner due to which, the Department had suffered loss which was sought to be recovered by imposing the recovery of Rs.15,830.36/- from the respondent-plaintiff.

4. Against the said order, the respondent-plaintiff filed an appeal and in the appeal, the said recovery was further enhanced by the appellate authority vide order dated 27.03.2017 from Rs.15,830.36/- to Rs.27,973/-. Feeling aggrieved against the said orders, the respondent-plaintiff filed a civil suit challenging the order dated 05.02.2014 as well as the order dated 27.03.2017. The trial Court dismissed the suit filed by the respondent-plaintiff vide judgment and decree dated 30.08.2018 but the lower Appellate Court accepted the appeal of the respondent-plaintiff vide order dated 01.05.2019 and set aside the orders challenged in the civil suit hence, the present regular second appeal.

5. Learned counsel for the appellants argues that the punishment was imposed on 05.02.2014 by the punishing authority directing the recovery of Rs.15,830.36/-, which was enhanced by the appellate authority to Rs.27,973/- vide order dated 27.03.2017. Learned counsel for the appellants submits that while setting aside both the orders, no cogent reason has been given by the lower Appellate Court so as to disturb the findings recorded by the trial Court vide judgment dated 30.08.2018 hence, the judgment and decree of the lower Appellate Court dated 01.05.2019 is liable to be set aside and judgment and decree of the trial Court dated 30.08.2018 is liable to be restored.

6. Learned counsel for the respondent-plaintiff argues that the punishment was imposed on him without there being any application of mind and without actually going through the reasons/defence submitted by the

respondent-plaintiff before the punishing authority and further that enhancement of the recovery from Rs.15,830.36/- to Rs.27,973/- by the appellate authority is without giving any show cause notice hence, the orders passed by the lower Appellate Court is perfectly valid and legal and is liable to be maintained.

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

8. It is a settled principle of law that the Civil Court while examining the conduct of the disciplinary proceedings, has only jurisdiction to ensure that the procedure envisaged under law for conducting the disciplinary proceedings is followed. The Courts cannot assume the role of an appellate authority so as to decide whether, the punishment imposed by the punishing authority is valid or not. It is only in the case where there is no evidence brought on record during the disciplinary proceedings, the Court will have the jurisdiction to examine the legality of punishment order on the ground whether the said case is of “no evidence”.

9. In the present case, in the impugned orders, the due reasons have been given while imposing the punishment of recovery of Rs.15,830.36/- that the respondent-plaintiff did not sent the material in time to the FCI due to which, the Department had suffered loss, which loss was sought to be recovered from the respondent-plaintiff while imposing the punishment vide order dated 05.02.2014. The said reason given in the punishment order, could not have been gone into by the lower Appellate Court so as to set aside the said order by stating that the reasons given by the punishing authority are not sufficient to impose the punishment on the respondent-plaintiff. The lower Appellate Court acted as an appellate authority over the punishing authority, which was not permissible. Hence, setting aside of the order dated 05.02.2014

by the lower Appellate Court is perverse to the evidence, which has come on record and hence, the same cannot be sustained.

10. With regard to the setting aside of the order dated 27.03.2017, the same is liable to be upheld as, the amount of recovery from the respondent-plaintiff was enhanced from Rs.15,830.36/- to Rs.27,973/- by the appellate authority and that too on an appeal preferred by the respondent-plaintiff. In case the appellate authority intended to enhance the recovery, a show cause notice was required to be given to the respondent-plaintiff, which was never given. In the absence of any show cause notice, the appellate authority was not having jurisdiction to enhance the amount from Rs.15,830.36/- to Rs.27,973/- hence, the setting aside of the order dated 27.03.2017 by the lower Appellate Court is liable to be upheld. No rule which permits the appellate authority to enhance the punishment has been shown to this Court.

11. Keeping in view the above, the appeal filed by the appellants is partly allowed. The judgment and decree of the lower Appellate Court is modified to the extent that the findings recorded qua the order dated 05.02.2014, the same are set aside being perverse and the order dated 05.02.2014 is upheld but the setting aside of the order dated 27.03.2017 by the lower Appellate Court, enhancing the recovery from Rs.15,830.36/- to Rs.27,973/-, is upheld. The suit filed by the respondent-plaintiff is partly allowed only qua the punishment enhanced vide order dated 27.03.2017.

12. Any civil miscellaneous application pending if any, also stands disposed of.

March 06, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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