
(2015) 07 P&H CK 0382

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 850 of 1991 (OandM)

Gurcharan Singh

APPELLANT

Vs

Punjab State

RESPONDENT

Date of Decision : 22-07-2015

Acts Referred:

Citation : (2015) 07 P&H CK 0382

Hon'ble Judges : Ritu Bahri, J.

Bench : Single Bench

Advocate : Prateek Mahajan, Advocate, for the Appellant; Vaibhav Sharma, DAG, for the Respondent

Final Decision : Allowed

Judgement

Ritu Bahri, J.—Plaintiff-appellant has come up in regular second appeal against the judgment of reversal dated 05.02.1991 passed by the Additional District Judge, Amritsar, whereby appeal filed by the State of Punjab-defendant against the judgment and decree dated 01.10.1988 passed by the Sub Judge, Ist Class, Amritsar, has been accepted and suit of the plaintiff for declaration has been dismissed.

2. Gurcharan Singh-plaintiff (appellant herein) was working as Assistant Fitter in the workshop of Punjab Roadways, Patti. An enquiry was instituted against him on the allegations that he had got issued some spare parts, but had not used the same in those buses for which the same were got issued. On 22.10.1984, a charge sheet was issued to him alleging that on 24.08.1984, certain spare parts were got issued by him for repairing he brakes of bus No. 2541, however, he did not fit those parts in the bus, rather wanted to steal the same. When on the basis of information, the Traffic Manager was to make checking, the plaintiff, on getting information from the Chowkidar, restored those parts in the store and same were taken into possession. Reply to the charge sheet was filed by him. The enquiry officer held that neither the spare parts were found from the possession of the plaintiff nor he was found carrying the same. As a result of

this, he was exonerated of the charges that he had intended to steal those spare parts. However, it was observed that the plaintiff had been negligent in performance of his duty and returning the spare parts which could not be used. Therefore, the enquiry officer had recorded the finding on 20.08.1985 that the delinquent employee was negligent. The punishing authority had agreed with the finding of the enquiry officer. Thereafter, a show cause notice dated 03.04.1986 was issued, to which, the delinquent employee (plaintiff) filed his reply. After considering the reply and giving personal hearing, the General Manager, Punjab Roadways, Patti, vide order dated 06.05.1986 imposed the penalty of stoppage of one increment of the plaintiff-appellant with cumulative effect and also forfeited the arrears of pay during his suspension period. The plaintiff challenged the aforesaid order by filing a suit.

3. Upon notice, defendant-respondent filed written statement and controverted the allegations made by the plaintiff-appellant in his plaint. It was stated that a report against the plaintiff was made by the Resident Senior Auditor, Accounts Officer and Traffic Manager regarding theft of some parts, which he had taken away from the store of the Punjab Roadways on the pretext that the same were to be fitted in bus No. 2541. It was further stated that all the procedures were adopted and the enquiry was conducted according to the rules.

4. From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the order dated 06.05.1986 passed by the General Manager, Punjab Roadways, Patti whereby the annual increment of the plaintiff has been stopped with cumulative effect is arbitrary, mala fide and is void? OPP

2. Whether this Court has got territorial jurisdiction to entertain the instant suit? OPP

3. Relief.

5. Trial Court, after going through the evidence and the enquiry report, came to the conclusion that the plaintiff had been exonerated of the allegations of the intention to commit theft. It was further observed that the plaintiff was negligent as he should have got issued the parts of the bus from the store only if, the same were required to be replaced and had become damaged or useless. As per Rule 9.2 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970, the punishing authority, if it disagrees with the findings of the enquiry officer on any article of charge, shall record its reasons for such disagreement. The trial Court held that the present was not a case where the punishing authority had disagreed with the findings of the Enquiry Officer. Rather, the punishing authority had concurred with the findings of the Enquiry Officer to take further action against the delinquent official. As per Rule 8.23 (explanation), if in the opinion of the inquiring authority, the proceedings of the inquiry establish any article of charge different from the original articles of the charge, it may record its findings on such article of charge, unless the Government employee had either admitted

the facts or had a reasonable opportunity of defending himself against such article of charge. Charge against the plaintiff was that he had intention to commit theft of the parts of the bus, but efforts made by him were foiled by the information, which was received in time. There was no charge against the plaintiff that he was negligent in getting the parts issued without satisfying himself that those parts which were to be replaced, had become useless. In the enquiry, the intention to commit theft was not found. However, the charge of negligence was different from the charge which had been levelled against the plaintiff. For the second charge of negligence, opportunity to defend himself should have been granted to the employee. Hence, issuing of show cause notice, imposing penalty of stoppage of one increment and forfeiture of salary for the suspension period, were against the mandatory provisions of Rule 8.23 (explanation). Ultimately, the suit was decreed and the impugned order was set aside.

6. On appeal, the lower appellate Court reversed the finding of the trial Court and dismissed the suit of the plaintiff-appellant. Reference has been made to the judgment given in Punjab State Electricity Board Vs. Gurpal Singh Bhanwra, 1989 (2) Recent Service Judgments 486, wherein it was held that once punishing authority had agreed with the findings of Enquiry Officer, it was only required to issue a show cause notice. It is only in the case of disagreement with the Enquiry Officer that a detailed show cause notice giving reasons with respect to the enquiry report of the Enquiry Officer is to be given to the employee. The report of the Enquiry Officer had been considered by the punishing authority in conformity with Rule 8.23. With these observations, the appeal was accepted and the suit of the plaintiff was dismissed.

7. Learned counsel for the plaintiff-appellant has argued that the appellant had been charge sheeted for an intention to commit theft and once the said charge was not found substantiated by the Enquiry Officer, the plaintiff-appellant had a right to prove his defence against the charge of negligence. He has referred to the judgments passed in Union of India (UOI) and Others Vs. J. Ahmed, , Union of India and others Vs. Mohd. Ramzan Khan, , Gurdeep Singh Vs. The Punjab State and Another, , Virendra Prosad Vs. Union of India (UOI) and Others, , Housing Board, Haryana Vs. Telu Ram Mehla and others, 2011 (2) SCT 480, to contends that once the Enquiry Officer has found him not guilty of the main charge of intention to commit theft, then on the allegation of negligent, he was required to be given a detailed notice and opportunity to defend himself. He has further argued that in the report of the Enquiry Officer, spare parts had been recovered from the store. Those spare parts had not been found from the custody of the appellant and that is why, the intention to commit theft was not made out. As far as negligence is concerned, since the recovery of spare parts was effected from the store itself, it would not amount to misconduct so as to attract the punishment of stoppage of one increment with cumulative effect and forfeiture of salary for the suspension period.

8. Keeping in view the peculiar facts and circumstances of the case, noticed hereinabove, following substantial question of law arises for consideration of this Court:-

"Whether without following the mandatory provisions of Rule 8.23 (explanation), the order dated 05.02.1991 is sustainable".

9. In the facts of the present case, as per report of the Enquiry Officer charge of theft levelled against Gurcharan Singh (plaintiff) could not be established, but his negligence stood established because as per statements of the prosecution witnesses, nothing was recovered from him and nobody had seen him taking away the goods. It was possible that Gurcharan Singh might have been depositing the goods in the store and due to Santokh Singh's urgency, he left the goods with store boy and told him to deposit the same as goods were recovered from the store boy. Gurcharan Singh-plaintiff was found to be negligent as he should have got issued new goods only when old goods became useless or those were not in proper working condition. The punishing authority accepted the report of the enquiry officer, but vide impugned order dated 06.05.1986 stopped his annual increment with cumulative effect and forfeited his arrears of pay. However, the punishing authority erred in not following the procedure prescribed in Punjab Civil Services (Punishment & Appeal) Rules, 1970. According to Rule 8.23 (explanation), if in the opinion of the inquiring authority, the proceedings of the inquiry establish any article of charge different from the original articles of the charge, it may record its findings on such article of charge. The findings shall not be recorded unless the Government employee has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such articles of charge.

10. A perusal of the above said rule shows that if the Enquiry Officer does not find the charge framed against the delinquent employee as proved, and if the original charge is not proved against an employee on enquiry and any other charge stands proved, for which no information was given to the employee, then no finding can be recorded against a charge which was not made against him, unless he has been given an opportunity to defend himself, which in the present case has not been done.

11. In the present case, charge against the plaintiff-appellant was of theft. However, as per report of the Enquiry Officer, which was accepted by the punishing authority, the plaintiff-appellant was found to be negligent in performing his duty. As per Rule 8.23, the plaintiff-appellant was required to be given a notice of charge of negligence enabling him to defend himself. The language of the Rule is mandatory and without applying the above said Rule, punishment on the charge of negligence could not be imposed. The Hon'ble Supreme Court in Union of India (UOI) and Others Vs. J. Ahmed, , examined a case of delinquent official, who was to be retained in service pending completion of an enquiry in which the charge was of misconduct. It was held that if, an employee was facing a charge of negligence, Rule 16.2 would not be applicable.

Hence, he would not be retained in service beyond the date of his retirement and in the absence of any charge of misconduct, his retention in service would be invalidated. It was further observed as under:-

"11. Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that that conduct which is blameworthy for the Government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct [see *Pierce v. Foster*, 17 QB 536]. A disregard of an essential condition of the contract of service may constitute misconduct [see *Laws v. London Chronicle (Indicator Newspapers)* , (1959) 1 W.L.R. 698]. This view was adopted in *Shardaprasad Onkarprasad Tiwari and Others Vs. Central Railway (Divisional Superintendent, Nagpur)*, , and *Satubha K. Vaghela Vs. Moosa Raza, The District Development Officer*, . The High Court has noted the definition of misconduct in *Stroud's Judicial Dictionary* which runs as under:

"Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct".

In industrial jurisprudence amongst others, habitual or gross negligence constitute misconduct but in *Management Utkal Machinery Ltd. Vs. Workmen, Miss Shanti Patnaik*, , in the absence of standing orders governing the employee's undertaking, unsatisfactory work was treated as misconduct in the context of discharge being assailed as punitive. In *Govinda Menon Vs. Union of India (UOI)*, , the manner in which a member of the service discharged his quasi judicial function disclosing abuse of power was treated as constituting misconduct for initiating disciplinary proceedings. A single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences the same may amount to misconduct as was held by this Court in *P.H. Kalyani Vs. Air France Calcutta*, , wherein it was found that the two mistakes committed by the employee while checking the load-sheets and balance charts would involve possible accident to the aircraft and possible loss of human life and, therefore, the negligence in work in the context of serious consequences was treated as misconduct..... "

12. A Co-ordinate Bench of this Court in *Gurdeep Singh's case (supra)*, had examined a case where the employee had been charge-sheeted for misappropriation of Government amount and he had been punished for negligence. While setting aside the said order, it was observed as under:-

"6. Learned counsel for the appellant has vehemently argued that admittedly the plaintiff-appellant was charged for having collected an amount of Rs. 9.60 P. from 12 passengers, but did not issue tickets and mis-appropriated the said amount to his own use and that a departmental enquiry was held into the said charge. This charge was not established but the Enquiry Officer returned a finding of

negligence and the services of the appellant were terminated on the basis of the said report. It could not have been done for the reasons:-

(i) That the plaintiff-appellant was never charge sheeted for negligence and inquiry was not held into the said charge. He had no opportunity to cross-examine the witnesses of the department on this point nor he could lead evidence in defence;

(ii) that negligence in itself is not a misconduct."

13. The Calcutta High Court in Virendra Prosad's case (supra), while interpreting the meaning of words "misconduct" and "negligence" has observed as under:-

"10. The word "Misconduct" is of very wide amplitude and meaning. "Misconduct" is common parlance means bad conduct and some sort of an ill motive or bad motive is an essential ingredient in imputing misconduct on to an individual. In my view, mere error of judgment or a mere negligent way of dealing in the matter cannot by itself be termed to be misconduct. It must be coupled with such other act or acts by which motive would be apparent either expressly or even be inferred by implication. Habitual acts of negligence, however, can be termed to be a misconduct and gross negligence also falls within the same category."

14. Hence, as per Rule 8.23 (explanation) and the aforesaid judgments, punishing authority was required to give a notice to the delinquent official to give his defence with regard to the charge of negligence. The authorities concerned, without doing so, have imposed the penalty of stoppage of one increment with cumulative effect and forfeiture of salary for the suspension period, which is against the mandatory provisions of Rule 8.23 (explanation) and hence, the impugned order is liable to be set aside.

15. Accordingly, the impugned judgment passed by the lower appellate Court is set aside and that of the trial Court is upheld. Consequently, the suit filed by the plaintiff-appellant is decreed.

16. Allowed accordingly.