
(1998) 03 P&H CK 0059

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2315 of 1996 (O and M)

Pepsu Road Transport Corporation and Another

APPELLANT

Vs

Shri Gopal Krishan

RESPONDENT

Date of Decision : 12-03-1998

Acts Referred:

Pepsu Road Transport Corporation (Conditions of Appointment and Service)
Regulations, 1981 — Regulation 20, 22

Citation : (1998) 119 PLR 48

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : K.S. Waraich, for the Appellant; Ravinder Chopra, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—This Regular Second Appeal is directed against the judgment and decree passed by the learned 1st Appellate Court dated 6.4.1996. The facts giving rise to the appeal fall in a very small compass are as under:-

2. Plaintiff Gopal Krishan respondent herein who was working as conductor with Pepsu Road Transport Corporation had filed a suit seeking declaration to the effect that the order dated 26.3.1992 passed by the General Manager was illegal, void, not binding upon the plaintiff. Vide this order respondent No. 2 in disciplinary proceedings had passed an order of punishment directing stoppage of four annual increments with cumulative effect and also that the plaintiff would not be entitled to receive any salary in excess of subsistence allowance already paid during suspension period. Consequently, the plaintiff prayed for payment of all benefits with interest at the rate of 12% per annum. The suit was contested by the defendants-appellants herein. The plea with regard to non-maintainability of the suit was taken. On merits, it was stated that the plaintiff was held guilty on the basis of departmental enquiry conducted in furtherance to the charge-sheet dated 16.3.1992. It was further averred that the plaintiff in his evidence before the trial Court has also admitted his guilt and as such, he is estopped

from filing the suit. On the aforesaid pleadings the following issues were framed by the learned trial Court :-

1. Whether the plaintiff is entitled to declaration as prayed for? OPP.
2. Whether the order dated 26.3.1992 passed by defendant No. 2 is illegal, null and void? OPP.
3. Whether the plaintiff has got no cause of action or locus-standi to file the present suit? OPD.

4. Relief.

3. Having granted opportunity to the parties to lead evidence, the learned trial Court decided all the issues against the plaintiff and dismissed the suit vide judgment and decree dated 12.8.1994. Against this judgment the plaintiff: had preferred an appeal before the District Judge, Bhatinda. Learned 1st Appellate Court accepted the appeal, set aside the judgment and decree of the trial Court and quashed the order of punishment vide judgment and decree of the trial Court and quashed the order of punishment vide judgment and decree dated 6.4.1996. Aggrieved from the judgment and decree of the learned 1st Appellate Court, the present appeal has been preferred by the Pepsu Road Transport Corporation.

4. The basic contention that was raised before the learned trial Court was that the impugned order of penalty was hit by doctrine of double jeopardy. According to the plaintiff it has imposed double punishment; one by stoppage of four increments with, cumulative effect and other by denying full pay and salary for the period of suspension. This contention was rejected by the learned trial Court while relying upon various judgments. Learned Ist Appellate Court noticed Regulation 20 of the Pepsu Road Transport Corporation (Conditions of Appointment and Service Regulation) 1981 and proviso of Regulation 22 and concluded that the case was one which resulted in double jeopardy to the plaintiff.

5. As is clear from the above discussion, the only bone of contention between the parties had been with regard to imposition of double punishment vide impugned order and not the merits of the case in regard to conduct of enquiry or application of mind by competent authority. On these promises and rightly so, the learned counsel for the appellants has only urged that the finding of the learned 1st Appellate Court that the impugned order was suffering from legal infirmity of causing double jeopardy to the respondent and therefore, was liable to set aside, is contrary to the settled principles of law.

6. There is no doubt that Regulation 20 provides for two penalties which can be imposed upon the employee of the Corporation. Withholding of increment is stated to be a penalty under Regulation 20(iii) and withholding of wages for suspension period is stated to be another penalty under (v) of the same Regulation. It is clear that the plaintiff remained under suspension from

14.2.1992 to 7.4.1992. His conduct of the respondent herein had been proved during departmental proceedings and in that regard there has not been any serious dispute even before the learned Courts below. Learned counsel appearing for the respondent relied upon the judgment of this Court in the case of Narinder Nath and Anr. v. The State of Punjab 1991(3) RSJ 630 and judgment of Central Administrative Tribunal in the case of A. Talukdar v. Union of India and Ors. 1936(4) SLR 148 in support of his contention that punishments imposed tantamount to double jeopardy and cannot be approved. Reliance was also placed on the case of Shiv Kumar Sharma v. Haryana State Electricity Board Chandigarh and Ors. 1988(3) SLR 524. In the case of Shiv Kumar Sharma, (supra) Hon"ble Apex Court has held that stoppage of one increment was one punishment and as penalty effecting the seniority of the same officer by an administrative action de-hors departmental proceedings, would attract the principle of double jeopardy. However, in a recent judgment Hon"ble Supreme Court in the case of conductor of the same Corporation, though of different District explicitly dealt with the similar matter and came to the conclusion that imposition of such punishment, as passed in the impugned order, would not attract the doctrine of double jeopardy. In the case of State of Punjab and Ors. v. Surjit Singh, Conductor 996(2) SLR 722, Hon"ble Supreme Court held as under :-

"The respondent was a conductor. A charge-sheet was issued imputing misconduct in not issuing the tickets. The Enquiry Officer, though had not recorded finding of proof of misconduct, the disciplinary authority did not agree with the Enquiry Officer's report and has given reasons in support of the disagreement, recorded a finding as to how the charges have been proved by giving opportunity to the respondent to show why the punishment of stoppage of increments and also withholding payments of arrears of salary as punishment. The respondent has submitted his explanation. On consideration thereof, the disciplinary authority imposed stoppage of three annual increment with cumulative effect and also withheld payment of arrears of salary for the suspension period. The trial Court dismissed the suit. On appeal, it was reversed and the suit was decreed. In S.A. No. 208/93 dated November 25, 1993, the High Court of Punjab and Haryana confirmed the appellate decree.

The appellate decree envisages confirmation of stoppage of three increments with cumulative effect but interfered with the order of withholding payment of arrears of salary as a measure of punishment. The appellate Court held that the disciplinary authority had no power to impose the said punishment.

We have heard counsel on both sides. It is an admitted position that the charges have been proved, it is settled law that the disciplinary authority is empowered to impose appropriate punishment. The rule indicates with-holding of payment of arrears of salary as one of the modes of punishment. Under these circumstances, the disciplinary Authority had rightly exercised its power. The civil Court had no jurisdiction to substitute the punishment imposed by the disciplinary authority. The civil court is not a court of appeal in civil suits."

7. In view of the judgment of Hon"ble supreme Court in the case of Surjit Singh (supra) hardly any controversy survives for adjudication. The questions arising on the basis of the same regulation cannot be said to be rest integra any longer. In view of the judgment of Highest Court of the Land, this Court is bound to accept this appeal and set aside the judgment and decree passed by the learned 1st Appellate Court and restore the judgment and decree passed by the learned trial Court. Consequently, this appeal is allowed. Judgment and decree of the learned 1st Appellate Court is set aside and the suit of the plaintiff shall stand dismissed without any order is to costs.