
(2009) 12 P&H CK 0128
In the Punjab And Haryana At Chandigarh

Pepsu Road Transport Corporation

APPELLANT

Vs

Sewa Singh and Another

RESPONDENT

Date of Decision : 01-12-2009

Acts Referred:

Citation : (2010) 158 PLR 134

Hon'ble Judges : Sham Sunder, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sham Sunder, J.—This appeal, is directed, against the judgment and decree, dated 24.04.93, rendered by the Court of Additional District Judge, Patiala, vide which, it accepted the appeal, against the judgment and decree, dated 25.03.91, rendered by the Court of Senior Sub Judge, Patiala, and, decreed the suit of the plaintiff.

2. The facts, in brief, are that, Sewa Singh, plaintiff, was on duty, on 31.10.86, as Conductor, in bus No. PBP-3503, which was plying, from Patiala to Guhla Cheeka. It was stated that, when the bus, was on its way, it was stopped, at Cheeka, and checked by the checking staff consisting of four officials. The checking staff took over the way bill, from the plaintiff, and checked the bus thoroughly, but, no passenger, was found, without ticket. However, after verification, the checking staff concluded that the entry, in the way bill, was incorrect. In spite of repeated requests, the raiding party, did not disclose, as to why the entry was incorrect. On 03.11.86, the checking staff, made a written report, that the plaintiff, did not issue tickets, to at least 14 passengers, and they were only issued the same, when the bus, was stopped, by it. Thus, the plaintiff, had embezzled a sum of Rs. 20.30/-. Charge-sheet was served upon the plaintiff, vide memo dated 05.02.88, on the basis of the allegations, that he had embezzled Rs. 20.30/-, as fare, collected from the passengers; that he misbehaved with the checking staff; and that he had violated the discipline. Reply to the charge-sheet, was submitted. An Inquiry Officer, was appointed, and

the witnesses were examined. The Inquiry Officer, gave the report, that the plaintiff, had embezzled Rs. 7.25/- only, instead of Rs. 20.30/-. After the receipt of the inquiry report, the defendants, issued show cause notice, to the plaintiff, vide memo dated 06.04.89, proposing the penalty of removal from service. It was further stated that reply to the show cause notice, was submitted by the plaintiff. Ultimately, he was removed from service, vide order dated 11.07.89. Feeling dissatisfied, the plaintiff, preferred an appeal, before the Chairman, Pepsu Road Transport Corporation, but the same, was dismissed, vide order dated 15.11.89. It was further stated that the orders aforesaid removing the plaintiff, from service, were illegal, null and void, and, against the principles of natural justice. The defendants, were many a time, asked to treat the orders impugned, as illegal, null and void, but to no avail. Ultimately, a suit for declaration, was filed.

3. The defendants, put in appearance, and filed written statement, wherein, they took up various objections, and contested the suit. It was pleaded that the suit, was not maintainable. It was stated that the plaintiff, had embezzled Rs. 20.30/-, as a result whereof, he was charge-sheeted, and after considering his reply thereto, an Inquiry Officer, was appointed. It was further stated that after the receipt of the Inquiry report, show cause notice, was served upon the plaintiff, and, after affording full opportunity of being heard, the order impugned, was passed, removing him, from service. It was further stated that the orders impugned are legal and valid. The remaining averments, were denied, being wrong.

4. On the pleadings of the parties, the following issues, were struck:

(i) Whether the order dated 11.07.89 removing the plaintiff from service is illegal, null and void? OPP

(ii) Whether the suit is not maintainable? OPD

(iii) Whether the jurisdiction of the Civil Court to entertain the suit is barred? OPD

(iv) Whether the suit is not justiciable in Civil Court? OPD

(v) Relief.

5. After hearing the Counsel for the parties, and, on going through the evidence, on record, the trial Court, dismissed the suit of the plaintiff.

6. Feeling aggrieved, an appeal, was preferred by the plaintiff/respondent, which was accepted, by the Court of Additional District Judge, Patiala, vide judgment and decree dated 24.04.93.

7. Feeling dissatisfied, the instant Regular Second Appeal, has been filed by the defendant/appellant.

8. I have heard the Counsel for the parties, and have gone through the evidence, and record of the case, carefully.

9. The following substantial question of law arises, in this appeal, for the determination of this Court:

Whether the first Appellate Court, recorded perverse findings, on account of misreading and misappreciation of evidence, and law, on the point, that the inquiry report, was based on, no evidence, and, as such, the orders impugned, passed, on the strength thereof, were illegal, null and void, and liable to be set aside?

10. The Counsel for the appellant, submitted that charge-sheet, was served upon the plaintiff, who was Conductor of the bus, for embezzlement of an amount of Rs. 20.30/-, as the same, was the fare, which he collected, from the passengers, but did not issue tickets to them. He further submitted that reply of the plaintiff, to the chargesheet, was obtained. He further submitted that after his reply, was considered, to be not satisfactory, a full-fledged departmental inquiry, was conducted, against him, wherein, he was found guilty of the. charges partly, by the Inquiry Officer. He further submitted that, thereafter, show cause notice, alongwith a copy of the inquiry report, was served upon the plaintiff/respondent, and after giving him hearing, the order, was passed by the competent authority, on 11.07.89, dispensing with his services. He further submitted that the plaintiff, filed an appeal, and after giving him hearing, the same, was dismissed, vide order dated 15.11.89. He further submitted that the plaintiff, gave a writing D1, admitting his guilt. He further submitted that one of the Inspectors, who was a member of the checking party, was examined, and he supported the case of the department. He further submitted that the first Appellate Court, was, thus, wrong in holding, that the inquiry report, was not based on any evidence. He further submitted that it was not necessary, to examine the passengers. He further submitted that the Civil Court, cannot go into the sufficiency or insufficiency of the evidence, led before the Inquiry Officer. He further submitted that, if some evidence, is led, before the Inquiry Officer, and that is found to be sufficient, to hold the delinquent guilty of the charges, levelled against him, then it could not be said that there was no evidence. He further submitted that the first Appellate Court, was wrong, in setting aside the orders, referred to above. He further submitted that the judgment and decree of the first Appellate Court, being illegal, were liable to be set aside.

11. On the other hand, the Counsel for the respondent, submitted that the first Appellate Court, was right, in coming to the conclusion that, in the absence of examination of the passengers of the bus, to whom, the tickets, were not allegedly issued, by the respondent, after charging the fare, it could be very well said, that there was no evidence, against the delinquent, to hold him guilty. She further submitted that, even the respondent, did not admit his guilt, vide D1. She further submitted that the cash with the Conductor, at the time of checking, was not checked. She further submitted that, under these circumstances, the judgment and decree of the first Appellate Court, being legal and valid, are liable to be upheld.

12. After giving my thoughtful consideration, to the rival contentions, advanced by the Counsel for the parties, in my considered opinion, the appeal is liable to be accepted, for the reasons to be recorded, hereinafter. It is, no doubt, true that this Court, in the Regular Second Appeal, cannot interfere with the findings of fact, recorded by the first Appellate Court, until and unless, it comes to the conclusion, that the same, are the result of misreading or misappreciation of evidence, and law, on the point. In the instant case, as stated above, charge-sheet, was served upon the plaintiff/respondent, that he embezzled the government money. He filed reply, which was considered, to be not satisfactory. An Inquiry Officer, was appointed, who conducted the inquiry. During the course of inquiry, the department examined the witnesses, and full opportunity, was granted, to the plaintiff/respondent, to cross-examine the witnesses. The Inquiry Officer, held him guilty. Ultimately, show cause notice, was served upon him, and copy of the inquiry report, was also furnished, to him. After hearing him, the competent authority, passed the order, dismissing him from service. He also filed an appeal, before the Chairman, which was dismissed. It may be stated here, that the Civil Court, cannot go into the sufficiency or insufficiency of evidence recorded, during the course of departmental inquiry. If some evidence, is led, during the course of inquiry, by the department, and that is found to be sufficient, by the Inquiry Officer, to hold the delinquent guilty, the same, can be acted upon. There was no necessity of checking the cash with the respondent. There was also no necessity of recording the statements of the passengers. The statement of one of the Inspectors, who was a member of the team, which checked the bus, and found, that the plaintiff/respondent, had not issued the tickets, to some of the passengers, after obtaining a sum of Rs. 20.30/-, as fare, to them, could be said to be sufficient, to hold the respondent guilty. The first Appellate Court, placed reliance, on Punjab State and Anr. v. Harnam Singh 1988 (1) SLR 98, in coming to the conclusion that, in the absence of recording the statements of the passengers, the charge of non-issuance of tickets, after obtaining the fare and committing embezzlement, in respect thereof, did not Stand proved. In The State of Haryana and Ors. v. Shri Ram Chander 1976 (2) SLR 690 (P&H), it was held, by a full Bench of this Court, that it is not necessary, that the statements of the passengers, should be recorded. It was further held, that even, in the absence of the statements of the passengers, the delinquent, could be held guilty of embezzlement, on the basis of other evidence produced. Keeping in view the principle of law, laid down, in The State of Haryana and Ors." case (supra), decided by a full Bench of this Court, the principle of law, laid down, to the contrary, in Punjab State and Anr. v. Harnam Singh's case (supra), shall not hold the field. The first Appellate Court was wrong in holding that the enquiry report was not based on any evidence. It was also wrong in holding that in the absence of examination of passengers, the delinquent could not be held guilty of embezzlement. The first Appellate Court, was, thus, wrong in holding that the orders impugned were illegal.

13. The findings of fact, recorded by the first Appellate Court, on the aforesaid

points, being not based, on the correct reading and due appreciation of evidence, and law, on the point, suffer from illegality and perversity, warranting the interference of this Court. The judgment and decree of the first Appellate Court, are liable to be set aside.

14. The substantial question of law, depicted above, is answered, in favour of the appellant.

15. For the reasons recorded above, the instant Regular Second Appeal, is accepted with costs. The judgment and decree of the first Appellate Court, are set aside. The judgment and decree of the trial Court, are restored. The suit of the plaintiff, shall stand dismissed, in toto.