

(2012) 06 P&H CK 0005

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2403 of 1997

Pepsu Road Transport Corporation, Patiala and Another

APPELLANT

Vs

Jagdish Kumar

RESPONDENT

Date of Decision : 01-06-2012

Acts Referred:

Citation : (2012) 06 P&H CK 0005

Hon'ble Judges : Paramjeet Singh, J

Bench : Single Bench

Advocate : Harsh Aggarwal, for the Appellant; Vikas Singh, for the Respondent

Final Decision : Allowed

Judgement

Paramjeet Singh, J.—Present regular second appeal has been filed by the appellants-defendants against the judgment and decree dated 22.03.1997 passed by learned Additional District Judge, Patiala, whereby judgment and decree dated 12.11.1994 passed by the learned Trial Court has been set aside. Brief facts of the case are that the plaintiff-respondent filed a suit for declaration stating that he was working as Assistant Store Keeper in the office of the Pepsu Road Transport Corporation, Patiala in Patiala-I Depot. He received suspension order dated 23.02.1987, followed by charge sheet and statement of allegations dated 09.12.1987. He was directed to submit his reply. Before submitting his reply, departmental inquiry was initiated against him. Sh. Nand Lal, Legal Advisor was appointed as Enquiry Officer, who submitted his enquiry report on 23.09.1988. On the basis of that report, show cause notice dated 16.02.1989 was issued to the plaintiff-respondent wherein a proposal of stoppage of four increments, with cumulative effect was made. The plaintiff-respondent submitted his detailed reply to the show cause notice. But ignoring all the relevant facts, defendant No. 2 passed the impugned order. The defendants appeared and filed written statement and denied the averments made in the plaint. The learned Trial Court vide judgment and decree dated 12.11.1994, dismissed the suit and in appeal, the said judgment has been reversed by the learned Additional District

Judge, Patiala vide judgment and decree dated 22.03.1997. Hence, this regular second appeal.

3. At the time of admission, no substantial question of law was framed. However, subsequently, following substantial questions of law have been placed on record:

1. Whether the findings given by the Ld. Lower Appellate Court are perverse to the evidence on record?

2. Whether the punishing authority is bound to give details reasons while punishing the delinquent?

3. Whether the show cause notice issued with proposed punishment can be said to be with predetermined mind?

4. Whether the civil court can interfere with the quantum of punishment if the enquiry proceedings are as per the principles of natural justice?

5. Whether by setting aside of punishment order the delinquent employee would be entitled to all the service benefits if the enquiry proceedings were found to be as per law?

4. I have heard the learned counsel for the appellants, as well as learned counsel for the respondent and perused the record.

5. Learned counsel for the appellants argued that the respondent has been given opportunity of hearing and the findings recorded by the Lower Appellate Court are against the evidence on record.

6. At the time of arguments, the learned counsel for the appellants has pressed only the following substantial question of law:

Whether the finding recorded by the Lower Appellate Court that no proper opportunity was granted and the punishment in the notice amounts to predetermined mind to award punishment is based on misreading of evidence and thus perverse?

Learned counsel for the appellants has referred to para No. 6 from the judgment of the Trial Court where it is specifically mentioned that "Moreover the plaintiff has admitted in his cross-examination that he took part on every date before the enquiry officer and the witnesses were examined in his presence and the full opportunities were given to him for cross-examination to the witnesses.....

7. From the above referred paragraph and admission of the plaintiff, it is clear that he was heard and afforded adequate opportunity of hearing.

8. Contention of the learned counsel for the respondent is that he was not afforded adequate opportunity and that in the show cause notice it was mentioned that appointing authority was of the pre-supposed view of imposing penalty of stoppage of four increments with cumulative effect. This is clearly pre-determination of mind of imposing punishment.

8. I have considered the contentions of the learned counsel for the parties.

9. Reliance has been placed on the decision of the Hon''ble Supreme Court in the case of Union of India and others Vs. Mohd. Ramzan Khan, by the learned counsel for the respondent to contend that the inquiry report was not furnished to the respondent for the purpose of enabling him to file a representation against the findings of the Inquiry Officer although the inquiry report was given to him for the purpose of showing cause against punishment and, therefore, the decision of the Disciplinary Authority is vitiated because the Disciplinary Authority had made up its mind to hold the respondent guilty. This contention of the learned counsel cannot be sustained in view of the clear provisions of law set out by the Supreme Court in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., The Supreme Court has held that the ratio of Ramzan Khan's case (supra) can only apply prospectively and it will not vitiate an inquiry already completed prior thereto. The inquiry in the present case was completed long prior to Ramzan Khan's case (supra), therefore, the reasoning of the Lower Appellate Court is not sustainable in law. Reference can also be made to the judgment of Hon''ble Supreme Court in Inspecting Assistant Commissioner, Bombay and Others Vs. Sharat Narayan Parab, .

10. In the present case, enquiry was properly conducted by the Investigating Officer. Respondent participated in the enquiry and had been given proper opportunity to defend himself. In view of the above, the instant appeal is allowed. Impugned judgment and decree dated 22.03.1997 passed by the learned Lower Appellate Court is set aside and judgment of the learned Trial Court is upheld.