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(2011) 11 P&H CK 0032

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 272 of 2010

Punjab State Civil Supplies Corporation Ltd. and Another — APPELLANT

Vs

Vijay Kumar — RESPONDENT

Date of Decision : 15-11-2011

Acts Referred:

Citation : (2013) 2 SLJ 31

Hon'ble Judges : A.N. Jindal, J

Bench : Single Bench

Advocate : Rakesh Gupta, for the Appellant; Gautam Thakur and Mr. R.S. Malhotra, for the Respondent

Final Decision : Allowed

Judgement

A.N. Jindal, J.—C.M. Nos. 789-C and 790-C of 2010 are allowed and the delay in filing and re-filing the appeal is condoned. The trial

Court vide judgment dated 22.12.1998 dismissed the suit of the plaintiff whereas the 1st Appellate Court reversed the judgment by modifying the

relief.

2. In his suit for declaration, the plaintiff claimed the following reliefs:--

(i) The defendants-appellants herein should not reduce his rank from the post of Inspector to Sub Inspector at the initial stage of time scale of Sub

Inspector with the provision that plaintiff will not earn any increment for the period of three years;

(ii) The period of dismissal be treated as leave of the kind due;

(iii) The order passed vide endorsement No. Amla-9(441) 93/31415-19 dated 2/4.2.1993 in respect of recovery of financial loss, be quashed

being illegal, null and void, unconstitutional and against the service rules.

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3. Briefly stated, the facts of the case are that the plaintiff had been serving as Sub Inspector at Jalandhar Center ""of Punjab State Civil Supplies

Corporation Limited (hereinafter referred to as ''PUNSUP'')- Vide order bearing endorsement No. Amla-9 (441) 901 57440-45 dated

24/25.1.1990 (Ex. PW3/B), he was dismissed from the post of Inspector (PUNSUP) on account of shortages pertaining to Centre/Depot of

PUNSUP at Dera Baba Nanak, District Gurdaspur for misappropriating wheat to the tune of 2580 quintals, 48 kgs. and 225 grams and for

illegally replacing empty bags of wheat to the tune of 6942 bags total to the tune of Rs. 3,80,913.26 after holding due inquiry. The plaintiff

preferred an appeal against the aforesaid order before the Chairman, PUNSUP on 20.2.1992. The appellate Committee after considering the

averments of the plaintiff held that the alleged shortages due were no longer shortages, accounting for the excess below norms. The Appellate

Committee did not agree with the averments of the plaintiff regarding Moong-whole, palm oil and 33 bags of set cement etc. worth Rs. 7809.21 as

well as loss caused to the PUNSUP worth Rs. 3,02654.07. However, while observing that since the major part of the shortages in wheat stocks

was that of less excess gain and P.V. Shortages, the Appellate Committee felt that the punishment of dismissal from service awarded to the plaintiff

was not commensurating with the gravity of the charges proved against him and accordingly decided as under:--

(i) the penalty awarded to Sh. Vijay Kumar be reduced from ''Dismissal'' to that of reduction in rank from Inspector to Sub Inspector at the initial

stage of the time scale of Sub Inspector with the provision that he will not earn any increment for the period of three years. The benefit of

increments would be restored thereafter. Sh. Vijay Kumar would accordingly be reinstated in service.

(ii) For the period between the date of his dismissal from service and the reinstatement of the plaintiff, leave of the kind due would be granted to

him.

(iii) The recovery of the financial loss as determined by the Managing Director would be effected @ Rs. 1000/- per month from the salary ensuring

not less than 40% carry home salary.

4. The Civil Suit No. 177 of 5.5.1988 for recovery of Rs. 3,80,913.24 and interest

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thereon was filed by the PUNSUP pertaining to shortages at

Dera Baba Nanak Center and regarding the replacement of 6942 gunny bags worth Rs. 45351.09, it has been decided against the defendants vide

judgment dated 18.1.1995 (Ex. P-1). While challenging the proceedings of inquiry, the plaintiff has challenged the orders of dismissal from service

being illegal, null and void.

5. In the written statement filed by the defendants, it was submitted that the defendants are implementing the order dated 2/4.2.1993 by effecting

recovery from the salary of the plaintiff. It was further averred that the appellate Committee held the plaintiff responsible for the shortages

pertaining to Moong, wheat, palm oil and 33 bags of set cement, which amounted to Rs. 7809.21 as per shortage order dated 23.1.1987. The

Committee has also held the plaintiff responsible for the shortage in wheat and essential commodities etc. worth Rs. 3,02,654.07. The plaintiff was

also indicted for the imputations as stated in the three charge sheets issued to him and the order dated 2/4.2.1993 has been passed by the

Appellate Committee while considering all the averments made by the plaintiff. The findings recorded by the Inquiry Officer do not suffer from any

serious infirmities, illegalities or conduct thereof. The Civil Court has no jurisdiction to sit over the judgment and findings arrived at by the Appellate

Committee, who had passed the impugned order after considering the entire record of the case. Consequently, the defendants were recovering the

default amount for which the plaintiff was held responsible by the Appellate Committee.

6. The replication was also filed. From the pleading of the parties, the trial Court framed the following issues:--

1. Whether the impugned order dated 2/4.2.93 is illegal, null and void, unconstitutional against the service rules of PUNSUP and natural justice?--

OPP

2. Whether the plaintiff is entitled to the relief of declaration and injunction as prayed for?--OPP

3. Whether the plaintiff is entitled to re-instatement as Inspector alongwith the benefit of back-wages?--OPP

4. Whether the Civil Court has got no jurisdiction to try the present suit?--OPD

5. Relief.

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7. Both the parties led their respective evidence. While returning the finding on issue No. 1, the trial Court held that there was no illegality in the

conduct of inquiry and the judgment as relied upon by the plaintiff has no relevancy to the facts of the present case; and that the case of the

defendants was beyond the limitation period. The Civil Court has exonerated the plaintiff on the ground that the audit report, which was the basis

of the civil suit, was not produced in evidence while the recovery was made on the basis of the inquiry report and while observing that the judgment

was not relevant, dismissed the suit.

8. The appellate Court without going into the findings recorded by the Inquiry Officer, while holding the inquiry as invalid, held the defendant liable

to pay the amount, which was made the basis of the charge sheets and made the following observation:--

(i) As regards, the charge for recovery of Rs. 380913.26 is concerned, since the defendants have lost in the Civil Court vide judgment dated

18.1.1995, therefore, no adverse order qua recovery of the said amount could be passed against the plaintiff.

(ii) As regards the charge sheet dated 20.6.1988 pertaining to giving Jess excess by the plaintiff from 4/85 to 1/87, the appellate Court had

decided against the defendant by holding that since in the departmental inquiry, it was held that the plaintiff was not at fault for giving less excess,

therefore, no order of dismissal dated 25.1.1990 or the modified order dated 2.2.1993 could be passed on the basis of said allegations.

(iii) As regards the charge sheet dated 5.1.1997 pertaining to the causing of loss to the tune of Rs. 56100.69 regarding wheat bags of 435 quintals

26 kgs and Rs. 7809.21 regarding moong, wheat, palm oil and 33 bags of set cement total amounting to Rs. 63909.90 stood proved, therefore,

the defendants could recover the said amount from the plaintiff.

9. The defendants, being aggrieved against the judgment dated 31.7.2008 of the appellate Court, have come up in this appeal.

10. The following substantial question of law arises for consideration:--

(i) Whether the judgment passed by the first Appellate Court is based on appreciation of evidence as led by the plaintiff-appellant.

(ii) Relief.

11. The main basis of challenge made by the respondent/plaintiff was the legality

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of the inquiry report dated 15.9.1989 and the findings returned by

the appellate Committee.

12. As per the inquiry report, three charge sheets were served upon the plaintiff Vijay Kumar. The grounds of imputation in the different charge

sheets are as under:--

Charge Sheet dated 5.1.1987

(i) The plaintiff in the year 1982-83 misappropriated 2580-48-225 quintals of wheat amounting to Rs. 3,35,561.35. He made illegal replacement

of 6942 bags of wheat worth Rs. 43,351.91 while he was posted in Dera Baba Nanak Center.

(ii) He is quite careless and untrustworthy employee.

Charge Sheet dated 23.1.1987

(i) The plaintiff embezzled a sum of Rs. 56100.69 of the Corporation.

(ii) He is careless and untrustworthy employee and is in the habit of misappropriating the property of the Corporation.

Charge Sheet dated 20.6.1986

(i) The plaintiff has caused a financial loss to the tune of Rs. 95440.26 to the corporation, which is liable to be recovered from him.

(ii) He is careless and untrustworthy employee and is in the habit of misappropriating the property of the Corporation.

13. No substantial contention has been raised by the learned Counsel for the appellant except placing reliance on the judgment of the Civil Court.

Regarding conduct of the inquiry, no major illegality or irregularity has been pointed out, which may result into serious prejudice to the plaintiff.

14. First coming to the judgment dated 18.1.1995, Ex. P-1, on the basis of which the plaintiff claimed exoneration from recovery of Rs.

3,80,913.26. It relates to shortages of wheat for the year 1981-82 worth of Rs. 3,34,388.45; worth Rs. 1172.90 for the year 1982-83 and

replacement of 6942 gunny bags worth Rs. 45351.91. The aforesaid amount had been demanded by the defendants through letter No. JA-

2/86/9298 dated 11.9.1986.

15. Now while comparing the judgment of the Civil Court with the charge sheets served upon the plaintiff, it transpires that the Civil Court had

decided against the plaintiff qua recovery of Rs. 3,35,561.35 as well as

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45,351.91 and the price of illegally replaced bags but that suit did not

relate to the recovery of Rs. 56,100.69 and Rs. 95,440.26, which the plaintiff had misappropriated and are part of the charge sheet dated

20.6.1986. As such the inquiry report qua these defaults has neither been set aside by the Appellate Authority nor by the Civil Court. Therefore, in

the absence of any defect in the conduct of inquiry, the aforesaid shortages as caused by the plaintiff has to be recovered irrespective of the fact

that the Appellate Authority had taken a lenient view by modifying the order of dismissal to that of reduction in rank. The powers of the Civil Court

to sit over the findings arrived at by the Appellate Authority in the inquiry are limited in nature. The Civil Court also has not to interfere in the

quantum of punishment as awarded by the Punishing Authority.

For the foregoing reasons, the appeal stands allowed. The order passed by the Appellate Authority dated 2/4.2.1993 is upheld and it is ordered

that the defendants-appellants would be at liberty to recover the amount of Rs. 56,100.69 and Rs. 95,440.26 from the salary of the plaintiff-

respondent, if he is in service of the Corporation and in case he has been retired from the service of the Corporation on attaining the age of

superannuation, the defendant appellants would be at liberty to recover the amount aforesaid from his pension etc.

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