
(2010) 02 P&H CK 0249

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2512 of 1985

Radha Kishan through his L.Rs.

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 08-02-2010

Acts Referred:

Citation : (2010) 02 P&H CK 0249

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Advocate : Gaurav Goel, for Anupam Gupta, for the Appellant; Deepak Jindal, DAG, for the Respondent

Final Decision : Dismissed

Judgement

Ranjit Singh, J.—Ex. Ahlmad, Radha Kishan, has filed this Regular Second Appeal to impugn the order of his removal, up-held by the Courts. This order of removal was passed as he had lost one judicial file while working in the Session Division Karnal in the Court of Judicial Magistrate Ist Class, Panipat.

2. One civil suit No. 542 of 1968 titled Mam Raj v. Ram Singh was decided by Sh. Hari Ram, Sub Judge Ist Class, Panipat on 20.11.1969. Aggrieved party filed an appeal against the same and the record of the case was summoned by the Additional District Judge, Karnal. Thereafter, the record of civil suit was despatched to the Court of Sh. S.N. Chadha on 6.3.1971 under a registered parcel, as per the dak register pertaining to the Court of Additional District Judge, Karnal. When the record of civil suit was requisitioned by the High Court to decide the R.S.A filed in this case, the same was not found available in the record room at Karnal or in the Court of Sh. S.N. Chadha at Panipat. Preliminary enquiry in this regard was conducted and the appellant was charge sheeted on 10.6.1977. Appellant denied the receipt of file of the civil suit. The District Judge did not feel satisfied with the explanation and appointed Chief Judicial Magistrate as an Enquiry Officer to hold the departmental enquiry under Punishment and Appeal Rules. After putting in appearance before the Enquiry Officer alongwith

counsel, the appellant thereafter did not appear. The statements of four witnesses were recorded and enquiry report was submitted. Thereafter, the appellant was served a show cause notice, to which again he did not file any reply and so he was dismissed from service. The service appeal filed by him before the High Court was also dismissed. Appellant had then filed the present civil suit.

3. The respondent-defendant resisted the civil suit and pleaded that the impugned order was valid, legal and passed in accordance with law after following due procedure. It is pointed out that the appellant refused to take part in the enquiry and also failed to furnish any reply to the show cause notice. Even the prayer for extension of time was granted but still he did not furnish any explanation despite repeated adjournments. Accordingly, it was prayed that the suit filed be dismissed.

4. The suit proceeded only on one issue that whether the order dated 18.4.1979 is illegal and against the natural justice as alleged in the plaint. The suit was dismissed. The appellant remained unsuccessful in his appeal and, thus, has filed the present Regular Second Appeal.

5. No substantial question of law has been formulated. The appeal has been admitted since 1985. When confronted with this situation, learned Counsel would draw attention to the grounds of appeal to urge that the substantial question of law as contained in the grounds would clearly emerge and that is that the Enquiry Officer had flouted all cannons of law and justice in ordering and conducting enquiry *ex parte*. It is also urged that the appellant was denied reasonable opportunity of defending himself before the Enquiry Officer and general principles of natural justice were violated inasmuch as he was not afforded any opportunity to cross-examine the witnesses.

6. All these submissions have been dealt with in detail by the Trial Court as well as by the first Appellate Court. The learned counsel for the appellant could not point out as to how he will substantiate the above noted question of law from the facts as these would emerge from the record. The question of denial of opportunity before the Enquiry Officer has been dealt with in detail, which the learned Counsel could not counter in any manner. In this regard, the trial Court observed as under:

7. Now the question for consideration is as to whether the plaintiff has been afforded a reasonable opportunity of being heard by the Enquiry Officer and by the Disciplinary Authority. It goes without saying that Id. Senior Sub Judge, Karnal was appointed as Enquiry Officer on 13.11.78. The witnesses and the plaintiff for the first time were summoned by the Enquiry Officer for 27.1.79 on the request of Id. Counsel for the plaintiff because he was pre-occupied as is clear from the very averments made by the plaintiff in para No. 19 of the plaint and then the case was adjourned to 3.2.79. On 3.2.79 the plaintiff through his counsel failed to appear before the Enquiry Officer and the Enquiry Officer

recorded the statements of four witnesses. The department closed his case. It was also observed by the Enquiry Officer in the order dt. 3.2.79 that the enquiry was adjourned twice on the request of respondent (present plaintiff). It is also observed that the plaintiff and his counsel were told that no further adjournment will be granted and thus ultimately exparte proceedings were initiated against the present plaintiff.

8. The submission by the learned Counsel that the appellant or his counsel should have been afforded opportunity to cross- examine the witnesses could be considered only in case something could be shown from the record that any request was made before the Enquiry Officer even on any subsequent date. Rather, the record reveals that the appellant did not submit any response to the show cause notice issued to him while proposing the punishment. This plea has subsequently been raised without much justification. Perhaps this is the reason that the counsel did not seriously pursue this line of reasoning before this Court. Before me, the submissions were generally made to this effect that the finding by the Enquiry Officer is based on inferences and conjectures. Otherwise, there is no evidence to prove that the file in fact was lost by the appellant. Appreciation of evidence led before the Enquiry Officer to come to any different conclusion certainly would not be within the purview of Civil Court or for that matter by this Court. This would only mean that the appellant wants this Court to re-appreciate the evidence. The interference at this stage could be if any substantial question of law is involved in the Regular Second Appeal. This position has been clarified by the Hon''ble Supreme Court on more than one occasions. I am, thus, not inclined to consider this limb of submission made by the learned Counsel, though the same was considered in detail by the Trial Court and was negated as can be seen from para 13 of the judgment. No substantial question of law either has been framed or is arising in this case.

9. Therefore, no cause is made out for interfering in this Regular Second Appeal, which is dismissed.