
(2012) 11 P&H CK 0028

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1492 of 1999 (O and M)

State of Haryana and Others

APPELLANT

Vs

Ram Kaur

RESPONDENT

Date of Decision : 17-11-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 311, 311(2)

Citation : (2013) 3 SCT 225

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

Bench : Single Bench

Advocate : Rajiv Parshad, DAG, Haryana, for the Appellant; Subhash Ahuja, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Jindal, J.—Ram Kaur-respondent, serving as Anganwari worker since 1985, was turned out on the basis of sham/summary inquiry

dated 18.11.1991, which was challenged by her by way of filing a civil suit, which was decreed in her favour on 15.1.1998. The appeal filed by

the State was also dismissed on 9.2.1999. Hence the State is in this second appeal. Substantively, the facts are that Ram Kaur/plaintiff was

employed as Anganwari worker by the Director, Social Welfare, Haryana in the year 1985, after completing the selection process. It was further

alleged by her that without following proper procedure and without affording her any opportunity of hearing, her services were terminated by the

appellants in terms of orders No. 74719/CD-3/SK-1 dated 18.11.1991 and 906-907 dated 5.12.1991.

2. The appellants/State contested the suit, by filing written statement.

From the pleadings of the parties, the following issues were framed by the trial

court:-

1. Whether the order No. 74719/CD-3/SK-91 dated 18.11.1991 passed by defendant No. 2 and Order No. 906-907 dated 5.12.1991 passed by the defendant No. 4 are illegal, null and void? OPP
2. Whether the plaintiff has no right to file the present suit? OPD.
3. Whether the plaintiff has no cause of action to file the suit? OPD
4. Whether the suit is not maintainable in the present form? OPD
5. Whether the civil court has no jurisdiction to try the present suit? OPD
6. Whether the suit of the plaintiff is barred by limitation? OPD
7. Relief.

3. The main issue in the case was, ""whether order dated 18.11.1991 passed by defendant No. 2-Director, Women and Child Development

Haryana, Chandigarh, was valid and passed in conformity with the rules and procedure and in accordance with the principles of natural justice?

The trial court observed that there was nothing in the inquiry report Ex. P6 about the presence of the plaintiff during the course of the inquiry. Even

the report does not indicate the signatures of the plaintiff. As such, it concluded that the inquiry was not conducted in the presence of the plaintiff.

The Court further observed that there was nothing to show if she was provided an opportunity to defend her case. No reasons for such grave

penalty were recorded. The appellate court also recorded the consistent opinion.

4. Heard.

5. The sole plea now being raised by the appellants is that since the plaintiff/respondent was not a government/civil servant, they were not obliged

to follow the procedure prescribed under the Haryana Civil Services (Punishment & Appeal) Rules, 1987 (for short "the Rules"), is totally

misconceived because even if the plaintiff/respondent is not entitled to the protection granted under the Rules framed in consonance with provision

of Article 311 of the Constitution of India, but still the employer is bound to afford a reasonable opportunity to its employees in consonance with

the principles of natural justice, if her services are sought to be terminated on the basis of a misconduct, in view of the law laid down by the Apex

Court in Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee, , wherein it was held as under:-

Even if at the time of dismissal of respondent-employee of U.P. State Warehousing Corporation the statutory regulations had not been framed or had not come into force, then also, the employment of the respondent was public employment and statutory body, the employer could not terminate the services of its employee without due enquiry in accordance with the statutory Regulations, if any in force, or in the absence of such Regulations, in accordance with the rules and natural justice.

XX XX XX

The rules of natural justice in the circumstances of the case required that the respondent should be given a reasonable opportunity to deny his guilt, to defend himself and to establish his innocence which means and includes an opportunity to cross-examine the witnesses relied upon by the appellant Corporation and an opportunity to lead evidence in defence of the charge as also a show cause notice for the proposed punishment.

6. But in the present case, as is evident from the evidence on record that plaintiff has been removed from service by way of punishment on the basis of misconduct but was neither supplied copies of complaints filed by villagers nor called upon to give her explanation to those complaints.

She was also not supplied copies of the statements of various persons recorded by Inquiry Officer, no opportunity was provided to cross-examine the prosecution witnesses and lead her defence evidence. She was also not called upon to explain her case against the proposed punishment in consonance with principles of natural justice by the punishing authority.

7. While decreeing the claim of a temporary teacher, a Division Bench of this Court in Dinesh Singh Rana v. Kurukshetra University, 1996 (4)

S.C.T. 383 : 1997 (1) RSJ 48, observed as under:-

It is an admitted position that neither the copies of two complaints were made available to petitioner nor was he given a notice to explain the

allegations levelled by the students and the comments submitted by the Director, USIC. It is, therefore, evident that the impugned decision of the

Executive Council is founded on the allegations of misconduct in respect of which petitioner had no opportunity to submit his representation. It

must therefore be held that the impugned decision has been taken by Executive Council in violation of the basic principles of natural justice and the

petitioner has been condemned unheard.

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We may mention that in a majority of the decisions reference has been made to Article 311 of the Constitution because the cases pertain to civil

servants. However, the same very principle has been followed in the cases where the employees were not civil servants but were employed with

agencies/instrumentalities of the State. One of the celebrated judgments on the subject is *Managing Director, Uttar Pradesh Warehousing*

Corporation and Another Vs. Vijay Narayan Vajpayee,

8. Similar view has been taken in the case of a Daily Rated Employee by a Division Bench in *Kuldip Singh Vs. State of H.P. and Another*, which

reads as under:-

True it is that petitioner was a daily rated employee. However, this Court has repeatedly held that even a daily rated workman cannot be pushed

out of employment, on such grounds and under such circumstances without compliance with basic rules of natural justice although no regular

departmental enquiry is required to be held against him. It may be reiterated that in the case of daily rated employees against whom penal action is

proposed, the least that is required to be done is (i) to inform him of the proposed action; (2) disclose to him the material sought to be relied

against him; (3) to afford him reasonable opportunity to correct or controvert such material and to place his view point and (4) to arrive at a fair

and just decision supported by reasons. Be it realized that the protection of Articles 14 and 16 of the Constitution is available as much as to an

employee on daily wages as to any other employee in the public sector. He too has to be dealt with in a fair and just manner and not arbitrary or

whimsically.

9. Similar view has been taken in the case of an adhoc employee by the Apex Court in *Jarnail Singh and Others Vs. State of Punjab and Others*,

wherein the Court observed as under:-

In the present case though the impugned order was made under the camouflage or cloak of an order of termination simpliciter according to the

terms of the employment yet considering the attendant circumstances which are the basis of the said order of termination, it is clear that the order of

termination has been made by way of punishment on the ground of misconduct and adverse entry in service record which were taken into

consideration by the Departmental Selection Committee without affording the aggrieved persons any opportunity of hearing and without following

procedure provided in Article 311(2) while considering their fitness and suitability for purpose of regularizing their services in accordance with

Government Circular. Thus, the impugned orders terminating the services of the appellants on the ground that ""the posts are no longer required

were made by way of punishment and in violation of Article 311(2).

10. Furthermore, in the present case, both the courts below have recorded concurrent findings of facts that no opportunity to defend has been

afforded to the plaintiff/respondent and also that there is not even a suggestion that findings of the courts below suffer from any perversity, the same

cannot be allowed to be assailed in the present Regular Second Appeal as it does not involve any substantial question of law in view of the law laid

down by this Court in a number of cases viz The State of Punjab Vs. Chamkaur Singh, and Punjab State and another v. Bodh Raj, 2008 (4)

S.C.T. 88 : 2008 (4) RSJ 631. Having perused the judgments passed by the courts below, it appears that the same do not suffers from any

illegality much less perversity.

No substantial question of law arise for consideration.

No merits. Dismissed.