
(2009) 07 P&H CK 0187
In the Punjab And Haryana At Chandigarh

State of Punjab and Others	Vs	APPELLANT
Jang Singh and Others		RESPONDENT

Date of Decision : 01-07-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (2009) 155 PLR 729

Hon'ble Judges : Sabina, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sabina, J.

C.M. No. 7030C of 2009

1. For the reasons mentioned in the application, delay of 42 days in filing the appeal is condoned. Application stands disposed of. Plaintiff Jang Singh filed a suit for declaration challenging order dated 17.5.2001 (endorsed on 27.6.2001) passed by defendant No. 2 Director-cum- Special Secretary, Rural Development and Panchayat Department, whereby punishment of withholding of one annual increment with cumulative effect was imposed. Suit filed by the plaintiff was decreed by the trial Court and appeal filed by the State challenging the judgment and decree of the trial Court dated 7.5.2008 was dismissed by the Additional District Judge, Ferozepur vide judgment and decree dated 1.12.2008. Hence, the present appeal.

2. Brief facts of the case, as noticed by the trial Court in para Nos. 2 and 3 of its judgment, are as under:

The plaintiff is employed as Senior Assistant and is now posted in the office of defendant No. 4. He has a neat and clean service record to his credit. It has been further submitted that defendant No. 2 passed order dated 17.5.2001 issued vide Endst. No. 6/108/97-S RDE-2/4306, dated 27.6.2001 imposing upon the plaintiff

the penalty of withholding of one annual increment with cumulative effect. The said order is wrong, illegal, against the Punjab Civil Service Rules and Govt. instructions on the ground that the charge is wrong, illegal and defective in nature being vague and indefinite. It did not contain the list of witnesses and documents relied upon against the plaintiff. The inquiry is without jurisdiction. It was not conducted by the Inquiry Officer himself. No proper procedure was followed while holding inquiry. The inquiry was conducted in a prejudiced way and in gross violation of the mandatory provisions of Rules 8 and 9 of the Punjab Civil Service (Punishment and Appeal) Rules, 1970. The plaintiff was not given proper opportunity to deny the guilt and defend himself. The plaintiff was not supplied with the copies of the documents and statements of witnesses by which the department proposed to sustain the charges. He was not given assistance of co-employee. No show cause notice was served upon the plaintiff. However, he has exonerated by the Inquiry Officer. But defendant No. 2 did not agree with the report of impugned order and passed impugned order dated 17.5.2001 imposing penalty of withholding of one annual increment with cumulative effect upon the plaintiff. The said order is wrong, cryptic and nonspeaking. No reasons have been given for disagreeing with the report of Inquiry Officer. The plaintiff is entitled to the increment withheld and along with 24 years proficiency step up annual increment as due in January 2003, arrears of pay and allowances of the annual increments since January 1999 till today, Samiti fee from March, 2001 to April, 2002 and refund of Rs. 11,962/- on account of income Tax paid by the plaintiff on behalf of defendant No. 5. He is also entitled to fixation grant and release of pay and allowances after taking into consideration all the above said service benefits and the arrears of pay and allowances on the above said counts along with interest @ 18% per annum from the date it became due till the date of its grant and release to the plaintiff. The plaintiff served the defendants with legal notice u/s 80 CPC in vain. Hence, the present suit.

3. Upon notice, the defendants appeared and filed written statement submitting that the suit is not maintainable in the present form; that the plaintiff has not exhausted the departmental remedies available to him and as such the suit merits dismissal on this score alone and that the suit is not properly valued for the purposes of court fee and jurisdiction. It has been denied that the inquiry was conducted in gross violation of the rules and procedure; or that no proper procedure was followed while holding the inquiry. It is, however, admitted that the plaintiff was exonerated from the charges. The charges against the plaintiff were that he mis-behaved with the superiors, which were fully proved in the inquiry and affording proper opportunity to the plaintiff, the impugned order was passed. It is denied that no reasons have been given for disagreeing with the report of the Inquiry Officer or for holding the plaintiff guilty. The plaintiff is not entitled to the service benefits as claimed in the plaint. While controverting the other pleas taken by the plaintiff, a prayer for dismissal of the suit has been made.

3. On the pleadings of the parties, following issues were framed by the trial

Court:

1. Whether the plaintiff is entitled to declaration as prayed for? OPP
2. Whether the suit is not maintainable in the present form? OPD
3. Whether the suit is barred by limitation? OPD
4. Whether the plaintiff has not exhausted the departmental remedies available to him? OPD
5. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD
6. Whether the suit is false, frivolous and is liable to be dismissed with special costs? OFD
7. Relief.

4. After hearing learned State counsel, I am of the opinion that the present appeal deserves to be dismissed.

5. The allegations against plaintiff Jang Singh during regular inquiry to the effect that he had misbehaved with Chaman Lal Premi Deputy Director were not proved. Thus, the plaintiff was exonerated of the charges framed against him by the Inquiry Officer vide report dated" 13.2.2000 (Ex.D-7). The punishing authority-defendant No. 2, however, did not agree with the inquiry report and passed the impugned order dated 17.5.2001 (endorsed on 27.6.2001), whereby the plaintiff was held guilty of the charges framed against him and his one annual increment was ordered to be stopped with cumulative effect.

6. After an enquiry report is to be put up before the disciplinary authority, it is open to the disciplinary authority either to agree with the findings recorded by the Inquiring Authority or disagree with those findings. If it does not agree with the findings of the Inquiring Authority, it may record its own findings. Where the Inquiring Authority has found the delinquent officer guilty of the charges framed against him and the Disciplinary Authority agrees with those findings, there would arise no difficulty. So also, if the Inquiring Authority has held the charges proved, but the Disciplinary Authority disagrees and records a finding that the charges were not established, there would arise no difficulty. Difficulties have arisen in all those cases in which the Inquiring Authority has recorded a positive finding that the charges were not established and the delinquent officer was recommended to be exonerated, but the Disciplinary Authority disagreed with those findings and recorded its own findings that the charges were established and the delinquent officer, was liable to be punished. This difficulty relates to the question of giving an opportunity of hearing to the delinquent officer at that stage.

7. When the enquiry is conducted by the enquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The

disciplinary proceedings stand concluded with the decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the enquiry officer. Where the disciplinary authority itself holds an enquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted to the employee. It will be most unfair and iniquitous that where the charged officer succeeds before the enquiry officer but he is deprived of representing to the disciplinary authority because that authority differs with the enquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed.

8. However, in the present case the punishing authority had failed to give any reason for disagreeing with the inquiry report nor had issued any show cause notice of the proposed punishment to the plaintiff before passing the impugned order. No evidence was led by the defendants to prove that the service record of the plaintiff was not good. In these circumstances, the Courts below had rightly decreed the suit of the plaintiff.

9. No substantial question of law arises in this regular second appeal. Accordingly, the same is dismissed.