

(2004) 10 P&H CK 0013

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 624 of 1981

Vishwa Nath (Dead) through LRs.

APPELLANT

Vs

Punjab State and Another

RESPONDENT

Date of Decision : 06-10-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 2A

Citation : (2005) 3 SLJ 316

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Advocate : Vijay Rana, for the Appellant; Arun Palli, Addl. A.G. and G.S. Hooda, AAG, for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—The plaintiff is in second appeal aggrieved against the judgment and decree passed by the first Appellate Court whereby relying upon a judgment of this Court reported as Banarsi Dass v. State of Haryana 1980(1) SLR 355, wherein it was held that the Civil Court has no jurisdiction to entertain the suit where challenge was made to the order of termination after conclusion of disciplinary proceedings as the remedy of the plaintiff-appellant was to raise industrial dispute u/s 2A of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

2. The plaintiff was appointed as a Conductor in Punjab Roadways when his services were terminated vide order dated 2.2.1979 after conducting departmental inquiry in terms of the Punjab Civil Services (Punishment and Appeals) Rules, 1970 (hereinafter referred to as the rules). The plaintiff challenged the said order in a suit for declaration claiming that such order is illegal, null and void and unconstitutional with consequential relief that the plaintiff continues to be in service and entitled to all benefits of service including pay and allowances. One of the issues framed was "Whether the Civil Court has

jurisdiction ?" and other issues was whether the order dated 2.2.1979 is illegal as alleged?

3. The learned Trial Court decreed the suit holding that the inquiry was not held properly and stood vitiated due to examination of an extra witness on 18.8.1978 and that the report of the Inquiry Officer does not contain any reasoning or findings based on evidence. It was also held that the inquiry report nor the impugned order is a speaking order and therefore, bad and defective. In appeal, the findings of the learned Trial Court on issue No. 1 was set aside relying upon Banarsi Dass's case (supra). However, in respect of issue No. 2 the first Appellate Court found that the order is not a speaking order and has been passed by the Inquiry Officer without applying mind and cannot be sustained but held that the Inquiry Officer has given his report after well considering the evidence and the documents produced on the file. Aggrieved against the said judgment the plaintiff is in second appeal.

4. The finding of the first Appellate Court that the Civil Court has no jurisdiction is not sustainable in law in view of the Full Bench judgment of this Court in Sukhi Ram v. State of Haryana 1982(1) SLR 663, wherein the Division Bench relied upon by the learned first Appellate Court was overruled. It was held that an employee of the State Government or an instrumentality of the State has a right to choose his remedy i.e. either before the Civil Court or by way of writ petition before this Court under Article 226 of the Constitution of India or by way of raising industrial dispute u/s 10 of the Act. Therefore, the finding of the first Appellate Court that the Civil Court has no jurisdiction is clearly not sustainable as the plaintiff has chosen the remedy of Civil Court.

5. However, the finding recorded by the learned first Appellate Court that the impugned termination order is non-speaking is factually incorrect. In fact, the impugned order of termination is the one concurring with the finding recorded by the Inquiry Officer. The Punishing Authority has agreed with the findings recorded by the Inquiry Officer after going through the inquiry file. In fact, the plaintiff has communicated to the Punishing Authority on 26.12.1978 (at page 169 of the Inquiry File) that he would be careful and will not commit the mistake again. However, the learned Counsel for the appellant has vehemently argued that the Punishing Authority has not dealt with the plea raised by the plaintiff in reply filed to the show-cause notice and thus, the non-consideration of the reply will vitiate the order passed by the Authority while relying upon Gujarat State Road Transport Corporation Vs. U.A. Malek, .

6. Still further, it has been argued that the witnesses produced by the Department had been cross-examined by the Inquiry Officer which contravenes the procedure prescribed for conduct of the inquiry. The order sheet in respect of the proceedings before the Inquiry Officer had not been maintained and thus it is not an inquiry conducted in accordance with the Rules. However, I am unable to agree with the argument raised by the learned Counsel for the appellant.

7. As far as the question that the Inquiry Officer himself has cross-examined the witnesses is concerned, the Inquiry Officer appoint to find out the truth on the basis of the statements of the witnesses produced by the parties. It may be noticed that no Presenting Officer was appointed and, therefore, if the Inquiry Officer has asked the questions to the witnesses produced by the parties to elucidate the truth, it cannot be said that there is any illegality which vitiate the inquiry proceedings. Still further, the mere fact that the order sheet has not been maintained in proper form is again an irregularity. It could not be pointed out that non-maintenance of order sheet in a proper form has caused an prejudice to the plaintiff and to what extent. In the absence of any prejudice, such irregularity in maintaining the record by the Enquiry Officer will not vitiate the inquiry proceedings.

8. The third argument that the order passed by the Punishing Authority is not a speaking order is again devoid of merit. The Inquiry Officer has agreed with the finding recorded by the Inquiry Officer. The plea raised in the reply was the same plea which was raised by the delinquent during the course of inquiry proceedings. All such pleas had been considered by the Inquiry Officer while submitting report that the plaintiff has embezzled the ticket amount and misbehaved with the checking staff. The jurisdiction of the Civil Court in examining the illegality and the validity of the order of termination passed by the departmental authority is limited. Civil Court is to examine whether procedure prescribed under the Rules pertain to the conduct of inquiry (sic) dispute has been complied with and the principles of natural justice have not been violated. It could not be pointed out that there is any failure of procedure or violation of any principles of natural justice.

In view of such findings recorded, I do not find any substantial question of law arises for consideration in this appeal. Resultantly, I do not find any merit in the present appeal. Dismissed with no order as to costs.