

(2012) 01 P&H CK 0055

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 292 of 2012 (O and M)

State of Punjab and others

APPELLANT

Vs

Kapoor Singh

RESPONDENT

Date of Decision: Jan. 18, 2012

Acts Referred:

- Punjab Civil Services (Punishment and Appeal) Rules, 1970 - Rule 5

Citation: (2012) 166 PLR 272

Hon'ble Judges: G.S. Sandhawalia, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

G.S. Sandhawalia, J.

C.M.No. 758-C of 2012

Application filed for condoning delay of 11 days in filing the appeal is allowed, in view of the averments made in the application, which are duly supported by affidavit, delay in filing the appeal is condoned. RSA No. 292 of 2012

1. The present appeal has been filed by the State of Punjab against the judgment and decree of the Additional District Judge, Amritsar wherein, he has allowed the appeal of the plaintiff and set aside the order dated 01.05.2006/23.05.2006 whereby, two earned increments of the plaintiff were stopped with permanent effect upto the date of retirement on the charge of causing financial loss. The suit was filed on the ground that the plaintiff was employed as a Conductor in the Punjab Roadways Department and posted at Punjab Roadways, Amritsar and two earned increments of the plaintiff were stopped with permanent effect upto the date of his retirement on the charge of causing financial loss while not covering the remaining passage from Baba Bakala to Batala and back while on duty on 28.04.2000 with bus number 9140 on Amritsar Batala route. It was pleaded that the said order was against the

principle of natural justice, null and void and the charge sheet dated 18.05.2000 was wrong since the allegations did not pertain to the plaintiff and it was the driver on duty who was responsible for the stoppage of bus but this fact was not taken into consideration. It was also pleaded that the cause for stopping the bus at Baba Bakala, Tehsil premises was that the shaft nut had broken and there was a light failure and since the bus was not road worthy, therefore, the plaintiff could not be held liable for the same and the Inquiry Officer had ignored the evidence and held him guilty. It was specifically pleaded that the driver Harbhajan Singh, with whom the plaintiff was on duty, had also been proceeded against departmentally and he was merely given a warning and let off vide order dated 30.10.2003 whereas, the case of the plaintiff was kept pending for more than 2 years and on 11.11.2005, a show cause notice was issued proposing the major penalty to which he filed objections which were not taken into consideration, whereas the driver was let off by giving a warning which is not penalty under Rule 5 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970. The plaintiff was awarded major penalty which has resulted in loss for all times to come and after retirement on his pensionary and other allied benefits. Accordingly, it was pleaded that the order is discriminatory and the additional increment under the ACP scheme implemented w.e.f. 01.01.1996 has also not been allowed to him after completion of 24 years of service on 20.06.1999.

2. The suit was contested by the defendants on various grounds including the jurisdiction and it was admitted that the relief of additional increment had been granted to him.

3. It was alleged that inquiry had been conducted and the plaintiff had filed an appeal against the punishment order and after personal hearing also, his appeal was rejected vide order dated 31.01.2007 and the suit had been filed on 06.08.2007 after his retirement on 31.05.2007. It is pertinent to mention the fact that the bus had broken down due to shaft nut being broken and light failure had not been specifically denied in the written statement. The trial Court, vide detailed judgment dated 31.07.2010, failed to interfere on the ground that it was the jurisdiction of the punishing authority and while discussing the Wednesbury principle, did not exercise jurisdiction in judicial review. It was in such circumstances that the appeal was filed by the plaintiff and as noticed above has been allowed and the order stopping the two earned increments with permanent effect has been set aside.

4. Mr. Yatinder Sharma, DAG, Punjab has contended that the Lower Appellate Court was incorrect in setting aside the well reasoned judgment and decree of the trial Court and not justified in re-evaluating the evidence recorded by the Inquiry Officer.

5. The submissions made by the State counsel are not acceptable in view of some of the admitted facts as noticed above. Admittedly, the charge against the plaintiff was that a financial loss has been incurred to the roadways because of the stoppage of bus and not plying on the route as per the time table. It is also the admitted case that the driver was also charged on the same ground but was let off with a mere

censure. The fact that the plaintiff is only a Conductor and a specific plea had been taken that the bus had broken down and had to be stopped since it was not roadworthy, was not denied in the written statement. Once the bus had broken down, then the question of plying the bus would not arise and, therefore, the punishment upon the plaintiff was not justified specially since he was merely a Conductor. It was the duty of the driver of the bus to ply the bus whereas the duty of the plaintiff was only to give tickets. The driver of the bus was given a warning only whereas the proceedings were dragged against the plaintiff and thereafter a major penalty has been imposed without any justification. The Lower Appellate Court has rightly relied upon Mann Singh v. State of Haryana,¹ 2008(3) SCT 364, in which, the Hon"ble Apex Court, while considering the issue of Article 14, has held that there can be no discrimination between the employees who faced similar charges and both of them have to be treated equally in the matter of departmental proceedings initiated against them for their acts and commissions.

6. Mr. Yatinder Sharma, DAG, Punjab has also submitted that while allowing the appeal, the Lower Appellate Court should have remanded the matter so that the same punishment could be imposed upon the plaintiff namely punishment of censure. This submission is also without any justification in view of the fact that it has come on record that the employee filed the suit on 06.08.2007 after his retirement on 31.05.2007 and it was only for the purposes of making sure that the stoppage of two earned increments would not adversely affect him and his pensionary rights and, therefore, no useful purpose would have been served in remanding the matter to impose the punishment of censure.

7. Keeping in view the above facts and circumstances, no fault can be found with the well reasoned judgment passed by the Lower Appellate Court. No substantial question of law arises for consideration. Accordingly, the present Regular Second Appeal is dismissed in limine.