(2010) 11 P&H CK 0370

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 3039 of 1987 (O and M)

Sh. Gopi Chand	APPELLANT
Vs	
State of Punjab and Others	RESPONDENT

Date of Decision: Nov. 18, 2010

Acts Referred:

- Penal Code, 1860 (IPC) - Section 161
- Prevention of Corruption Act, 1988 - Section 13(1), 5(2)
- Punjab Jail Department Executive Staff (Punishment and Appeal) Rules, 1943 - Rule 11, 13, 3, 3(111)

Citation: (2011) 161 PLR 686

Hon'ble Judges: Gurdev Singh, J

Bench: Single Bench

Judgement

Gurdev Singh, J.

The Appellant-Plaintiff-Gopi Chand filed suit for declaration to the effect that the order dated 18.6.1981 passed by Superintendent Jail, Ferozepur and the order dated 16.6.1982 passed by the Inspector General of Prisons, Punjab, Chandigarh in the appeal are illegal, ultravires, unconstitutional, mala fide, null and void, against the principles of natural justice and service Rules and Regulations and that he continues to be in service, as if those orders have not been passed, with all the rights, benefits and privileges attached to the post which he was holding at the time of the said dismissal. The suit was decreed by Sub Judge, Ist Class, Moga, vide judgment and decree dated 7.1.1985. The Respondents/Defendants preferred an appeal against that judgment and decree, which was accepted by Additional District Judge, Faridkot, vide judgment and decree dated 24.2.1987 and the suit of the Plaintiff was dismissed. Now, he has preferred this second appeal against that judgment and decree.

2. The case of the Plaintiff, as pleaded in the plaint, is that he was a complainant in the criminal case against one Mangal Singh, Superintendent Treasury Officer, Jalandhar, registered u/s 13(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1988 and Section 161 of the IPC. In that case Mangal Singh was acquitted by giving the benefit of doubt. The charge-sheet was served upon him and he submitted his reply to that charge-sheet. Subsequently, show cause notice was served, which was also duly replied by him. Thereafter, he was dismissed from service, vide order dated 18.6.1981 passed by Superintendent Jail, Ferozepur. He filed an appeal before Inspector General of Prisons, Punjab, Chandigarh, which was dismissed vide order dated 16.6.1982. Both those orders are illegal, ultravires, unconstitutional, null and void against the principles of natural justice and service Rules and Regulations, inter alia, on the following grounds:

i) no enquiry was conducted under the Punjab Civil Service (Punishment and Appeal), Rules;

ii) prosecution did not produce any evidence against him nor he was allowed to lead any evidence;

iii) the statement given by him in the Court as a witness was used against him. The authorities pre-judged his guilt while issuing the charge-sheet and the show cause notice with a biased mind. The procedure adopted was unknown to law.

3. The suit was contested by the Defendants. In their written statement they admitted that at the instance of the Plaintiff criminal case of corruption was registered against Mangal Singh, in which the Plaintiff appeared as a witness and Mangal Singh was acquitted. They also admitted mat the charge-sheet and the show cause notice were so served upon the Plaintiff and he was dismissed from services and that the appeal filed by him against the order was dismissed. They denied the other contentions made in the plaint and pleaded that the Plaintiff was entrusted with the duty of getting the bills passed from Sub Treasury. On 30.8.1978, he presented two bills of G.P. Fund of the jail warden for Rs. 400/- and Rs. 500/-, respectively, before Mangal Singh. For getting the same passed that Mangal Singh demanded Rs. 20/- and the Plaintiff recovered a sum of Rs. 10 each from the warders, concerned and then approached the Vigilance Inspector. During the trial the Plaintiff was won over by Mangal Singh and he resiled from the statement made by him before the Vigilance Inspector with the intention to save that Mangal Singh. On account of that statement made by the Plaintiff the case failed in the Court. There was absolutely no ground with him to lodge the complaint with the Vigilance Department in case Mangal Singh had given Rs. 65/- to him for purchase of Ghee and he was to return the balance amount of Rs. 20/-, as stated by him before the criminal Court. This act of the Plaintiff in resiling from his previous statement amounted to serious mis-conduct for which the charge sheet was served upon him. The departmental proceedings were adopted and the Plaintiff was asked to explain his conduct and accordingly, he submitted his reply to the chargesheet, which was

found to be unsatisfactory. The statement of the Plaintiff recorded in the Court of Special Judge, Faridkot, on oath, resiling from his previous statement, was sufficient proof to his mis-conduct. He was dismissed from service after serving the show cause notice upon him. The departmental proceedings so taken were quite legal, constitutional and were in accordance with law. The impugned orders were passed after due consideration and giving full opportunity to the Plaintiff. Those are passed after following the procedure laid down in the Rules. The civil Court has no jurisdiction to entertain the suit.

4. In replication to the written statement the Plaintiff denied the contentions raised therein and reiterated his averments made in the plaint.

5. On the pleadings of the parties, following issues were framed by the learned trial Court.

1. Whether the impugned order of dismissal of the Plaintiff from service is void, illegal and not binding on the Plaintiff, on the grounds mentioned in the plaint? OPP

2. Whether this civil Court has not jurisdiction to try the present suit? OPD

3. Whether the suit is bad for misjoinder of the parties? OPD

4. Relief.

6. To succeed in the suit, the Plaintiff himself entered the witness box as PW-1. On the other hand the Defendant examined Banarsi Dass Assistant Superintendent Jail DW1, Bhagwan Dass, DW-2 and M.L. Sandhu, Superintendent DW3.

7. After going through that evidence and hearing learned Counsel for the Plaintiff and GP for the Defendants, learned trial Court decided all the issues in favour of the Plaintiff and resultantly decreed his suit. However, first appeal preferred by the Defendants against that judgment and decree was accepted by the first Appellate Court and the suit of the Plaintiff was dismissed.

8. I have heard learned Counsel for both the sides.

9. It has been submitted by learned Counsel for the Plaintiff that the impugned orders were passed under the Punjab Jail Department Executive Staff (Punishment and Appeal) Rules 1943 (hereinafter referred to as the Jail Rules). The procedure as prescribed by Rule 11 of those Rules for imposing the punishment of dismissal from service was not followed. No doubt the enquiry officer was competent to waive off that procedure but while doing so he was required to record the reasons and no such reason was recorded by him. At no stage Plaintiff was given an opportunity to lead evidence in support of his reply to the charge-sheet. When the impugned orders have been passed against the mandatory provisions of the Jail Rules, those are liable to be set aside.

10. On the other hand, while drawing the attention of this Court towards the impugned order, it has been submitted by learned State counsel that the reasons have been recorded by the enquiry officer for waiving the procedure laid down in Rule 11. The mis-conduct of the Plaintiff stands proved from the fact that he resiled from his previous statement while making statement before the Special Judge in the criminal case, in which Mangal Singh was standing his trial on the complaint filed against him by the Plaintiff himself. Nothing else was required to be proved against him. It is a case of the Plaintiff himself that the proceedings were taken against him under the Rules and as such he could not have resort to the Jail Rules. It was correctly concluded by the first Appellate Court that the impugned orders do not suffers from any such illegality and were passed after following due procedure laid down in the Rules.

11. The Plaintiff might have stated in the plaint that the procedure as laid down in the Rules was not followed, but that cannot operate as estoppel against him to allege that the procedure as laid down in the Jail Rules was not followed. Admittedly the impugned orders were passed under the Jail Rules and as such this Court has to confine itself about the legality or the illegality of the impugned orders in the light of those rules.

12. The charge against the Plaintiff, as per the charge-sheet, was that he made a report before the Vigilance Inspector Bhagwan Chand that Mangal Singh demanded illegal gratification of Rs. 20/- for the passing of two bills, but while making statement in the Court he changed desposition in such a manner that Mangal Singh got an opportunity to secure his acquittal and as such he violated the conduct Rules 1966 and Rule 3 11(1). Rule 3 11(1) of the Jail Rules, which appears to have been wrongly quoted as 3(111) in the charge-sheet, lays down different punishments which can be awarded to the subordinate officers while working in the jail. Admittedly at the alleged time the Plaintiff was working as warder in the jail and he falls under the definition of subordinate officers as contained in Rule 1 3(f). The punishment under Rule 3 could have been imposed upon him if he had been found guilty of any breach of any law, Rule, Regulation direction or order for the time being inforce, in regard to the duties or any of the duties, which he was required to perform or the manner in which he performed them or any one of them. It cannot be said that the making of a statement in the Court was in any way connected with the duties to be performed by him. Therefore, for the alleged misconduct, he could not have been punished under Rule 3.

13. Before imposing the punishment of dismissal from service the procedure as laid down in Rule 11 was to be followed. The same is being reproduced below:

11.(1) Without prejudice to the provisions of the Public Servants (Inquiries) Act, 1850, no order awarding a punishment specified in Clauses (d), (f),(h), (i) and (j) of Rule 3 shall be passed against a subordinate officer other than an order based on facts found proved by a criminal court unless he has been informed in writing of the

grounds on which it is proposed to take action and has been afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be reduced in the form of a definite charge or charges which shall be communicated to the person charged together with a statement of the allegations on which each charge in based and of any other circumstances which it is propsed to take into consideration in passing orders in the case. He shall be required, within a reasonable time, to put in a written statement of his defence and to state whether he desires to be heard in person. If he so desires and if the authority so direct, an oral inquiry shall be held. At the enquiry oral evidence shall be heard as to such of the allegations as are not admitted and the person charged shall be entitled to cross-examine the witnesses in person and to have such witnesses called as he may wish, provided that the officer conducting the inquiry may, for special and sufficient reasons to be recorded in writing, refuse to call a witness. The proceedigs shall contain a sufficient record of the evidence and the statement of the findings and the grounds thereof.

Provided that:

(a) this sub-rule shall not apply where the person concerned has absconded, or where it is, for other reasons, impracticable to communicate with him;

(b) all or any of the provisions of this sub-rule may, in exceptional cases, for special and sufficient reasons to be recorded in writing be waived, where there is a difficulty in observing exactly the requirements of this sub-rule and those requirements can be waived without injustice to the person charged.

14. As per this Rule, an enquiry was to be conducted if it was so desired by the Plaintiff or if the authorities so directed. In reply to the charge-sheet, the Plaintiff denied, the accusation levelled against him and it can easily be made out from that reply that he desired an enquiry to be conducted into charge levelled against him. No doubt according to proviso (b) of this Rule any of the provisions thereof could have been waived but the same could have been done only in exceptional cases and for special and sufficient reasons to be recorded in writing and when there was a difficulty in observing exactly the requirements of that Rule. No doubt in the impugned order some reasons have been recorded for not holding an enquiry, but those cannot be said to be special and sufficient nor it can be said that it was difficult for the authorities to observe exactly the requirements of this Rule. Moreover, there was another requirement and the punishing party was required to record in writing that the rule could have been waived without causing injustice to the Plaintiff. No such finding was recorded. It cannot be said that there was difficulty in recording the evidence of the prosecution. The Plaintiff has been materially prejudiced in his defence as he was not given an opportunity to lead evidence in support of the reply given by him to the charge-sheet. There is complete and flagrant violation of Rule 11, which is an additional ground for setting aside the impugned orders. The first Appellate Court wrongly upset the reasoned finding

recorded by the learned trial Court.

15. In the result, this appeal is hereby accepted with costs. The judgment and decree of the first Appellate Court is set aside and that of the trial Court is restored.

Records of lower Courts be returned forthwith.