

(2014) 01 P&H CK 0148

High Court Of Punjab And Haryana At Chandigarh

Case No: R.S.A. Nos. 2102 and 2245 of 1989

Kundan Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Jan. 9, 2014**Citation:** (2014) 175 PLR 657 : (2014) 4 SCT 452**Hon'ble Judges:** Paramjit Singh Patwalia, J**Bench:** Single Bench**Advocate:** G.S. Bal and Ranbir Singh Pathania, DAG, Advocate for the Appellant; Ranbir Singh Pathania, DAG and G.S. Bal, Advocate for the Respondent**Final Decision:** Dismissed

Judgement

Paramjit Singh Patwalia, J.

Both the second appeals i.e. RSA Nos. 2102 of 1989 and 2245 of 1989 are being decided by a common judgment as both arise from same common judgment. Plaintiff - Kundan Singh filed a suit for declaration to the effect that the impugned orders passed by defendant No. 2 by virtue of which the punishment of withholding of various annual grade increments with cumulative effect and reduction to time scale were imposed on the plaintiff, are illegal, unlawful, ultra vires and against the principles of natural justice. The trial Court partly allowed the suit and declared the orders dated 30.01.1974, 03.03.1978, 05.05.1978 and 28.09.1985 illegal, null and void and the plaintiff is entitled to all the benefits. However, the suit of the plaintiff qua order dated 01.02.1979 was dismissed. The respondents-defendants preferred an appeal which has been partly allowed by the learned Additional District Judge, Gurdaspur and suit qua orders dated 30.01.1974 and 05.05.1978 was also dismissed vide judgment and decree dated 15.03.1989. Along with said appeal, cross-objections were also filed by plaintiff-Kundan Singh which have also been dismissed by the learned lower appellate Court by a common judgment and decree. Both the aforementioned two second appeals have been filed one by plaintiff-Kundan Singh and the other by the defendants - State of Punjab.

2. At the time of admission of this appeal, no substantial question of law was framed nor it has been brought on record at this stage.

3. I have heard learned counsel for the parties on merit since the matter remained admitted since 1989.

4. It would be appropriate to mention that the punishing authority in taking an action against his employee performs quasi judicial functions. Rule 5 of the Punjab Civil Service (Punishment and Appeal) Rules, 1970 (hereinafter referred to as the "Rules") clearly provides that a penalty can be imposed upon the members of the service only if good and sufficient reasons have been shown. The disciplinary authority is, thus, under a statutory mandate to support its order with reasons. It is well settled law that a non-speaking order is bad in the eyes of law thus, vitiated and cannot be sustained.

5. So far as orders dated 21.05.1973 and 03.03.1978 are concerned, there is concurrent finding of fact that these are non-speaking orders. No reasons whatsoever have been mentioned for stopping one annual grade increment of the plaintiff with cumulative effect. Similarly in respect of order dated 28.09.1985 that is concurrent finding of Courts below that since plaintiff was reduced to lower stage in the time scale of pay permanently, therefore, the order is null and void being violative of Rule 5. Therefore, these orders have rightly been declared as null and void.

6. So far as order dated 30.01.1974 is concerned, the trial Court has held this order to be illegal on the ground that though the procedure for imposing major penalty had been initiated but the order was passed by stopping the said proceedings, therefore the order is bad in law. The learned lower appellate Court reversed the finding with regard to this order by holding that at page 37 of the enquiry file (Ex. P1), the plaintiff has admitted his guilt and has also sought reinstatement. He had assured that he would not repeat the misconduct in future and any punishment except termination may be passed against him. Since the plaintiff had admitted his guilt, no further enquiry was necessary. In view of the admission, the plaintiff was ordered to be reinstated and two annual grade increments with cumulative effect were stopped. The object of enquiry is only to establish the guilty of the delinquent official. The finding of the learned trial Court qua order dated 30.01.1974 has rightly been set aside by the learned lower appellate Court. The same is upheld.

7. So far as order dated 05.05.1978 is concerned, the trial Court has held that this order is invalid as there was violation of Rule 8.11 of the Punjab Civil Service (Punishment and Appeal) Rules, 1970 inasmuch as the enquiry officer did not adjourn the case after recording the plea of the delinquent official. The learned lower appellate Court reversed the finding by holding that provisions of Rule 8.11 of the Rules are merely directory in nature and every violation of the rules is not actionable unless it is shown that the infraction thereof has caused any prejudice to

the delinquent. The rule of procedure are only hand maids of justice and too much of legalism cannot be expected in departmental proceedings. So, the finding of the learned trial Court has rightly been reversed by the learned lower appellate Court.

8. So far as order dated 01.02.1979 is concerned, learned trial Court as well as lower appellate Court has rightly held that the plaintiff admittedly did not reply to the show cause notice served upon him, it has to be assumed that he had admitted the correctness of the allegations against him. The enquiry officer was thus justified in stopping his one annual grade increment with cumulative effect.

9. Since the findings of fact have been recorded by the lower appellate Court, I do not find any illegality or perversity in the impugned judgment and decree passed by learned lower appellate Court. No substantial questions of law arise in these appeals. In view of above, both the aforementioned regular second appeals are dismissed.