

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-5032-2014 (O&M)

Decided on 08.01.2025

Santosh Taneja

... Appellant

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ashok Tyagi, Advocate for the appellant

Mr. BS Virk, Sr.DAG Haryana

Sandeep Moudgil, J.

(1). This Regular Second Appeal under Section 100 CPC has been brought by the appellant against the judgment dated 10.02.2014 passed by the Addl. District Judge, Mewat at Nuh confirming the judgment and decree of the trial court dated 03.11.2012 passed by the Civil Judge (Jr.Divn.), Nuh passed in suit filed by the appellant-plaintiff for declaration with permanent injunction.

(2). In 1987, the appellant-plaintiff applied for the post of Aanganwari Worker in response to an advertisement by respondent-defendant No. 2, Director of Women & Child Development Programme, Haryana. She was selected as Aanganwari Worker in the month of May, 1987 and was posted in village Buraka, Panchayat of both village Buraka and Gwarka, Circle Bawla, Block Tauru, Tehsil Tauru, District Gurgaon. Her services were terminated by respondent-defendant No.3/Programme Officer, ICDS Cell District Mewat in pursuance to an enquiry on a complaint against her regarding misappropriation of Rs.91,440/-, vide letter No.1297-1300 dated 23.4.2008 and she was directed to deposit an amount of Rs.91,440/- within a

week. The appellant-plaintiff visited office of defendants several times and made request for her reinstatement but the defendants did not pay any heed to her request which was finally refused on 28.4.2008. The appellant-plaintiff asked the respondents/defendants several times to withdraw the said letter of termination but no attention was paid to her request. Hence, she filed a suit for permanent injunction.

(3). The respondents/defendants appeared before the trial court and took the preliminary objection regarding maintainability of the suit as the appellant-plaintiff has withdrawn Rs.91,440/- from the Cooperative Bank Tauru in her name for which she was not competent as the said amount was required to be transferred in SHG Account.

(4). Both the parties led their respective evidence and on the basis of pleadings, the trial court framed the following issues:-

1. Whether the letter No.1297 and 1300 dated 23.04.2008 are illegal, null and void and not binding upon the rights of the plaintiffs?

OPP

2. Whether the plaintiff has no cause of action to file the present suit? OPD

3. Whether the civil court has no jurisdiction to try the suit? OPD

4. Whether the plaintiff is not maintainable?

5. Relief.

(5). The trial court vide judgment dated 03.11.2012 dismissed the suit of the appellant-plaintiff observing that as per rules and regulations, VLC account was to be opened by the Anganwari Worker in the name of three persons, namely, Anganwari worker and two female panches of the village

which was not done and instead got opened VLC account in her name and two ladies, namely, Saroppi and Amna. The trial court decided issue No.1 against the appellant-plaintiff holding that the appellant-plaintiff misappropriated the government fund and was unable to explain as to where those funds were (mis)used by her and that termination and recovery notice are not illegal.

(6). The appellant-plaintiff went in appeal against the trial court judgment dated 03.11.2012 which too was dismissed by District Judge, Nuh vide judgment dated 10.02.2014 by observing as under:-

“17. The letters Ex.DC and Ex.DD further reflects that ample opportunities was given and plaintiff in her cross-examination admitted that no training was given to her but this cannot be excuse as plaintiff was serving in the department from the year 1987 and a person who joined a job in the year 1987 cannot claim that he or she was ignorant of the rules and no training was given and when amount was withdrawn from village level committee account and not deposited in the self help group account undoubtedly the said amount was misappropriated by the plaintiff and Ex.DE shows that amount was debited by the plaintiff and as such it is established on record that under the pretext of ignorance of rules the Plaintiff is concealing the true and material facts and withdrawal of the amount is proved from Ex.DE photocopy of the passbook of village level committee account and when misappropriation of government fund is established certainly the termination order and recovery order cannot be said to be illegal or based on biasness and malafide rather the same is proved to have been passed after proper enquiry.

18. Moreover, termination order again reflects that the plaintiff was found absent from the Anganwari centre time and again.

Letter Ex.DF reflects that plaintiff was asked to be present before CDPO and the impugned order again reflects that plaintiff herself produced the record and when letter Ex.DD was sent the same was received by the plaintiff and as such sufficient opportunity during enquiry was given to explain the short comings and not transferring the amount withdrawn from VLC account to self help group account but when no satisfactory reply was given and embezzlement was established and when plaintiff herself did not appear many times after having knowledge of the enquiry she cannot claim the violation of natural justice and there is nothing to show that the enquiry officer did not apply correct law or violated principles of natural justice.”

(7). Learned counsel for the appellant-plaintiff submits that the judgments passed by both the courts below are erroneous and are liable to be set aside, *inter alia*, on the following grounds:-

(i) the respondents have failed to produce letter of appointment of Enquiry Officer for conducting inquiry into the complaint against the appellant for the reason that no such steps were taken for appointing the Enquiry Officer nor any charge-sheet was issued to her showing the list of charges against the appellant. Further no enquiry report was supplied to the appellant as such, the termination is bad for non-compliance of principles of natural justice;

(ii) even otherwise also, the respondents could not show as to whether the appellant was given any opportunity to cross-examine the witnesses/complainant before the Enquiry Officer which is against the settled principles of law as laid down by the

Apex Court in *UP Warehousing Corp. vs. Vijay Narayan AIR 1980 SC 840* as well as by this Court in *State of Haryana & Ors. Ram Kaur 2013(3) SCT 225*.

(iii) further, the courts below failed to consider the documents exhibited in its true perspective inasmuch as the record keeper of the respondent DW1 Daya Chand has concealed the true and material facts by taking shelter of forged writing alleged to be complained by the villagers. Moreover, DW Daya Chand never tendered any affidavit as Ex DW1/A, as mentioned in para no. 8 of the trial court judgment.

(iv) the courts below failed to consider the fact that the alleged complaints have not been proved as the complainants were not produced which deprived the appellant of opportunity to cross examining them besides no oral evidence is forthcoming as none has been produced. The statement of DW1 and DW2 are absolutely hearsay. It is a case of "No evidence" before the so called enquiry officer and to rely upon the said bald statement of the complainants.

(8). Learned counsel for the respondents, on the other hand, contends that the judgments passed by both the courts below are based on proper appreciation of legal as well as factual position as available on record and the suit has been rightly dismissed as no fault qua order of termination Ex.P1 and recovery notice of Rs.91,440/- could be proved by the appellant since as per the testimony of DW1 Daya Chand Goyal, SA Officer of CDPO, services of the appellant were terminated on the basis of complaints moved

by the villagers and she was found to have misappropriated the govt. funds in VLC account and to disprove this, the appellant failed to bring all her records before the Project Officer or before the courts below.

(9). Heard learned counsel for the parties and gone through the record.

(10). It has been pleaded on behalf of the appellant-plaintiff that after having worked as Anganwari Worker for a period of 23 long years, her services were terminated and a recovery of Rs.91,440/- was imposed upon her and such letter was not received by her rather it was merely pasted outside the wall of Kender which was torn out and subsequently she wrote a letter Ex. D2 dated 28.4.2008 to I.C.D.S. Cell, District Mewat to furnish its copy but she did not get any response and ultimately filed the instant suit. It is her case prior to issuance of said notice Ex. P-1, the appellant-plaintiff was not given any opportunity to explain her position that the complaint itself is false and fabricated by an anonymous person. It has been further exhorted that respondent No.3 is not the appointing authority and that being so, he had no right to terminate the services of appellant. Even the enquiry officer failed to produce the record of inquiry and while passing the impugned termination order, the appellant was not heard to explain her position.

(11). The issue that arises for consideration is whether the respondents are justified in passing the impugned order terminating the services of the appellant on the basis of anonymous complaint, allegedly, without affording opportunity of being heard especially when such order arrives with civil consequence?

(12). On receiving a complaint filed by an unknown person, ICDC Cell, Mewat Nuh alongwith Child Development Project Officer visited the Anganwari Kendra on 06.09.2007 and found the same closed wherein it came to knowledge from the teacher of the Government Primary School that neither the Kendra is opened everyday nor proper diet is served. They re-visited the Kendra on 11.9.2007 and found the same position. When worker and helper were called from the village, the appellant appeared but did not produce any record consecutively and when the matter was inquired into and bank accounts and transactions were checked, it was found that the appellant has smartly misappropriated Rs.91,440/- for her personal use which she was supposed to withdraw for use in Anganwari works.

(13). It is a matter of record that the vide Ex.DC & DD dated 24.09.2007 and 14.09.2007 duly acknowledged by the appellant which shows that she was give ample opportunities to explain her position along with record. Instead she threw the rules in air and went on to form a forged and fraudulent VLC committee and did not include female panches in the same and got opened saving bank account No.3378 in Cooperative Bank Ltd., Tauru by showing her helper Saroppi and President of SHG Amna as the female panches and thereafter even withdrew the govt. funds from the said account, as is evident from Ex.DE, which she was supposed to deposit in SHG account instead she utilized the same for her personal use.

(14). As per rules, the amount taken from this VLC account was to be deposited in SHG account for the purpose of use for cooking meals for children in the Kendra. It is quite clear that proper inquiry was conducted by the Project Officer wherein only it was established that the appellant has

misappropriated the Government funds for her own personal use, then only her services were terminated.

(15). The compliance of natural justice in domestic/disciplinary inquiry is necessary and has long been established. Though there are no specific statutory rules requiring observance of natural justice, the compliance of natural justice is necessary. Domestic enquiries must be conducted honestly and bona fide with a view to determine whether the charge framed against a particular employee is proved or not, and so, care must be taken to see that these enquiries do not become empty formalities. An enquiry cannot be said to have been properly held unless –

(i) the employee proceeded against has been informed clearly of the charges levelled against him,

(ii) the witnesses are examined - ordinarily in the presence of the employee - in respect of the charges,

(iii) the employee is given a fair opportunity to cross-examine witnesses,

(iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and

(v) the inquiry officer records his findings with reasons for the same in his report.

(16). On application of the above yardstick in the present case, it emerges out from the judgment of the court below that vide office letter No. 1701 dated 6.12.2007 (Ex. DF), letter No.1789 dated 18.1.2007 and letter No.1106-07 dated 14.3.2008 as also the letter No. 9391 dated 14.9.2007 (Ex. DD) adduced by the respondents, the appellant was time and again asked to

be present before C.D.P.O., Tauru and Project Officer, Mewat. Albeit, the appellant, having been in receipt of such communications also and duly endorsed by her, opted to refrain from participating in the departmental proceedings.

(17). Thus, in the given case, the appellant knew the material fact and was conscious of her legal rights in that matter, but failed to take the plea of bias at the earlier stage of the proceedings. Apparently, when the appellant found that she would be confronted with and was to present herself along with necessary record before the Enquiry Officer and explain her conduct, she adopted the device of raising the issue of biasness and violation of principle of natural justice. If a person intentionally waived off his/her right of being personally heard, he/she cannot come to the court saying that no opportunity of personal hearing was afforded. Where was the occasion for the respondents to have held the enquiry in the presence of the appellant enabling her to examine or cross-examine the witnesses when despite causing effect of notice upon her, she, willingly and intentionally, chose not to appear for the reasons best known to her.

(18). It stands proved before the courts below that appellant has misappropriated the government funds and did not produce the records on how she used those funds with the help of her helper Saropi and Amna while doing away with the requirement to get the VLC account opened in the name of Anganwari Worker and two female panches. So much so, the amount so unauthorisedly withdrawn was never deposited in the SGH Account which itself amounted to embezzlement and misconduct on the part of an employee. It is not that the respondents proceeded unilaterally on the basis of complaints

by the villagers itself but also conducted departmental enquiry as per rules and even followed the principles of natural justice as the appellant was given due opportunity to put her case which she failed to do so and resultantly, her services were terminated and recovery notice of Rs. 91,440/- was issued against her.

(19). In view of the above discussion, this Court has no reason to interfere with the findings returned by the courts below vide impugned judgments, for, it stands proved that the appellant has misappropriated the Government funds amounting to embezzlement and misconduct.

(20). The regular second appeal is accordingly, dismissed.

08.01.2025

V.Vishal

1. Whether speaking/reasoned?

2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No

Yes/No