

SUPREME COURT OF INDIA

State of Punjab

Vs.

Amarjit Singh

C.A.No.3176 of 2009

(D.K. Jain and B.Sudershan Reddy JJ.)

04.05.2009

ORDER

1. Leave granted.

2. This appeal, by special leave, arises from a judgment dated 6th August, 2007, delivered by the High Court of Punjab & Haryana at Chandigarh in Regular Second Appeal No. 1274 of 1984. By the impugned judgment, the High Court has reversed the order, dated 17th December, 1983, passed by the District Judge, Chandigarh and restored the judgment and the decree passed by the trial Court in respondent's suit for declaration.

3. The plaintiff-respondent filed a suit for declaration to the effect that order dated 1st June, 1977, passed by the General Manager, Punjab Roadways, Chandigarh dismissing him from service was illegal, unjust and violative of Article 311 (2) of the Constitution of India. On evaluation of the evidence adduced by the parties, the Trial Court decreed the appeal preferred by the State against the decree was allowed by the first appellate Court; the judgment and decree of the Trial Court was reversed and the suit was dismissed. Being aggrieved, the respondent took the matter in second appeal to the High Court. As noted above, the High Court allowed the appeal; reversed the order passed by the first Appellate Court and as a consequence, restored the decree passed by the trial Court. Hence this appeal by the State.

4. We have heard learned counsel for the parties and perused the judgments of the courts below.

5. Learned counsel appearing for the appellant submits that the High Court has committed a serious illegality in reversing the decision of the first Appellate Court without formulating a substantial question of law, which according to it required determination. It is urged that the decision of the High Court deserves to be set aside on this short ground alone. Learned counsel appearing on behalf of the respondent, on the other hand, submits that since the respondent has already retired, instead of remanding the matter back to the High Court for fresh adjudication, this Court may itself decide the case on merits.

6. We are afraid that in the light of the settled legal position, the prayer made by learned counsel for the respondent cannot be accepted. It is well settled that the High Court cannot proceed to hear a second appeal without formulating the substantial question of law involved in the appeal and if it does so, it acts illegally and in abrogation or abdication of the duty cast on Court. The existence of substantial question of law is the `sine qua non' for the exercise of the jurisdiction under the amended Section 100 of the *Civil Procedure Code, 1908*, (See: *Santosh Hazari vs. Purushottam Tiwardi (D) by Lrs.*¹).

7. It is manifest that in the present case, the High Court has failed to discharge the statutory obligation cast on it by proceeding to decide the second appeal without framing a substantial question of law.

8. Consequently, the appeal is allowed; impugned order dated 6th August, 2007 is set aside and the matter is remitted to the High Court for hearing and deciding the second appeal afresh in accordance with law.

9. Since the suit was filed as far back as in the year 1979, we would request the High Court to dispose of the appeal expeditiously.

¹(2001) 3 SCC 179