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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**RSA-3936-2001 (O&M)
Date of Decision : 15.10.2024**

The State of Punjab and Others

....Appellants

VERSUS

Baljit Singh

....Respondent

CORAM : HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Maninder Singh, Sr. DAG, Punjab
for the appellants.

Mr. Mayank Vashisth, Advocate for
Mr. Prateek Mahajan, Advocate for the respondent.

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SUDEEPTI SHARMA, J (Oral).

The present appeal is filed against the judgment and decree dated 01.06.2001 passed by the learned Additional District Judge, Faridkot, whereby the appeal filed by the respondent-Baljit Singh was allowed and judgment and decree dated 16.12.1999 passed by the Civil Judge (Senior Division), Faridkot, was set aside.

2. The brief facts stated before the learned Trial Court are that the plaintiff-respondent filed a suit for declaration that the order dated 06.12.1991 passed by Senior Superintendent of Police, Faridkot, order dated 09.08.1992 passed by Deputy Inspector General in appeal and order dated 08.05.1994 passed by Inspector General (Director General) of Police, alongwith mercy petition dismissed vide order dated 01.03.1996 by the Home Secretary vide which

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plaintiff's dismissal from service and ordered and subsequently up-held, are illegal, null, void and against the provisions of law and service rules.

3. The case of the plaintiff/respondent in brief is that he was posted as constable in the Police Department in the year 1989. He remained absent from duty for 74 days 19 hours and 39 minutes. A departmental enquiry was held against him and ultimately, he was removed from service vide order dated 06.12.1991 passed by the Senior Superintendent of Police. The appeal, revision and mercy petition filed against this order were also dismissed.

4. Upon notice, the defendant/appellants contested the suit and contended that the order of dismissal of the respondent from service was passed after holding enquiry as per procedure and dismissal order was passed after considering all the facts. It is further submitted that service record of the plaintiff was bad and he remained absent from duties from 20.04.1991 to 04.07.1991 and departmental enquiry was conducted against him as per law and procedure. It is further submitted in the reply that the respondent was given full opportunity to defend his case and enquiry report is based on evidence and principles of natural justice were followed.

5. From the pleadings of the parties, the following issues were framed by the learned Trial Court:-

1. Whether the order dated 06.12.1991 passed by S.S.P Faridkot, dated 09.08.1992 passed by DIG and order dated 01.03.1996 passed by Home Secretary are illegal etc., as alleged in the plaint? OPP
2. If issue No.1 is proved, whether the plaintiff is entitled to interest on the financial benefits, if so at what rate? OPP
3. Whether the suit is not maintainable in the present form? OPD



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4. Whether the plaintiff has no locus-standi of file the suit? OPD
5. What is effect of non-service of notice under Section 80 CPC?
OPD
6. Whether the suit is bad for non-payment of sufficient court fee?
OPD.
7. Whether the suit is bad of non-joinder of necessary parties?
OPD
8. Relief.

6. After hearing both the parties and perusing the whole record, the learned trial Court dismissed the suit filed by the plaintiff-respondent vide its judgment and decree dated 16.12.1999. The plaintiff-respondent filed an appeal against the same, which was allowed by the learned first Appellate Court, vide judgment dated 01.06.2001. Hence the present appeal.

7. Learned State counsel for the appellants contends that the learned first appellate Court reversed the findings of learned Trial Court without taking into consideration the evidence on record, which has been discussed in detail, by learned trial Court in its judgment and decree dated 16.12.1999.

8. *Per contra*, learned counsel for the respondent argues on the lines of the judgment dated 01.06.2001 passed by the learned first Appellate Court allowing the appeal and contends that there is no merit in the present appeal, therefore, the same be dismissed.

9. I have heard learned counsel for the parties and perused the whole record of this case.

10. The relevant portion of the judgment dated 16.12.1999 passed by the learned Trial Court is as under:-



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“12. The enquiry file has been produced in this case as Ex. P.4. Perusal of the enquiry file shows that plaintiff remained absent for 74 days, 19 hours and 45 minutes. A departmental enquiry was initiated against him. He was supplied with the summary of allegations, list of witnesses by the Enquiry Officer. The plaintiff admitted the allegations against him. The charge against the plaintiff was that he remained willfully absent from duty. Still the Enquiry Officer proceeded to record the statement of witnesses. He recorded the statements of Hira Singh MHC, Kabal Singh, Lines Officer, Darshan Singh MHC, Constable Sadhu Singh and HC Dilbagh Singh. The plaintiff was present when the statements of all these witnesses were recorded and was allowed the opportunity to cross-examine these witnesses. The plaintiff was then served with charge-sheet.

13. On 20.9.1991, the plaintiff moved an application stating as follows:-

"It is requested that in my departmental enquiry I do not want to produce any witness. Please record my statement in defence,"

14. (The application is in Punjabi language and above is the English translation thereof). On the request of the plaintiff, his statement was recorded which require to be reproduced here as it will reflect his conduct and discipline. The English translation of his statement is as follows:-

"It is requested that I constable Baljit Singh No. 2019 is presently posted at Police Lines We are two brothers and are



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residing at village Bariwala. We are agriculturists and my elder brother has separated from the family. My Parents are very old and my father is a Patient of Paralysis. My Parents are residing with my. I am very much worried about the health of my father The entire liability of agriculture work is on me and due to this I remained absent earlier. But now I am present in the Police Lines and getting my enquiry completed. After completion of enquiry, I will resign from my job as per discipline of the Police department.

15. *After recording statement of the plaintiff in defence, Enquiry Officer proceeded to record his findings, wherein he held the plaintiff guilty of the charges levelled against him. Thereafter, show cause notice was issued to the plaintiff proposing punishment of dismissal from service. The plaintiff gave reply to the show cause notice and was called for personal hearing and thereafter detailed punishment order was passed by the Senior Superintendent of Police, Faridkot.*

16. *The point to be seen here is that enquiry against the plaintiff was to determine the fact that he intentionally remained absent from duty without any reasonable case, The evidence was led on this point, the plaintiff had pleaded guilty. Even in his statement he admitted his absence. It was in his mind that he will resign after completion of the enquiry proceedings. All this reflects the attitude and conduct of the plaintiff that he was a non-serious official who preferred domestic cause more than official duty. He wanted to look after his land and agricultural affairs than to remain in service. After discussing the entire evidence against the plaintiff, Enquiry Officer also reached at*



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this conclusion that charges against the plaintiff are duly proved. He also discussed this fact that the plaintiff want to resign after completion of enquiry. Learned counsel for the plaintiff has tried to project the findings of the Enquiry officer by arguing that he based his conclusion on the statement of plaintiff only, while infact he has discussed the entire evidence produced during enquiry in his report. In addition, he also discussed the defence version of the plaintiff which was very material.

17. Perusal of the enquiry file shows that whatever has been stated by plaintiff in his statement is not correct. No defect has been pointed out in the charge-sheet, There is nothing that the punishing authority has pre-determined to impose the punishment of dismissal. In this regard, learned counsel for the plaintiff has drawn my attention towards the recommendation of Line Officer of Police Lines dated 11.7.1991 and the note put up in this regard dated 16.7.1991. Line Officer is not a punishing authority. He has recommended the dismissal from service of the plaintiff in view of the prevailing conditions in the State as plaintiff had remained absent for 74 days. There is nothing that his recommendation was ever acted upon or influenced the enquiry proceedings or the punishing authorities, He being the controlling officer of the plaintiff in Police Lines has made his recommendation and it does not reflect the pre-determined mind of the punishing authority. So far as the non-providing of assistance of expert or appointing of Presenting Officer is concerned, learned counsel for the plaintiff has not been able to show me the violation of



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any provision of Rule 16.24 of the Punjab Police Rules. He has also not been able to show me a to what prejudice has been caused to the plaintiff due to non-appointing of the presenting officer and which provision of Police Rules has been violated due to this omission. There is nothing that the Enquiry Officer was inimical towards the plaintiff in any manner. The plaintiff was allowed the full opportunity to cross- examine the witnesses. In his statement he admitted his absence and gave reasons for his absence. Personal hearing was also afforded to the plaintiff. There is absolutely nothing as to how show cause notice was illegal.

18. Learned counsel for the plaintiff has out much stress on the fact that at page 57 of the enquiry file, it has been ordered that order of discharge of the plaintiff be issued, while the punishment of dismissal has been imposed. It is against this order the plaintiff has been filing appeals and mercy petition. Use of word 'discharge at page 57, does not reflect the mind of the punishing authority that plaintiff was intended to be discharged and not dismissed. Order of dismissal is a detailed order in which all the pleas taken by the plaintiff have been discussed and the impugned order of dismissal from service do not suffer from any illegality. There is no provision quoted by learned counsel for the plaintiff that before disposing of the appeal against the order of punishment, the plaintiff was required to be given personal hearing. Learned counsel for the plaintiff confined his argument towards illegality of the order of Senior Superintendent of Police and has not stated anything regarding orders passed in appeal. Even



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copies of orders passed in appeal have not been produced on file by plaintiff. No doubt the existence of the orders passed in appeal or revision is not denied, but it was for the plaintiff to prove on file as to how these orders are illegal, null and void.

*Xxxx**xxxx**xxxx*

21. From the above discussion, I am of the considered opinion that the plaintiff has failed to prove that the impugned orders whereby he was dismissed from service are illegal, null, void, against the provisions of law and service rules.

22. With these observations, this issue is decided against the plaintiff and in favour of the defendants.

11. The relevant portion of the judgment dated 01.06.2001 passed by the learned first Appellate Court is as under :-

“13. A minute perusal of the evidence on the file reveals that in this case no oath was administered to the witnesses, No presenting officer was appointed, No personal hearing was given to the appellant-plaintiff by the appellate/revisional authorities. The punishment imposed upon the appellant-plaintiff is not commensurate with his guilt, There is no evidence in the inquiry that the appellant-plaintiff wanted to submit his resignation. In these circumstances, in my opinion, the findings of the leaned lower court are required to be set aside as the citations referred to by the learned counsel for the appellant are fully applicable to the facts of the present case and it is held that the order dated: 6.12.1991 passed by SSP, Faridkot, order dated: 9.8.1992 passed by DIG and order dated 1.3.1996 passed by



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the Home Secretary are illegal and the plaintiff is entitled to all the benefits of his service alongwith interest at the rate of 9 % per annum on the amount due to him. I accordingly, accept this appeal, set aside the impugned judgement & decree and decree the suit of the appellant as stated above with costs. Decree sheet be prepared."

12. A perusal of the judgments passed by both the Courts below show that the learned first Appellate Court without taking into consideration the evidence on record, as categorically discussed by the learned Trial Court in its judgment dated 16.12.1999 as reproduced above has allowed the appeal filed by the respondent on the ground that no oath was administered to the witnesses, no presenting officer was appointed, no personal hearing was given to the appellant, whereas it has been categorically explained in the judgment dated 16.12.1999 passed by the learned trial Court that a departmental enquiry was initiated and plaintiff was supplied with summary of allegation, list of witnesses by the Enquiry Officer and he admitted the allegations leveled against him. It is further observed by the learned trial Court that on 29.09.1991, the plaintiff moved an application stating as follows:-

"It is requested that in my departmental enquiry I do not want to produce any witness. Please record my statement in defence,"

13. As reproduced above, it is further noted in the judgment passed by the learned Trial Court in para No.14 that the statement of plaintiff was recorded to the following effect:-

"It is requested that I constable Baljit Singh No. 2019 is presently posted at Police Lines we are two brothers and are



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residing at village Bariwala. We are agriculturists and my elder brother has separated from the family. My parents are very old and my father is a patient of Paralysis. My parents are residing with me. I am very much worried about the health of my father. The entire liability of agriculture work is on me and due to this I remained absent earlier. But now I am present in the Police Lines and getting my enquiry completed. After completion of enquiry, I will resign from my job as per discipline of the Police department.

14. It has been noted down by the learned trial Court that principles of natural justice were followed by the respondent and thereafter, the plaintiff-respondent was dismissed from service on the ground that he remained absent for 79 days, 19 hours and 39 minutes from his duty.

15. In view of the above, I do not agree with the reasoning given by the first Appellate Court in allowing the appeal filed by the plaintiff/respondent. Accordingly, the present appeal is allowed and judgment and decree dated 01.06.2001 passed by the learned first Appellate Court is set aside and the judgment and decree passed by the learned trial Court is upheld.

16. Decree-sheet be prepared.

17. Pending applications, if any, also stand disposed of.

October 15, 2024
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(SUDEEPTI SHARMA)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes