

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

RSA No.210 of 1991 (O&M)

Date of decision : 23.07.2015

The State of Punjab & others

...Appellants

versus

Constable Harnek Singh

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Ms. Vaibhav Sharma, DAG, Punjab.

None for the respondent.

RITU BAHRI, J

The State of Punjab has come up in regular second appeal against the judgment of the trial Court dated 13.10.1989 and the lower appellate Court dated 23.07.1990 whereby the suit of the plaintiff for declaration that the order dated 01.10.1984 whereby his three years' service had been forfeited with permanent effect was illegal, null and void has been decreed by both the Courts.

The plaintiff joined the service in Punjab Armed Police as a constable at Bahadurgarh. On 16.12.1984 at about 11:30 AM, the plaintiff was checked and found careless in his duties. Inspector Joginder Singh was appointed as an Enquiry Officer. The enquiry was initiated against the plaintiff according to Punjab Police Rules 16.24 and rules and regulations governing the service of the plaintiff. The plaintiff was neither supplied copy of the report made by HC Sunhera

Singh nor he was given the list of prosecution witnesses and copies of the documents thus the plaintiff could not make necessary preparation to cross-examine the prosecution witnesses and there was no evidence before the Enquiry Officer on which the charges against the plaintiff could be held to be proved. The alleged confession by the plaintiff was false and concoction. After getting the report from the Enquiry Officer, the Commandant, 36th Bn. PAP Bahadurgarh, vide order 01.10.1984, illegally forfeited three years' approved service of the plaintiff with permanent effect and hence the present suit.

On notice, the defendants filed a written statement. On merits, it was pleaded that the enquiry was conducted by Inspector Joginder Singh as per Punjab Police Rules 16.24 without prejudice and list of allegations and list of witnesses and other documents had been supplied to the plaintiff. He was given full opportunity to cross-examine the witnesses and the enquiry was conducted on the basis of evidence. The impugned order dated 01.10.1984 forfeiting three years' service was a valid, legal and constitutional order and in accordance with the rules governing the service matters. The pay of the plaintiff was reduced from Rs.555/- to Rs.510/-. The following issues were framed on 07.06.1988 :-

“1. Whether the order dated 1-10-84 and 29-5-85 by Commandant 36th Bn. PAP for forfeited of three years service of plaintiff is with permanent effect is illegal, null and void without jurisdiction, unconstitutional, in contravention of Punjab Police Rules and against the principle of natural justice? OPP.

2. *Whether the plaintiff is entitled to declaration prayed for? OPP.*
3. *Whether the plaintiff has no cause of action? OPP.*
4. *Relief.”*

The allegations against the plaintiff were that of misconduct with Head Constable Sunehera Singh on 16.12.1983 in PAP Guard Lodowal for protection of Sutlej Bridge. The plaintiff was found careless in performing his duty and HC Sunhera Singh Incharge of the guard directed him to held his duty property. The plaintiff abused and mis-behaved with him. The enquiry was conducted by Inspector Joginder Singh. In the enquiry he was held guilty of misconduct on the basis of confession made by him in the presence of Inspector Sandhoran Singh and Sub Inspector Swran Singh and constable Raj Kumar. No confessional statement of the plaintiff was recorded by the Inspector Sandhoran Singh and the Sub Inspector Swran Singh. The Enquiry Officer himself found that the charges were not substantiated from the evidence led by the department. The trial Court held that the report of the Enquiry Officer was based on no evidence.

The trial Court further examined the provisions of Rule 16.24 of the Punjab Police Rules which provides that the superior officer is competent to make enquiry under direction of the Superintendent but Inspector Joginder Singh could not be termed as a superior officer because he did not come under the expression gazetted

Police Officer. He was covered under the expression upper subordinate as given in Chapter 1 Rule 13 of the Punjab Police Rules, 1934. After passing the impugned order, the plaintiff had filed his appeal to DIG, which was rejected and then he preferred a revision to the DGP, which was also rejected. The second order of the Commandant passed on 29.05.1985, was based on the guidance of the superior officer which was based on the order Ex.P3 passed by the DGP. Before passing these orders no opportunity of hearing is given to the plaintiff. Since the report of the Enquiry Officer was based on no evidence, the order dated 01.10.1984 and 29.05.1985 passed by the Commandant forfeiting three years' service of the plaintiff was held to be illegal, null and void. The State of Punjab went in appeal. The lower appellate Court has affirmed the finding given by the trial Court. The lower appellate court further examined the provision of Rule 16.24 of the Punjab Police Rules which provides that a police officer accused of a mis-conduct shall have to be brought before the officer empowered to punish him or said superior police officer as the Superintendent may direct to conduct the enquiry. The Inspector as per Rule 1.13 of Punjab Police Rules 1934 was covered under the expression upper subordinate. He was not a superior officer to conduct the enquiry of the plaintiff and hence the enquiry conducted by an unauthorised person was held to be illegal, null and void.

Counsel for the appellant has referred to a judgment of the Hon'ble Supreme Court passed in the case of Inspector General of

Police & anr. Vs. Thavasiappan 1996 (2) SCC 145 to contend that in case of a departmental enquiry it is not necessary that the enquiry officer may not be the authority competent to impose the penalties under the statute. It is not necessary that the enquiry should be conducted by such an authority and an act of instituting a disciplinary proceeding is different from conducting an enquiry. While interpreting Rules in the case before the Hon'ble Supreme Court, a departmental proceeding was initiated against Sub Inspector of Police but the Deputy Superintendent of Police was appointed as Enquiry Officer to conduct the enquiry on the employee. Thereafter he held an enquiry and submitted his report to the Deputy Inspector General of Police who was competent to award the proposed penalty. The DIG agreed with the report of the enquiry officer and imposed the penalty of compulsory retirement. As per the rules applicable in the case, Rule 4 specifies the authorities which could impose penalties prescribed under Rule 2. Rule 3 provides the procedure that has to be followed before an order imposing penalty could be passed. While interpreting Rule 3 (b) (i), the Hon'ble Supreme Court held that it is provided, to impose on a member of service any of the penalties specified under Rule 2. The Rule was silent as regard the person who should perform those acts except that the report of authority holding enquiry. The enquiry officer may not be the authority competent to award the proposed penalty, which was apparent from the second para of the sub Rule. If it was intended by the rule making authority that the disciplinary

authority should itself framed the charge and hold the enquiry then it would not have provided that a report of the enquiry shall be prepared by the authority holding the enquiry whether not such authority is competent to imposed the penalty. The Hon'ble Supreme Court held that the Rules were silent that the above said Rules did not lay down that it was only punishing authority who can conduct the enquiry. As per rule 3 (b) it was a disciplinary authority who has the power to impose the penalty and even if the enquiry was conducted by a lower authority, the penalty imposed by the disciplinary authority would not be vitiated. In the facts of the present case, the enquiry was conducted by the Inspector who as per Rule 1.13 of the Punjab Police Rules, 1934 is covered under the expression of an upper subordinate officer. By applying the ratio of the judgment of the Hon'ble Supreme Court to the facts of the present case, he was appointed as an enquiry officer as he was a controller officer being superior to the head constable. Hence he was competent to conduct the enquiry. At the same time, the finding of the enquiry report would be relevant now. The disciplinary authority after examining the enquiry report came to the conclusion that there was no written confession recorded before the enquiry officer nor before the officer with whom he mis-behaved. Hence, in the absence of any evidence, the enquiry officer had given a report in favour of the plaintiff-Harnek Singh. Even if the Inspector was competent to conduct the enquiry, the enquiry report in itself was held by the trial Court and lower appellate Court without evidence. Hence,

on merits there was no evidence against the plaintiff that he had misbehaved on 16.12.1983 with HC Sunehra Singh and the trial Court had rightly set aside the punishment order forfeiting three years' regular service of the plaintiff. Another fact which can be taken into consideration is that when the plaintiff had filed appeal before the Inspector General of Police, he was not given an opportunity of hearing. Viewed from any angle the impugned order was passed without there being any evidence against the plaintiff.

Hence, the judgments of the trial Court and the lower appellate Court do not require any interference and the appeal of the State of Punjab is dismissed. A direction is given to the appellants that since the respondent has retired, the necessary payment of three increments be given to the plaintiff within a period of four months and compliance report be sent to this Court.

23.07.2015
Vinay

(RITU BAHRI)
JUDGE