

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Regular Second Appeal No.1329 of 1998 (O&M)

Date of decision: 19.11.2015

Punjab State and others

.....Appellants

versus

Subash Chander

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.T.N.Sarup, Addl.A.G. Punjab for the appellants
Mr.A.S.Maanaise, Advocate for the respondent

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

Impugned in the present regular second appeal is the judgment and decree dated 19.1.1998, passed by the learned Additional District Judge, Gurdaspur, affirming the judgment and decree dated 23.12.1995 passed by the learned Civil Judge, Junior Division, Pathankot, vide which, suit of the plaintiff was decreed and declaration was granted to the effect that the order passed by the defendant (Ex.P2.2) on the mercy petition/ appeal/ representation filed by the plaintiff against his termination order dated 15.3.1983 passed by defendant No.4, whereby mercy petition of the plaintiff has been dismissed on 6.10.1989 by Deputy Inspector General of Police PAP (Admn.) Jalandhar Cantt., is illegal, null, void in-effective, unconstitutional and against the principles of natural justice.

Plaintiff joined the police department in Punjab Armed Police as Constable on 14.10.1981. Suffice to say that in the exercise of powers under Rule 12.21 of the Punjab Police Rules Volume II Part II, the plaintiff was discharged from service on 15.3.1983 w.e.f. 14.3.1983. Aggrieved by the said order, the plaintiff filed a civil suit in the Court of Sub Judge 1st Class, Jalandhar, which was decreed on 5.11.1984. However, in the appeal, the judgment and decree was reversed by the learned Additional District Judge, Jalandhar on 12.3.1986. This Court is informed that further RSA filed before this Court was also dismissed.

It is further stated that one Joginder Singh was also discharged and that the concerned authority accepted his appeal and reinstated him on 18.11.1986 and Joginder Singh re-joined the service. Therefore, the plaintiff also filed an appeal against his termination order, which was dismissed vide order dated 6.10.1989, passed by the Deputy Inspector General of Police PAP (Admn.) Jalandhar Cantt.

The stand of the defendants before the lower Court was that the suit is barred by principles of res judicata. It is also barred by limitation and that the order dated 6.10.1989 was passed by the appellate authority after fully considering the grounds of appeal and is justified. It was further stated that case of Joginder Singh is based on different facts. Only DGP Punjab Police was competent to hear the mercy appeal. From the pleadings following issues were framed:-

- 1. Whether the plaintiff is entitled to the declaration prayed for? OPP*

2. Whether suit of the plaintiff is not maintainable? OPD

3. Whether this Court has no jurisdiction to try this suit?

OPD

4. Whether suit of the plaintiff is time barred? OPD

5. Relief.

The learned Civil Judge, Junior Division, Pathankot, decreed the suit. The appeal was dismissed by the learned Additional District Judge, Gurdaspur on 19.1.1998. The State of Punjab, being aggrieved by the judgment of both the Courts below, has filed this regular second appeal.

Initially, this Court, vide order dated 25.5.1998, dismissed the regular second appeal in limine. However, the said order was recalled by this Court on 11.5.1999 and the RSA was ordered to be heard on merits.

I have heard learned counsel for the parties and have also carefully gone through the file.

Following substantial questions of law arises:-

- i) Whether the Courts below were justified in setting aside the order of termination on merits after the same has already been decided by the competent Court and has attained finality?*
- ii) Whether merely by setting aside the order of appellate authority dated 6.10.1989 after the decision of the Civil Suit on merits, the plaintiff could be reinstated?*

After going through the file, I am of the view that the discharge order passed on 15.3.1983 was contested before the Civil Court and was decided on merits and the suit of the plaintiff stood

dismissed. Therefore, the legality of the discharge order dated 15.3.1983 was finally adjudicated upon by the Civil Courts.

What the plaintiff has done is that after the decree of the Civil Court had attained finality, he filed an appeal before the DIG, which was dismissed on 6.10.1989. The order of DIG is reproduced as under:-

Order

A representation has been submitted by Ex.Constable Subash Chander against the order of discharge passed under Rule 12.21 of PPR.

I have carefully gone through the complete record, order of discharge as well as the representation. There is no provision of appeal against the order of discharge but however on consideration of the facts on record, I find that order of discharge is legal, valid and proper and I find no point for any interference. All the pleas taken by the representation are without any legal justification and sound reasoning.

3. In the circumstances explained above, the representation is rejected on merit accordingly.

One copy of this order may be supplied to the representationist accordingly.

*Sd/- Deputy Inspector General of Police
PAP (Admn) Jalandhar Cantt.
6/10/89*

I am of the view that in view of the decision of the Civil

Court upholding the validity of the discharge order dated 15.3.1983,

the same could not be re-opened in the subsequent suit on the ground that subsequently, plaintiff filed a representation before the DIG and the same has been dismissed. Both the Courts below erred in holding that the order of discharge dated 15.3.1983 merged in the order dated 6.10.1989 passed by DIG. The order dated 15.3.1983, discharging the plaintiff had become final and both the Courts below erred in re-opening the matter in the subsequent suit and deciding the same on merits against the State. Therefore, the second suit qua the discharge order dated 15.3.1983 is barred by res judicata. The findings of both the Courts below on this aspect are reversed.

Now coming to the lower Court judgment, which was upheld by the lower appellate Court, it comes out that only the order dated 6.10.1989, dismissing the appeal has been set aside. The order reproduced above, shows that there is no provision of mercy appeal even then a representation was submitted and the same was considered on merits and dismissed. The lower Court has set aside the said order dated 6.10.1989. That would effectively mean that only the said order dated 6.10.1989 has been set aside and the order dated 15.3.1983 discharging the plaintiff has not been set aside and consequently, it will remain in operation. Both the Courts below have failed to take note of the fact that this in fact does not give any relief to the plaintiff and the plaintiff stands where he was before the filing of the present suit.

So far as order dated 6.10.1989 is concerned, I do not find any illegality in the same. No appeal/representation lies before DIG after decision of Civil Court. A representation was filed which was

bound to be dismissed on the simple ground that the order of discharge has already been upheld by the civil Court. No mercy petition lies to the DIG. Therefore, there is no illegality or infirmity in the impugned order dated 6.10.1989. The mercy appeal is always the prerogative of the State. That would not mean that the civil dispute upholding the discharge order can be again challenged on the ground that the mercy, even if filed, has been subsequently dismissed .

In view of the matter, it is found that the judgment and decrees of both the Courts below are patently illegal and are hereby set aside and the suit filed by the plaintiff stands dismissed with costs.

The appeal stands allowed accordingly.

19.11.2015

gk

**(Kuldip Singh)
Judge**