

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

**CM No. 9715-C of 2015 in/and
RSA No. 1863 of 1999
Date of decision : September 2, 2015**

State of Haryana

..... Appellant

Versus

Ex. H. C. Anant Ram

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ravi Partap Singh, AAG., Haryana
for the appellant.

Mr. G. S. Gopera, Advocate
for the applicant-respondent.

1. Whether reporters of local papers 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?

Amit Rawal, J (oral).
CM No. 9715-C of 2015

The application is for fixing an actual date of hearing.

The application is allowed.

The appeal is taken on board today with consent of the both the parties.

RSA No. 1863 of 1999

The challenge in the present appeal is to the impugned judgment and decrees of the courts below whereby the civil suit filed by the respondent-plaintiff seeking declaration of order

dated 9.9.1992 passed by defendant No.2 and 19.1.1993 of DIG., Hisar Range, Hisar whereby on the basis of enquiry report he has been dismissed from service and the appeal filed against the same has also been dismissed and the trial court has held him entitled to continuous service and ordered that he would be paid all pay and other allowances. The aforementioned judgment and decree has been assailed.

Mr. Ravi Partap Singh AAG., Haryana submits that the aforementioned judgment and decree was assailed by filing appeal under Section 96 CPC and the first appellate court being court of fact and law partly accepted the appeal and the orders dated 9.9.1992 and 19.1.1993 were modified and it was held that the respondent-plaintiff shall be entitled to retiral benefits from 9.9.92 and shall be paid the same within a period of three months.

He further submits that the respondent-plaintiff had remained absent for seven months without seeking sanction from the competent authority and in view of the absence, he was served with the charge sheet and the reply to charge sheet was not found to be satisfactory accordingly the enquiry officer was appointed. The enquiry officer, after taking evidence, recommended for dismissal of service and vide order dated 9.9.1992 the respondent-plaintiff was dismissed from service.

He further submits that the respondent-plaintiff has only challenged the order of dismissal and not enquiry proceedings, therefore the suit suffers from an inherent defect.

Learned counsel appearing on behalf of the respondent-plaintiff submits that the judgment and decree of the lower appellate court is fair, legal and justified and there is no illegality and perversity in the same. He submits that before conducting the enquiry sanction of District Magistrate is required under Section 16.38 (1) of Punjab Police Rules, 1934 applicable to Haryana had not been obtained, which is mandatory in nature and submits that no substantial question of law arise for adjudication before this court.

I have heard learned counsel for the parties and appraised the paper book.

It is a matter of record that the sanction as per aforementioned rule was not obtained which is mandatory in nature and therefore the entire process of holding an enquiry was vitiated in law and accordingly the order of dismissal of service of the respondent-plaintiff and dismissal of his appeal were not correct in law and ought not to have been passed. The appellate court has failed to notice the aforementioned fact.

Both the Courts below have rendered a finding of fact and law after appreciation of oral and documentary evidence. I do not find any illegality or perversity in the aforementioned judgments and decrees of the courts below. The respondent shall be entitled to all the retiral/notional benefits. Since the appellate court had directed to make the payment of retiral/notional benefits within a period of three months, I deem it appropriate to maintain such

direction. Accordingly the appellant-State is directed to make the payment of retiral/notional benefits to the respondent-plaintiff within a period of three months from the date of receipt of certified copy of this order.

No substantial question of law arise for determination by this Court.

Accordingly, the appeal is dismissed.

**(AMIT RAWAL)
JUDGE**

**September 2, 2015
archana**