

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

Date of decision:20.01.2015

Ex.Constable Mohan Singh

.....Appellant

v.

State of Punjab through Collector,Gurdaspur and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE JASWANT SINGH

Present:- Mr.Dheeraj Mahajan,Advocate for the plaintiff/appellant.
Mr.Vaibhav Sharma,DAG Punjab for defendants/
respondents.

Jaswant Singh,J.(Oral)

Since there is delay of 389 days in filing the present appeal,
application seeking condonation of said delay has been filed.

After hearing learned counsel for the parties and perusing
the averments made in the application, the same is allowed and delay in
filing the appeal is condoned.

Main Case.

Plaintiff/appellant is in appeal against judgment and decree
dated 4.8.2009 passed by learned District Judge, Gurdaspur whereby
while allowing the appeal of the defendants/respondents, judgment and
decree dated 24.12.2007 passed by Civil Judge (Junior Division)
Gurdaspur decreeing the suit of the plaintiff was set aside.

It is apparent that plaintiff/appellant was enrolled in Punjab

police as Constable on 13.8.1992. Due to his absence from duty from 11.3.2000 to 25.3.2000; from 1.4.2000 to 3.5.2000; and from 6.5.2000 to 16.9.2000 he was dismissed by Commandant,^{2nd} Commando Battalion, Punjab vide order dated 23.11.2001. The appeal filed by him against his dismissal was dismissed by the appellate authority vide order dated 21.3.2002 and further the revision preferred by him was also dismissed vide order dated 16.8.2002. Aggrieved by this action of the defendants/respondents, plaintiff filed a suit for declaration that aforesaid orders dated 23.11.2001, 21.3.2002 and 16.8.2002 were illegal. Further prayer was for reinstatement with all consequential benefits.

The learned Civil Judge (Junior Division)Gurdaspur decreed the suit of the plaintiff/appellant vide judgment and decree dated 24.12.2007. Aggrieved against the same defendants filed an appeal which was accepted by the learned District Judge,Gurdaspur and the suit of the plaintiff/appellant was dismissed while setting aside the judgment and decree passed by the learned trial court.

It has been submitted by the learned counsel for the plaintiff/appellant that the findings recorded by the learned Appellate court are perverse, as it has been proved on record that neither any opportunity of hearing nor any copy of the enquiry report was provided to plaintiff/appellant before passing order of dismissal from service. It has further been submitted that the punishment awarded to the plaintiff/appellant is disproportionate to the misconduct on his part and

that plaintiff/appellant should have been allowed to seek voluntary retirement so as to be entitled for pensionary benefits.

On the other hand, learned Deputy Advocate General submits that full opportunity to defend him was provided to the plaintiff/appellant and that length of service put in by the plaintiff/appellant did not entitle him for grant of pensionary benefit.

After hearing the learned counsel for the parties in my opinion, no question of law much less substantial question of law arises for consideration in this appeal and the same is liable to be dismissed.

The learned appellate Court while allowing the appeal filed by defendants, in para 21, has noticed that plaintiff/appellant admitted the charge framed against him and also made an application to the effect that he did not want to examine any witness in defence and prayed for forgiveness. Faced with this situation, Enquiry Officer submitted his report holding the plaintiff/appellant guilty. A copy of the said enquiry report was furnished to the plaintiff/appellant alongwith show cause notice dated 6.8.2001. In reply to the said show cause notice plaintiff/appellant submitted a reply admitting therein that he had left his duty due to his wife's ailment as also he himself was under depression. Keeping in view the admission on the part of the plaintiff/appellant before the Enquiry Officer as also before the punishing authority, in my opinion it does not lie in the mouth of the plaintiff/appellant that he was not afforded any opportunity to defend himself.

As regards the quantum of punishment, it has come on record that petitioner put in service of a little more than 9 years out of which three years' service was treated as non-duty period/forfeited permanently due to his absence from duty on 11 different occasions earlier. Thus, the plaintiff/appellant was left with service of a little more than 6 years to his credit disentitling him for grant of pensionary benefits.

In view of the above, neither the findings recorded by the learned Appellate Court can be said to be perverse nor the quantum of punishment awarded to plaintiff/appellant can be said to be disproportionate to misconduct on his part.

Dismissed.

20.01.2015
joshi

(Jaswant Singh)
Judge