

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

RSA No.3428 of 2011

Date of Decision: 12.10.2015

HC Rakesh Kumar

....Appellant

Vs

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Naveen Daryal, Advocate
for the appellant.

Mr. Siddharth Sanwaria, D.A.G., Haryana.

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?*

RAJ MOHAN SINGH, J

[1]. Plaintiff is in second appeal against the concurrent judgments and decrees passed by the Court below dismissing the suit of the plaintiff for declaration to the effect that the orders dated 11.07.2003 and 09.06.2004 passed by Punishing Authority and the Appellate Authority respectively are illegal, ultra vires, unconstitutional and against the principles of natural justice. Consequential relief for entitlement to arrears of pay on account of stoppage of increments and further promotion as Head Constable at part with his juniors was also declined besides declining prayer for benefit of special pay and grant of ACP Scale became due on 01.02.2004.

[2]. Plaintiff was recruited as Constable in defendant's Department in the 1st Battalion, HAP Ambala on 16.01.1984 being a permanent resident of village Barwala, District Ambala where he actually resided. The antecedents of the plaintiff regarding his permanent residence were verified on his selection as Constable from village Barwala itself. Plaintiff was transferred from HAP 1st Battalion to District Police, Jind and thereafter he was transferred to District Karnal in the year 1989.

[3]. Plaintiff appeared in the test for the post of Constable in the Executive Clerk Cadre and was approved for Executive Clerk having qualified the test and was transferred to District Panipat, where he remained posted till 1992. Plaintiff was promoted to the post of Head Constable in the year 1992 and was given posting in District Karnal where he remained posted upto 09.11.2000.

[4]. Plaintiff alleged that one Head Constable Mohan Lal in collusion with some officials of the office of DIG Rohtak Range, Rohtak arranged a mutual transfer with plaintiff vide TPM dated 09.04.1999. Plaintiff on receipt of said order immediately approached DIG Rohtak Range, Rohtak and pleaded that he never sought such transfer with aforesaid HC Mohan Lal. Manipulation was alleged by him. DIG Rohtak Range, Rohtak vide order dated 12.04.1999 cancelled the transfer of the plaintiff from Karnal to Panipat and directed Superintendent of Police, Karnal to look into the matter and to inquire as to how mutual transfer order was arranged. DIG,

Rohtak Range, Rohtak also directed the Superintendent of Police, Panipat to verify the mutual transfer. The Superintendent of Police, Karnal vide order dated 21.04.1999 apprised DIG Rohtak Range, Rohtak that plaintiff never moved an application for his mutual transfer and the same was the handiwork of HC Mohan Lal as a managed affair.

[5]. The DIG Rohtak Range, Rohtak was promoted to the post of IG Police, Rohtak Range, Rohtak. Thereafter IG Police, Rohtak Range, Rohtak vide order dated 23.05.2001 directed Sh. Godhu Ram Welfare Inspector, Rohtak to inquire into the circumstances leading to the transfer of plaintiff vis-a-vis HC Mohan Lal during last two years and as to on whose behest such transfer took place. The Welfare Inspector was to make inquiry regarding mutual transfers of the plaintiff vis-a-vis HC Mohan Lal, but instead of inquiring into that aspect, he misdirected himself and diverted the inquiry into another direction and recorded that the plaintiff is not the permanent resident of village Barwala and he intentionally suppressed the material facts at the time of his appointment because he wanted to manipulate his posting at Karnal and, therefore, plaintiff was held responsible for playing fraud upon the Government.

[6]. Inquiry Officer exonerated HC Mohan Lal for want of record. On the basis of such inquiry conducted by Welfare Inspector, plaintiff was chargesheeted for imposing major penalty. Regular inquiry was held and it was alleged that the plaintiff gave his wrong address of

village Barwala in place of his ancestral village as Baragaon at District Karnal and, therefore, suppression of facts took place and it was held that he played fraud with the Department.

[7]. The defence of the plaintiff was that at the time of recruitment in Police Department he was residing in Barwala for the last many years being adopted son of his Bua. Show cause notice was issued to him and proposed penalty of dismissal was made.

[8]. Plaintiff filed detailed reply to I.G. Police Range Rohtak, Rohtak. The Punishing Authority did not consider the defence of the plaintiff and ordered stoppage of one future annual increment with permanent effect vide order dated 11.07.2003. The plaintiff filed an appeal against the said order before the DGP, Haryana, but the Appellate Authority without affording any opportunity of hearing dismissed the same vide order dated 09.06.2004. Thereafter the suit in question came to filed.

[9]. The suit was contested by the defendants on all pleas of jurisdiction, limitation, cause of action and suppression of facts. The defendants alleged that the plaintiff intentionally gave wrong address at the time of his appointment by informing that he was resident of village Barwala in District Ambala, whereas he was permanent resident of vilalge Baragaon in District Karnal). Defendants claimed that chargesheet was issued on the basis of proper inquiry report. The order of punishment of stoppage of one future annual increment with permanent effect was lawful and was passed in accordance with

law after giving full opportunity of hearing to the plaintiff. The wrong address was given by the plaintiff as he wanted to get posted at his home District Karnal in future.

[10]. No replication was filed. Trial Court framed the following issues:-

- “1. Whether plaintiff is entitled to a decree for declaration to the effect that the order dated 11.07.2003 and the order dated 09.06.2004 passed by the Punishing Authority as well as appellate authority are illegal, against the principles of natural justice be quashed? OPP*
- 2. If issue no.1 is proved, whether plaintiff is entitled to a decree for declaration as prayed for? OPP*
- 3. Whether plaintiff has no cause of action?OPD*
- 4. Whether this court has got no jurisdiction to entertain and try the present suit? OPD*
- 5. Whether plaintiff has not come to the court with clean hands and has suppressed the true and material facts from this court? OPD*
- 6. Whether the suit is time barred? OPD*
- 7. Relief.”*

[11]. Both the parties led evidence. Trial Court took issues No.1 and 2 together and decided the same by holding that the plaintiff was guilty of concealing his place of birth and permanent address in order to get posting in his home District. Impugned orders dated 11.07.2003 (Annexure P-5) and 09.06.2004 (Annexure P-9) were upheld. Issues No.3 and 4 were decided in favour the plaintiff and

against the defendants. Issues No.5 and 6 were also decided against the defendants on the basis of findings recorded under issue No.1,. The suit of the plaintiff was dismissed vide judgment and decree dated 28.01.2010. The judgment of the trial Court was upheld by the lower appellate Court vide judgment and decree dated 21.02.2011.

[12]. In para no.9 of the grounds of appeal, appellant has formulated following questions of law:-

- “i. Whether the findings recorded by the Courts below are perverse and are not based upon no evidence/material on record?*
- ii. Whether appellant has been malafidely framed in this case with oblique motive and the action of respondent is against the settled principle of law and against the principle of natural justice.*
- iii. Whether grave and manifest injustice has been caused to the appellant/plaintiff.”*

[13]. All the aforesaid questions of law as formulated above revolve around one question, whether findings recorded by the Courts below are the result of misreading of evidence or suffered with perversity and are in violation of principles of natural justice?

[14]. I have heard learned counsel for the parties and have gone through the material on record with their due assistance.

[15]. Learned counsel for the appellant has vehemently contended that even the Inquiry Officer has found in his inquiry report Ex.P-2 that plaintiff was adopted by his father's sister Bohti

Devi and he lived as a permanent resident of village Barwala, therefore, plaintiff cannot be held to be guilty of mis-conduct for furnishing wrong particulars with regard to his birth place.

[16]. Learned counsel further contended that the aforesaid omission is not such an omission which would entail in stoppage of one future annual increment with permanent effect. The reason for such argument is that in terms of Rule 14.47 of Punjab Police Rules (for short 'the PPR') only Inspectors and Sub-Inspectors are not to serve in their home towns. Rule 14.47 of the PPR is reproduced hereasunder:-

“14.47. Inspectors and Sub-Inspectors not to serve in their home districts.- Except for special reasons, and with the approval of the Inspector-General in each case, no Sub-Inspector shall be posted to a permanent appointment in the district in which his home is situated. The same rule will govern the postings of Inspectors. The rule will not, however, apply to appointments to clerical posts or posts of Lines Officer or reserve Inspector, nor will it affect the postings of European Inspectors or Sergeants.”

[17]. Perusal of aforesaid Rules reveals that there is no such bar for officials like the appellant to be posted in their home districts. Firstly there is no concealment by the appellant vis-a-vis his being adopted by Bua in village Barwala in District Ambala and secondly there was no such impediment in his posting in Karnal even if Baragaon is taken to be the birth place of the plaintiff.

[18]. Learned counsel contends that when complaint is made against the member of the police force, requirement of sanction from

District Magistrate in terms of Rule 16.38 of the PPR 1934 is a mandatory requirement before proceeding departmentally. Since no such sanction has been obtained by the Department before proceeding against the plaintiff, therefore, impugned orders stood vitiated in account of non-compliance to mandatory requirement in terms of Rule 16.38 of the PPR 1934. In the aforesaid context learned counsel for the appellant relied upon **State of Punjab v. Raj Kumar, AIR 1988 SC 805.**

[19]. On the other hand, learned counsel for the respondent argued that the impugned orders have been passed after providing due opportunity of hearing. There is no infraction of Rule and, therefore, the orders passed by the Authorities in hierarchy are not assailable in civil Court.

[20]. Apparently, the Inquiry Officer has not refuted the plea of adoption taken by the plaintiff-appellant in his defence. Factum of adoption has been proved in favour of plaintiff-appellant, but it is only on the grounds that he has not mentioned village Baragaon District Karnal as place of his birth at the time of recruitment in the Police Department. Solely on that premise mis-statement of fact has been attributed to the plaintiff-appellant so as to inflict impugned punishment of stoppage of one future increment with permanent effect. The Courts below have recorded that proper opportunity to cross-examine the witnesses was afforded to the plaintiff and he was given opportunity to lead his evidence in defence.

[21]. Inquiry Officer in his report Ex.P-2 has observed that plaintiff was adopted by his parental aunt and was taken to Barwala District Panchkula where he resided permanently. But the plaintiff ought to have mentioned his place of birth in the official record and to that extent he was found guilty. Investigating Officer has also observed that plaintiff has not obtained any undue advantage on account of his wrong address furnished at the time of appointment.

[22]. The natural mother of the plaintiff was examined in order to corroborate that he was adopted by his Bua at the time of his birth. Solely on the basis of voter card, ration card of village *Baragaon* the factum of adoption could not have been ignored. The lower appellate Court have not based the reasoning on the threshold of the defence taken by the plaintiff-appellant in terms of applicability of Rules 14.47 and 16.38 of PPR 1938.

[23]. On the aforesaid counts the judgments and decrees are found to be lacking. Firstly it has to be proved on record that the alleged omission despite finding that plaintiff was lawfully adopted by his Bua in his childhood, the alleged latch in not giving place of birth as *Baragoan* District Karnal at the time of appoint would be an omission of such type which would entail in passing an order of punishment stopping one annual increment with permanent effect. Such a punishment does not commensurate to the alleged misconduct by any stretch of imagination. Factum of adoption has been found by the Inquiry Officer and even by the Courts below as a

matter of fact. Once the plaintiff is proved to be adopted son he ceases to have all the links from his original parents including the village where he took birth.

[24]. In view of aforesaid, the omission, if any in not disclosing original place of birth at the time of recruitment in Police Department is not an incident warranting such a punishment of stopping of one annual increment with permanent effect. The order does not appear to be commensurate with the alleged misconduct. Even as per requirement in terms of Rule 14.47 of PPR, there is no bar for the officials like plaintiff to be posted in home District. The bar is in respect of Inspectors and Sub-Inspectors not to serve in their home Districts. If this requirement is read in consonance with the factum of adoption of the plaintiff by his Bua in village Barwala District Ambala, the impugned punishment is found to be wholly unsustainable in law.

[25]. Even as per mandatory requirement in terms of Rule 16.38 of the PPR 1934, no sanction from the District Magistrate was obtained before proceeding against the plaintiff departmentally. On this count also impugned punishment is proved to be unsustainable in law. The questions as formulated by the appellant have a cumulative interpretation.

[26]. On the basis of evidence on record, it is found that the reasoning given by the Courts below is perverse and is result of misreading of evidence, therefore, the questions of law are answered by way of giving cumulative interpretation that these questions do

exist in favour of the appellant and impugned order of stoppage of one increment with cumulative effect is wholly unsustainable in law.

[27]. Accordingly, impugned judgment dated 21.02.2011 passed by Additional District Judge, Karnal upholding the judgment and decree dated 28.01.2010 passed by Civil Judge (Jr. Divn.) Karnal is hereby set aside and the suit of the plaintiff is decreed with costs throughout.

October 12, 2015
Atik

(RAJ MOHAN SINGH)
JUDGE