

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

**Regular Second Appeal No.4319 of 2012 (O&M)
Date of decision: 04.11.2015**

The Haryana State & others

.....Appellants

Versus

Satish Kumar

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Samarveer Singh, DAG, Haryana,
for the appellants.

Mr. Sandeep Kotla, Advocate,
for the respondent.

Ritu Bahri, J.

This appeal has been filed against the judgment dated 30.04.2012 passed by the Addl. District Judge, Gurgaon, dismissing the appeal filed by the defendants-appellants against the judgment and decree dated 29.09.2011 passed by the Civil Judge (Junior Division), Gurgaon, whereby suit filed by the plaintiff-respondent has been decreed.

Satish Kumar-plaintiff (respondent herein) while posted at Police Lines, Faridabad, was found absent from special roll on 19.03.2000, which was recorded vide DD No.9 dated 19.03.2000. He remained absent for 186 days and thereafter, returned back on 21.09.2000. Thereafter, on the basis of enquiry report given by the Enquiry officer, the Superintendent of Police, Faridabad dismissed the plaintiff-respondent from service vide order dated 17.08.2001. Appeal against the said order was dismissed by the Inspector General of Police, Gurgaon vide order dated 03.06.2002. Aggrieved against the said order, he preferred a revision, which was dismissed by the Director General of Police, Haryana-defendant No.2 on 07.04.2003. Thereafter, the

plaintiff-respondent submitted a mercy petition before defendant No.2, which was accepted on humanitarian ground keeping in view his family circumstances. While taking lenient view, the dismissal order was reduced to stoppage of three increments with permanent effect vide order dated 03.09.2004. Thereafter, the plaintiff joined his duty. However, after a period of two years, defendant No.2 again sent a show cause notice dated 17.08.2006 on the same ground of absence from duty. Plaintiff gave reply to the said notice. However, defendant No.2 vide his order dated 25.09.2006 had withdrawn the order dated 03.09.2004 and restored the order dated 17.08.2001 passed by the Superintendent of Police, Faridabad. As per plaintiff, defendant No.2 was not competent to review its earlier order. In this regard, he made a representation, which was rejected by defendant No.3. Ultimately, he filed the present suit challenging the aforesaid orders being illegal and unjustified.

Upon notice, defendant-appellants filed written statement and controverted the claim made by the plaintiff-respondent. It was stated that the procedure adopted by the defendants was correct. Vide memo No.8114/2005-6HG-1 dated 13.06.2006, the State Government had accorded approval for withdrawal of undue benefits given by the then DGP, Haryana.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the impugned order dated 25.09.2006 passed by defendant No.2, order of dismissal passed by SP, Faridabad and order of rejection of mercy petition passed by defendant No.2 are illegal null and void against the principle of natural justice and are liable to be set aside on the grounds mentioned in the

plaint? OPP

2. Whether the plaintiff is entitled to decree for declaration as prayed for? OPP

3. Whether the suit is time barred? OPD

4. Whether this Court has no jurisdiction to try and decide the present suit? OPD

5. Relief.

Both the Courts below have decreed the suit of the plaintiff-respondent on the ground that the order dated 03.09.2004, whereby Director General of Police-defendant No.2 had accepted the mercy petition of the plaintiff, has been reviewed by the same authority after a gap of two years.

The relevant rule for consideration and interpretation in the present appeal is Rule 16.28 of the Punjab Police Rules, 1934 (as applicable to Haryana), which is reproduced as under:-

“16.28 Powers to review proceedings.- (1) The Inspector General, a Deputy Inspector General, and a Superintendent of Police may call for the records of awards made by their subordinates and confirm, enhance, modify or annul the same, or make further investigation or direct such to be made before passing orders. [The State Government may also call for the records and review the awards made by the Inspector General of Police, Punjab or by any other authority subordinate to him.]

(2) If an award of dismissal is annulled, the officer annulling it shall state whether it is to be regarded as suspension followed by reinstatement, or not. The order should also state whether service previous to dismissal should count for pension or not.

(3) In all cases in which officers propose to enhance an award they shall, before passing final orders, give the defaulter concerned an opportunity of showing cause, either personally or in writing, why his punishment should not be enhanced.”

As per above said Rule, the Inspector General, Deputy Inspector General and Superintendent of Police have been given powers to call for the records and modify or direct further investigation in the awards made by

their subordinates. It is the State Government, which can call for the records and review the awards made by the Inspector General of Police or any other authority subordinate to him. As per sub clause (2) of Rule 16.28, when an award of dismissal is annulled and modified, the reinstatement order should explain whether service previous to dismissal would count for pension or not. As per above said rules, superior officer has been given powers to modify an award of punishment or direct further investigation in the matter. On an order passed by the Inspector General of Police, the power has to be exercised by the State Government.

In the present case, on account of being absent from duty w.e.f. 19.03.2000 to 21.09.2000 i.e. 186 days, a regular departmental enquiry was initiated against the plaintiff-respondent. The enquiry officer held the charge to be proved against him. The Superintendent of Police, Faridabad considered the enquiry report and dismissed the plaintiff-respondent from service vide order dated 17.08.2001. This order was challenged in appeal, which was dismissed by the Inspector General of Police, Gurgaon on 03.06.2002. Revision against this order was dismissed by the Director General of Police, Haryana-defendant No.2 vide order dated 07.04.2003. Thereafter, the plaintiff filed a mercy petition before the Director General of Police to review the earlier order, which was accepted vide order dated 03.09.2004 and dismissal order was reduced to stoppage of three increments with permanent effect. This matter was considered at the level of Government and vide order dated 13.06.2006 withdrawal of undue benefits given by the Director General of Police, Haryana vide his order dated 03.09.2004, was approved and thereafter, a show cause notice was issued to the plaintiff. Ultimately, vide order dated 25.09.2006, the order of dismissal

Learned counsel for the appellants has referred to a decision given by the Division Bench of this Court in **Satish Kumar Vs. State of Haryana and others**, CWP No.18889 of 2006 (decided on 30.11.2006), whereby petition filed by the plaintiff-respondent against the order dated 30.10.2006 has been dismissed without giving notice to the State of Haryana.

After dismissal of the aforesaid writ petition, the present suit was instituted on 15.11.2008. After issuing due notice, framing of issues and leading evidence, the suit of the plaintiff-respondent has been decreed. The Director General of Police, Haryana had dismissed the revision petition on 07.04.2003.

The question for consideration before this Court is, “whether exercise of power by dismissing revision petition and entertaining mercy petition is against the provisions of Rule 16.28 of the Punjab Police Rules.”

A revision petition was maintainable under Rule 16.32. The object of entertaining a revision was to examine as to whether there was any material irregularity in the proceedings or on production of fresh evidence, the orders passed by the appellate authority could be set aside or not. Rule 16.32 of the Punjab Police Rule is reproduced as under:-

“16.32. Revision.

An officer whose appeal has been rejected is prohibited from applying for a fresh scrutiny of the evidence. Such officer may, however, apply, within a month of the date of dispatch of appellate orders to him, to the authority next above the prescribed appellate authority for revision on grounds of material irregularity in the proceedings or on production of fresh evidence, and may submit to the same authority a plea for mercy: provided that no application for the revision of an order by the Inspector-General will be entertained. An officer whose appeal has been heard by the Inspector General may however, submit to the Inspector-General a plea mercy or may apply to the Inspector-General for a review of his appellate order only on the ground that fresh evidence has become available since the appellate order has been pronounced. This rule does not affect the provisions of rule

16.28. Such application or plea must be in English.”

Powers to be exercised while hearing a revision petition are distinct and separate while entertaining a review petition under Rule 16.28 of the above Rules. The State Government can call for records and review the orders passed by the Inspector General of Police or any other authority subordinate to him. If the Director General of Police exercises his powers under Rule 16.28 of the Rules while entertaining a mercy petition, he can review the orders passed even in a revision petition filed under Rule 16.32. Hence, the order dated 03.09.2004 was passed by the Director General of Police, Haryana, as per the powers given under Rule 16.28. The Director General of Police was exercising powers representing the State Government while reviewing the revisional orders passed by him. Therefore, once the orders were passed by accepting the mercy petition, then the said order could not be reviewed by the Director General of Police while exercising powers under Rule 16.28 of the Punjab Police Rules (as applicable to Haryana). The earlier order dated 03.09.2004 accepting the mercy petition, could not be reviewed by the Director General of Police in the year 2006.

In view of the above, this Court is of the view that suit of the plaintiff-respondent has been rightly decreed by the Courts below after appreciating evidence in the right perspective. No illegality, much less perversity, has been found in the impugned judgments, warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

04.11.2015
ajp

(RITU BAHRI)
JUDGE