

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

103

*C.M. Nos. 8834-35-C of 2013 and
RSA No. 3285 of 2013 (O&M)*

Date of decision: 05.11.2015

Govind Ballabh

....APPELLANT

VERSUS

Haryana State and others

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Sandeep Kotla, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No. 8834-C of 2013

Prayer in this application is for condonation of delay of 83 days
in re-filing the appeal.

For the reasons mentioned in the application, which is duly
supported by an affidavit of the clerk of the counsel, the present application
is allowed. Delay of 83 days in re-filing the appeal stands condoned.

C.M. No. 8835-C of 2013

Prayer in this application is for exemption from filing certified
copy of order dated 30.07.2012 passed by Civil Judge (Junior Division),
Gurgaon.

Prayer granted. Filing of certified copy of order dated 30.07.2012 passed by Civil Judge (Junior Division), Gurgaon is dispensed with.

Application stands disposed of.

RSA No. 3285 of 2013

Challenge in this appeal is to the judgment and decree dated 30.07.2012 passed by the Civil Judge (Junior Division), Gurgaon, whereby the suit of the appellant-plaintiff for declaration to the effect that the adverse Annual Confidential Report recorded for the period 01.04.2006 to 31.03.2007 by the Deputy Commissioner of Police, Head Quarters, Gurgaon-respondent No. 2-defendant No. 2 was illegal and unlawful as the same is not based upon any material on the record and the order dated 15.06.2009 passed by the Commissioner of Police, Gurgaon, rejecting the representation is also not sustainable and the adverse remarks are liable to be expunged, stands dismissed, the appeal against which preferred by the appellant-plaintiff has also been dismissed by the District Judge, Gurgaon on 27.11.2012.

2. It is the contention of the learned counsel for the appellant that the Annual Confidential Report for the year 01.04.2006 to 31.03.2007, which has been recorded and found to be adverse against him by respondent No. 2-defendant No. 2, is not sustainable as the departmental enquiry initiated against the appellant-plaintiff has resulted in the dropping of the same as the complaint was found to be false after the departmental enquiry. He contends that in the absence of any material, the adverse remarks recorded by respondent No. 2-defendant No. 2 cannot be said to be in accordance with law as the same would be in total violation of the principle

of natural justice and against the judgments of this Court in **Head Constable Randhir Singh vs. State of Haryana and others**, 2002 (1) RSJ 115 and **State of Haryana vs. Karan Singh**, 2002 (1) RSJ 109. He, therefore, contends that the findings recorded by the Courts below cannot sustain and deserve to be set aside and the suit of the appellant-plaintiff decreed.

3. The contentions of the learned counsel for the appellant-plaintiff have been considered and the impugned judgments have been gone through with his able assistance but the same cannot be accepted.

4. As far as the principle, which has been laid down by this Court in the judgment of **Head Constable Randhir Singh's case (supra)** is concerned, there can be no dispute that in the absence of any reason no adverse comment can be made in the ACR. In **Karan Singh's case (supra)** also in the departmental enquiry, which was initiated against him and in the criminal case, the appellant-plaintiff has been exonerated but present is not such a case, as there is no evidence on record indicating that he has been exonerated in the departmental enquiry except for the bald assertion of the counsel for the appellant.

5. A perusal of the impugned judgments would indicate that the appellant-plaintiff has been involved in two specific acts of departmental mis-conduct during the period 01.04.2006 to 31.03.2007. The first was the incident, which took place during the intervening night of 2/3.9.2006 at traffic red lights in Sector-29, Gurgaon where he had left 3-4 Santro cars borne youths, who have been found carrying *Ganja* at the time of checking of the vehicles by taking bribe of ₹ 25,000/- from them while he was posted as Incharge of Anti Robbery Staff, Gurgaon. In another incident of

October, 2006, there were serious allegations that he had picked up 3-4 men and 4-5 women as also some children as suspects of pick-pocketing and chain snatching from Sheetla Mata Shrine area but left them without making any interrogation while he was holding the same post i.e. Incharge of the Anti Robbery Staff, Gurgaon. These materials, which have been referred to in the reply which has been filed by respondents-defendants and evidence has been brought on record, have not been disputed by the appellant-plaintiff but rather has admitted in his cross-examination. Unfortunately for him, there is nothing on record to indicate that the enquiry proceedings, which were initiated against him, have resulted in his exoneration. The Annual Confidential Report, which has been recorded by respondent No. 2, cannot be said to be without any basis or that there was no material for giving an adverse Annual Confidential Report. The judgments, thus, relied upon by the learned counsel for the appellant will not be of much help to him.

6. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the evidence produced by the parties, there is no illegality in the impugned judgments passed by the Courts below. Further, there is no substantial question of law in the present appeal, which requires consideration of this Court.

7. In view of the above, finding no merit in the present appeal, the same stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

November 05, 2015

pj