

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

104

*C.M. Nos. 10725-26-C of 2013 and
RSA No. 3971 of 2013 (O&M)*

Date of decision: 05.11.2015

Jagdish Chander

....APPELLANT

VERSUS

State of Haryana and others

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Sanjiv Gupta, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No. 10725-C of 2013

Prayer in this application is for condonation of delay of 22 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 22 days in re-filing the appeal stands condoned.

RSA No. 3971 of 2013

Challenge in this appeal is to the judgment and decree dated
25.07.2011 passed by the Civil Judge (Senior Division), Sirsa, whereby the
suit for declaration to the effect that the order of dismissal dated 12.05.2007
passed by The Superintendent of Police, Sirsa for absence from duty for 67
days by the appellant-plaintiff without intimation and the order dated

07.06.2007 passed by The Inspector General of Police, Hisar Range, Hisar-respondent No. 3-defendant No. 3 accepting the appeal partly and converting the order of dismissal to that of stoppage of five future annual increments with permanent effect being illegal, unconstitutional and not sustainable, stands dismissed, the appeal against which preferred by the appellant-plaintiff before the District Judge, Sirsa, has also been dismissed on 06.03.2013.

2. It is the contention of the learned counsel for the appellant that before passing the order of dismissal from service, the appellant-plaintiff was not supplied with the copy of the enquiry report and, therefore, the order of dismissal cannot sustain. His further contention is that the order passed by the Appellate Authority converting the dismissal into that of stoppage of five future annual increments with permanent effect also cannot sustain as the same is disproportionate to the mis-conduct attributed to the appellant-plaintiff. He contends that instead of passing an order of stoppage of increments with cumulative effect, the same should have been without cumulative effect. The contention has, thus, been made that the order of the Appellate Authority deserves to be set aside.

3. I have considered the submissions made by the learned counsel for the appellant and with his assistance, have gone through the judgments passed by the Courts below.

4. It is correct that if the copy of the enquiry report is not supplied along with the show cause notice, the order of dismissal, which has been passed as a consequence thereof, cannot be said to be in accordance with law and deserves to be set aside. The said benefit has already been granted by the Appellate Authority to the appellant-plaintiff. It is not the case and

while passing the order of stoppage of five increments with cumulative effect, the appellant-plaintiff was not supplied with the copy of the enquiry report. That apart, in the enquiry report, the finding has been recorded that he has been absent from duty for 67 days without any intimation i.e. from 30.05.2006 till 05.08.2006. The punishment, which has been imposed by the Appellate Authority, appears to be on the lower side, in fact, for his misconduct of the nature of absence from duty for 67 days, which is the gravest act of mis-conduct, the appropriate punishment would have been much more and there should not have been a lenient view taken thereof. The contention, thus, of the learned counsel for the appellant that the punishment, which has been imposed, is disproportionate to the mis-conduct attributed to the appellant-plaintiff, cannot be accepted. There is no illegality in the order passed by the Appellate Authority which would call for interference by this Court and the Courts below have rightly, therefore, rejected the suit of the appellant-plaintiff.

5. 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.

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

C.M. No. 10726-C of 2013

In view of the dismissal of the main appeal, no separate orders

are required to be passed in this application for stay and, therefore, the same stands dismissed.

November 05, 2015

pj

(AUGUSTINE GEORGE MASIH)
JUDGE