

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

**C.M. NOS.11470-11471 C OF 2013 &
R.S.A. NO.4247 OF 2013**

DATE OF DECISION: NOVEMBER 28, 2015

Brij Pal

.....Appellant

VERSUS

Haryana State and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Keshav Pratap Singh, Advocate for
Mr. Abhimanyu Singh, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No.11470-C of 2013

Application is allowed.

Exemption is granted from filing certified copies of judgement
and decree dated 28.09.2012 passed by Civil Judge (Junior Division),
Gurgaon and grounds of appeal dated 30.10.2012.

C.M. No.11471-C of 2013 & R.S.A. No.4247 of 2013

Challenge in this appeal is to the judgement and decree passed
by the Civil Judge (Junior Division), Gurgaon, dated 28.09.2012 by which
suit of the appellant-plaintiff for declaration to the effect that adverse
remarks recorded in the annual confidential report for the year 1989-90

were wrong and illegal and, therefore, liable to be expunged and that he was

entitled to the Ist and 2nd A.C.P Grade on completion of 10/20 years of regular and satisfactory service with effect from 07.04.1992 and 07.04.2002 respectively alongwith arrears, stands dismissed, appeal against which preferred by him has also been dismissed by the learned District Judge, Gurgaon, on 17.04.2013.

It is the contention of learned counsel for the appellant that adverse remarks, which have been recorded in the annual confidential report for the period from 01.04.1989 to 31.03.1990, which was graded as “good” by the Reporting Officer i.e. the Assistant Employment Officer, Pataudi has been down graded to “average” by the Reviewing Officer i.e. District Employment Officer, Gurgaon on the basis of a criminal case, which was registered against him i.e. FIR No.160, dated 08.08.1991 under Sections 420 and 468 IPC at Police Station Pataudi. He contends that in the criminal case, which was registered against him, after the trial, he has been acquitted vide judgement dated 10.09.1997. In the light of this judgement, the very basis for recording the adverse remarks in the impugned annual confidential report having been extinguished, the said remarks were required to be expunged. He, thus, contends that the Courts below have not appreciated the effect of the said judgement in its right perspective and, therefore, the findings recorded in the judgements cannot be sustained. His further contention is that as a consequence thereof, he is entitled to the benefit of two A.C.P grades from the date the same become due. Accordingly, a prayer has been made for allowing the present appeal and for setting-aside the impugned judgements and decree.

I have considered the submissions made by learned counsel for the appellant and with his assistance have gone through the impugned

judgements.

A perusal of the judgement passed by the learned lower Appellate Court would show that in the year 1989, the appellant-plaintiff was employed as an Assistant in the office of the Employment Exchange, Pataudi, who, in that capacity had sent certain names of eligible candidates for appointment. One of the such persons was Ashok Kumar, who was selected as a Peon but later on it was found that the said letter was a forged and fabricated document alleged to have been issued by the Employment Exchange, Pataudi. A regular departmental enquiry was held in which appellant-plaintiff Brij Pal was held guilty and it was proved that the said letter issued in favour of Ashok Kumar had not been signed by the Assistant Employment Officer, Pataudi, and was issued by the appellant-plaintiff for a consideration of ₹3,000/-. On the basis of said findings recorded in the enquiry, an FIR was registered against the appellant-plaintiff, which, after trial, ultimately has led to his acquittal. In the meanwhile, since the period for which the annual confidential report had to be recorded i.e. 01.04.1989 to 31.03.1990 came, the Reporting Officer though assessed the appellant-plaintiff as “good” but the District Employment Officer, who is the Reviewing Authority, after giving detailed reasons assessed him as “average”. The observations made by the District Employment Officer, Gurgaon, reads as under:-

- “i) Official is negligent and reckless in his working;*
- ii) He indulges in direct communication with senior officers;*
- iii) The official is neither trustworthy nor dependable; and*
- iv) He is involved in sending bogus lists of candidates for employment.”*

It would not be out of way to mention here that while making these observations, detailed reasons were given, against which the revision submitted by the appellant-plaintiff was duly considered and decided against him on 19.05.1992, Ex.D6. The result thereof was that the adverse remarks were not expunged.

An assertion has also been made that after the acquittal of the appellant-plaintiff, he had submitted a representation to the respondents and no action thereon has been taken. However, in the revision, which the appellant-plaintiff had preferred after the judgement, the same was considered and not accepted, which is apparent from the communication, Ex.D1. Learned lower Appellate Court has rightly taken into consideration the judgement of acquittal dated 10.09.1997, Ex.PW1/C to conclude that even the effect of acquittal order would render the observations qua Item No.4 i.e. “he is involved in sending bogus lists of candidates for employment” redundant but rest of the observations would still stand as the same have no connection with the 4th item. The result thereof is that the adverse remarks and the “average” annual confidential report still exist and are not liable to be expunged. The findings, thus, recorded by the Courts below on the basis of sequence of events, pleadings and the evidence brought on record cannot be faulted with.

As regards the claim of the appellant-plaintiff for grant of A.C.P Grades, the observations made by learned lower Appellate Court do not call for any interference. In Paras 16 and 17 of the said judgement, it has been observed as under:-

“16. Record reveals that when the matter of grant of ACP Scale to the plaintiff was considered, detailed order (Ex.DII) with

regard to ACP-I was made by the defendant No.3. Similarly, with regard to grant of ACP-II such detailed order from the defendant No.3 is Ex.DIII. Even though grading in ACR for the period 1989-90 (Ex.D5) was recorded as “average” but observations of the District Employment Officer that he was not dependable and trustworthy, is sufficient to put the honesty and integrity of the appellant-plaintiff in the dock.

17. In well explained order (Ex.D2), it is made clear that effect of ACR for 1989-90 (Ex.D5) was to remain till 1999-2000 and thus as demanded, appellant-plaintiff was not to be given ACP-I Scale w.e.f. 1.1.1994. Consequently, he was given ACP-I Scale w.e.f. 1.4.2000. Sequelly, having completed his 20 years service on 6.4.2002 (this official had remained on leave without pay for 96 days and thereafter had remained absent from 7.9.1999 to 25.5.2000 i.e. for 262 days), there was some impediment in the grant of ACP-II Scale to the plaintiff. But the period of absence of 262 days was regularized after treating the period of absence as 'leave without pay'. Consequently, counting 20 years of service after deducting period of leave without pay, plaintiff completed it on 30.3.2002. Sequelly, he was granted ACP-II Scale w.e.f. 1.4.2003. Order in this respect made by defendant No.3 on 8.9.2002 is Ex.DS. ”

In view of the above, there is no merit in the present appeal, which would call for any interference by this Court.

Both the Courts below have returned concurrent findings after properly appreciating the pleadings and evidence brought on record by the

parties and the same cannot be interfered with as there is no perversity or illegality in the same.

No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

Since the main appeal stands dismissed, C.M. No.11471 C of 2013 for staying the operation of the impugned judgement and decree is also dismissed.

**November 28, 2015
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**(AUGUSTINE GEORGE MASIH)
JUDGE**