

**C.M. NO.14795 C OF 2014 &
R.S.A. NO.6206 OF 2014**

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

DATE OF DECISION: SEPTEMBER 17, 2015

(1) C.M. No.14795 C of 2014 &
R.S.A. No.6206 of 2014

State of Haryana and others

.....Appellants

VERSUS

Nafe Singh

....Respondent

(2) R.S.A. No.6317 of 2014

Nafe Singh

.....Appellant

VERSUS

State of Haryana 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. Siddharth Banwana, DAG, Haryana,
for the appellants in R.S.A. No.6206 of 2014 and
for the respondents in R.S.A. No.6317 of 2014.

Mr. Sumit Gupta, Advocate,
for the respondent in R.S.A. No.6206 of 2014 and
for the appellant in R.S.A. No.6317 of 2014.

AUGUSTINE GEORGE MASIH, J. (ORAL)

By this order, I propose to dispose of two cross Regular Second

Appeals, which have been preferred by both the parties against the judgment

and decree dated 21.09.2014 passed by the Additional District Judge, Jhajjar, in an appeal preferred against the judgment and decree dated 28.07.2012 passed by the Civil Judge (Senior Division), Jhajjar, by which the suit of Nafe Singh, appellant-plaintiff (in R.S.A. No.6317 of 2014) for grant of declaration as well as mandatory injunction stood dismissed.

Briefly the facts of the case are that appellant-plaintiff, Nafe Singh, while working as a Junior Engineer, was placed under suspension and FIR No.149, dated 07.07.1995 was registered against him at Police Station Jhajjar under Sections 406 and 409 IPC on the allegation that he had pilfered the Government material while on duty. In the criminal case, since the prosecution had failed to prove the guilt against Nafe Singh beyond reasonable shadow of doubt and even Satbir Singh, Chowkidar, complainant, had turned hostile and not supported the case of the prosecution, he was acquitted by the Court vide judgment dated 07.10.2003. It appears that the departmental enquiry, which was initiated against Nafe Singh during the pendency of the criminal case, has not been concluded. However, during the pendency of the enquiry, appellant-plaintiff, Nafe Singh, was decided to be compulsorily retired by the Haryana Government order No.4/5/96-PH/2, dated 27.11.1997. In pursuance of this decision, he was retired from service vide Endorsement No.1-12-1997 with directions that Nafe Singh would be deemed to have been reinstated on the date of this order. Nafe Singh remained under suspension with effect from 08.07.1995 to 30.11.1997.

Vide order dated 30.04.2004 passed by the Engineer-in-Chief, Haryana, P.W.D., Public Health Branch, Panchkula, final decision on the departmental enquiry of Nafe Singh has been taken and also regarding his

suspension period. In this order, although it has been held that appellant-plaintiff, Nafe Singh, deserves severe punishment but keeping in view the fact that he had been prematurely retired by the Government, the authority concerned proceeded to take an extreme lenient view and passed the order that his suspension period from 08.07.1995 to 30.11.1997 be treated as duty period for all intent and purposes except for the purpose of salary for the said period. It was further ordered that he should not be paid more than the subsistence allowance already paid to him. This order was assailed by appellant-plaintiff, Nafe Singh, by way of a civil suit, claiming therein not only the setting-aside of said order of prematurely retiring him but also for a declaration and injunction to the effect that he be held entitled to promotion to the post of Sub Divisional Engineer from date the other Junior Engineers junior to him have been promoted to the said post. The said suit was dismissed by the trial Court, against which appeal preferred by appellant-plaintiff, Nafe Singh, has been partly allowed, holding him entitled to consideration for promotion to the post of Superintending Engineer from the date his juniors have been promoted and for notional fixation of his pay from the said date with fixation of his pension and other retiral benefits accordingly. The prayer of setting-aside of impugned order of his premature retirement and the order dated 30.04.2004 has been dismissed by holding that the said order was in accordance with law and the rules governing the service. Aggrieved thereby, appellant-plaintiff Nafe Singh as also the defendant-State have preferred the present cross appeals.

I have considered the submissions made by counsel for the parties and with their assistance have gone through the judgments passed by the Courts below. However, I do not find any illegality in the judgment

passed by learned Additional District Judge, Jhajjar, which would call for any interference by this Court.

As is apparent from the facts, which have been recorded above, the departmental enquiry, which was initiated against appellant-plaintiff, Nafe Singh, has not been finally concluded. However, the departmental proceedings initiated against him culminated by way of passing of order dated 30.04.2004 by the Engineer-in-Chief, Haryana, P.W.D., Public Health Branch, Panchkula, wherein detailed facts have been mentioned, including the criminal case, which was registered against him and on consideration of the facts and circumstances of the case, the competent authority has passed the said order, which, in my considered view, is in accordance with the statutory rules governing the service and, therefore, cannot be faulted with. It, however, needs to be mentioned here that since appellant-plaintiff, Nafe Singh, vide order dated 30.04.2004 has been granted the benefit of treating his period of suspension i.e. 08.07.1995 to 30.11.1997, as duty period for all intent and purposes except salary for the said period, it goes without saying that he would be entitled to all other benefits, except for the salary, which would include consideration for promotion to the post of Sub Divisional Engineer from the date his juniors have been promoted, which is an admitted fact.

Learned Additional District Judge, Jhajjar, has returned findings after properly appreciating the evidence 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.

Accordingly, the judgment and decree passed by learned

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Additional District Judge, Jhajjar, dated 21.09.2014 cannot be faulted with and, therefore, is upheld. As a consequence thereof, both the appeals stands dismissed.

**September 17, 2015
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**(AUGUSTINE GEORGE MASIH)
JUDGE**