

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

RSA No. 2347 of 1997 (O&M)

Date of decision: 06.04.2016

State of Punjab

...Appellant(s)

Versus

Rachhpal Singh dead (through LRs)

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr.Luvinder Sofat, AAG, Punjab.

Mr. Vivek Aggarwal, Advocate,
for the respondent.

JITENDRA CHAUHAN, J.

This regular second appeal has been filed by the State of Punjab against the judgment and decree dated 03.03.1997, passed by Additional District Judge, Jalandhar vide which the appeal filed by the State of Punjab was dismissed and the judgment and decree dated 23.08.1994, passed by Sub Judge, Second Class, Jalandhar, was upheld.

In brief, the plaintiff/respondent (since deceased and now represented by LRs) filed suit for declaration to the effect that he was working as constable No. 9/353 PAP Amritsar and was governed by the Punjab Police Rules, 1934. While the plaintiff was

posted at Jalandhar Cantt. in 13 Battalion, he was placed under suspension and was directed to be proceeded against departmentally by the Commandant on the basis of a false complaint. An enquiry was instituted. Sh. Sadhu Singh, DSP 13 Battalion was appointed as Enquiry Officer. On receipt of the enquiry report, which was allegedly carried out without following the principles of natural justice, the Commandant 13 Battalion of Jalandhar Cantt issued a show cause notice to him on 15.01.1987 proposing a penalty of dismissal from service. The plaintiff replied to the show cause notice but the Commandant without considering his reply and after adopting a false and pre-judicial personal notions passed order dated 30.01.1987, imposing the penalty of forfeiture of five years approved service of the plaintiff with cumulative effect resulting in the reduction of pay of the plaintiff. Aggrieved against the above said order, the plaintiff filed an appeal before DIG of Police PAP Jalandhar Cantt. The DIG rejected the appeal vide his order dated 25.03.1987 without considering the pleas of the plaintiff and without going through the records of the case. The plaintiff again appealed to I.G.of Police PAP Jalandhar Cantt. But the same was rejected vide order dated 06.08.1987 and that all the above said orders are illegal because they are not based upon any evidence.

Upon notice, the defendants appeared and filed written

statement. It was pleaded by the defendants that the plaintiff was posted at Amritsar for bus security duty on 28.10.1986 and was deputed along with two other constables to escort Gov. Bus No. PJC-128 en route from Amritsar to Jalandhar. But the plaintiff and the other Constables left the bus on the way and returned to Amritsar and deposited their Arms and Ammunition in P.S. Ram Bagh, Amritsar, thus, absented from duty. On these allegations, the plaintiff as well as the other constables were placed under suspension w.e.f. 28.10.1986. A regular enquiry was ordered against all of them. The Inquiry Officer conducted the enquiry as per provision of PPR and held the plaintiff guilty and punishing authority considered the reply filed by the plaintiff to the show cause notice and passed order as per law after examining the departmental enquiry file. The order of forfeiture of five years approved service was passed by Commandant 13 Battalion PAP Jalandhar Cantt and the same is legal and constitutional and that appeal of the plaintiff was rejected by the DIG of Police PAP, Jalandhar Cantt after a careful consideration and also that appeal of the plaintiff was rejected by the IG of Police after due consideration and that all the impugned orders passed the Commandant, DIG and IG are legal and valid and prayed for dismissal of the suit.

After appraisal of evidence, the learned trial Court,

under issue No. 1, held that the order dated 30.01.1987 passed by the Commandant 13 Battalion forfeiting five years of approved service of the plaintiff on the permanent basis was not valid. Therefore, the order dated 30.01.1987 and the subsequent orders dated 25.03.1987 and 06.10.1989 passed by the DAG and IG respectively were also held to be void. Consequently, the suit was decreed vide judgment and decree dated 23.08.1994.

Aggrieved against, the State of Punjab went in appeal before Additional District Judge, Jalandhar. Vide judgment and decree dated 03.03.1997, the appeal was dismissed and the impugned judgment and decree dated 23.08.1994 was upheld.

Still feeling dissatisfied, the defendant/State of Punjab has preferred the present regular second appeal challenging both the judgment and decree dated 23.08.1994, passed by the trial Court and judgment and decree dated 03.03.1997, passed by the lower Appellate Court.

On behalf of the appellant/State of Punjab, it is contended that both the Courts below have committed error in decreeing the suit of the plaintiff. The orders passed by the authorities are in consonance with the law. Learned State Counsel refers to Rule 16.1, Punjab Police Rules, 1934 and contends that the effect of forfeiture of five years of approved service of the plaintiff on the permanent basis is the stoppage of five increments.

Though, the words “for increment” were missing in the order imposing penalty yet the effect of the order is forfeiture of approved service only for the purpose of increments.

On behalf of the respondent/plaintiff, it is contended that both the Courts below have rightly decreed the suit. The order passed by the authorities imposing penalty of forfeiture of approved service of five years is against the rule. The authority i.e the Commandant 13 Battalion was not competent to pass the order dated 30.01.1987 as the words “ for increments” were missing in the order and the stoppage of forfeiture of service of five years was not clarified.

I have heard the learned counsel for the parties and gone through the case file.

The sole issue in the instant case involves around the interpretation of Rule 16.1 of the Punjab Police Rules, 1934. For facilitation, the Rule 16.1 is reproduced as under :-

“16.1 (2) at Sr. No. 3.....Stoppage of increment or forfeiture of approved service for increment.”

A perusal of the rule shows that the authority is competent to pass an order of stoppage of increment or forfeiture of approved service for increment. In the impugned order, the words “for increment” are missing. However, the learned State Counsel concedes that the order was passed for the purpose of

forfeiture of increments only. Otherwise also, the effect of the order is the forfeiture of increments.

That being the position, this Court clarifies that the order dated 30.01.1987 passed by the Commandant 13 Battalion shall have an effect of forfeiture of approved service for the purpose of increments only. With this observation, the regular second appeal filed by the State is allowed and the impugned judgments and decrees passed by both the Courts below are set aside.

Consequently, the suit of the plaintiff is dismissed.

06.04.2016
SN

(JITENDRA CHAUHAN)
JUDGE