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In the High Court of Punjab and Haryana at Chandigarh.

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Date of Decision:13.01.2016

State of Punjab and others

...Petitioners

Versus

Balwinder Singh

...Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Neeraj Yadav, AAG, Punjab.

Mr. A.P.S. Shergill, Advocate,
for the respondent.

SABINA, J.

Respondent had filed suit for declaration that the orders dated 16.02.1989, 12.04.1989 and 20.12.1989 were illegal, null and void.

Case of the respondent, in brief, was that he was working as a Constable with the defendants. Respondent was served with summary of allegations on 22.09.1988 that while he was on duty on 02.09.1988 at Mandir Sita Ram, he was found to have consumed liquor and had misbehaved with Punjab Home Guard Volunteer-Parsa Ram who was also on duty. The case of the respondent was that without holding proper inquiry, the Inquiry Officer had submitted the report against the respondent. On the basis of the inquiry report

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dated 29.11.1988, show cause notice was served to the respondent. Vide impugned order dated 16.02.1989 five years approved service of respondent was forfeited with future effect. Appeal filed by the respondent was dismissed by defendant No.2 and revision filed by the respondent was dismissed by defendant No.3.

Defendants in their written statement averred that the order of punishment had been passed after following the due procedure of law.

On the pleadings of the parties, followings issues were framed by the trial Court.:-

1. Whether the plaintiff is entitled to the decree of declaration as prayed for? OPP
2. Whether the plaintiff is entitled to the decree of Mandatory injunction as prayed for? OPP
3. Whether the plaintiff has no cause of action to file the suit? OPD
4. Whether the suit is not maintainable in the present suit? OPD
5. Relief.

Parties led their evidence in support of their respective pleas.

Trial Court vide judgment/decreed dated 15.10.1994 dismissed the suit filed by the respondent. The First Appellate

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Court, vide judgment/decreed dated 31.08.1988, allowed the appeal filed by the respondent and decreed the suit. Hence, the present appeal by the defendants-State.

Learned State counsel has submitted that the First Appellate Court had allowed the appeal placing reliance on Rule 16.38 of the Punjab Police Rules, 1934 ('Rules' for short). The said Rule was not applicable to the facts of the present case as the respondent had misbehaved with his co-employee while he was under the influence of liquor. In support of his argument, learned State counsel has placed reliance on a Division Bench judgment of this Court in the case of **Chandigarh Administration and others v. Central Administrative Tribunal and another**, 2013(2) S.C.T. 121, wherein it was held as under:-

“After going through the said Rule we find substance in the contention of learned counsel for the petitioner that it would be applicable only in those cases where the police officer commits criminal offence which is in connection with his official relations with the public. In the present case, as pointed out, the act on the part of respondent No.2 was in private capacity and had nothing to do with the official duties. In such a situation, Rule 16.38 shall have no application at all. We are fortified in our conclusion by the Division Bench judgment of the Himachal Pradesh High

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Court in the case of **Shri Bhagat Ram v. Inspector General of Police, Himachal Pradesh and others, 1979(3) S.L.R. 256**. In that case, the allegation against the delinquent official was that after his duty he went in a dry area and consumed liquor and thereafter indulged in rowdyism and as such he was late in duties. It was treated as an offence committed in his personal capacity and was not in connection with his official relations with public. On that basis, the Division Bench of the said High Court held that Rule 16.38 was not attracted.

Learned State counsel has further placed reliance on a Division Bench judgment of Himachal Pradesh High Court in the case of **Shri Bhagat Ram v. Inspector General of Police, Himachal Pradesh and others, 1979(3) SLR 256**, wherein it was held as under:-

“We find that Rule 16.38 has no relevance to the facts of the present case and, therefore, it has no application. Even a cursory reading of the language employed by the above quoted portion of Rule 16.38 shows that it is not every type of offence which is required to be brought to the notice of the District Magistrate. The plain reading of the rule suggests very clearly that the criminal offence which is required to be brought to the notice of the District Magistrate should be one

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which should be found to have been committed "in connection with his official relations with the public". Therefore, unless it is found that the criminal offence, which a particular officer is said to have committed, was committed by him in connection with his official relations with the public, no question of the application of Rule 16.38 would arise. The words "in connection with his official relations with the public" have been explained by Delhi High Court in ***Ajit Singh v. Delhi Administration reported in 1973 (1) SLR 1100***, wherein the view which we are taking in this case has been expressed in the following words:

The question to be decided is as to what is the import of the words 'the commission by a police officer of a criminal offence in connection with his official relations with the public'-occurring in the said rule. It shows that at the time of the commission of the alleged offence by a police officer he should be (1) discharging his duties as a police officer and (2) that on the discharge of those duties should bring him in contact with the public in relation to whom the offence is committed. In other words, it is not each and every offence which may come to be committed by a police

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officer that this rule will become applicable.”

Learned counsel for the respondent, on the other hand, has submitted that the appeal filed by the State is liable to be dismissed as Rule 16.38(1) of the Rules had been violated. In support of his argument, learned counsel has placed reliance on a judgment of this Court in the case of **State of Haryana and another v. Surjan Singh 1990(2) SLR 88**, wherein it was held as under:-

“It is not disputed that concurrence of the District Magistrate had not been obtained. In view “of this, the order of removal passed against the plaintiff for a criminal offence committed by him in connection with his official relation with the public was passed in violation of the said mandatory rule. The order shall thus be deemed to be a void order. I find support in the above observation of mine from *Ajit Singh versus Delhi Administration and others*, 1973(1) S.L.R. 1100 and *Daulat Ram Versus Union of India*, 1971(2) S.L.R. 502.”

Learned counsel has further placed reliance on a judgment of this Court in the case of **The State of Punjab v. Gurmit Singh**, 1993(3) S.C.T. 287, wherein it was held as under:-

“I have carefully examined the

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respective contentions raised by the parties. On bare reading of Section 510 of the Indian Penal Code, it is amply clear that whosoever in the state of intoxication appears in any public place and there conduct himself in such a manner as to cause annoyance to any person, he shall be deemed to have committed an offence under section 510 of the Indian Penal Code. The allegations made by Joginder Singh – complainant – vide Exhibit P-I clearly bring out a case under section 510 of the Indian Penal Code against the plaintiff. This being the position, it was incumbent upon the authorities to proceed against the plaintiff following the provisions contained in Rule 16.38 (I) which clearly envisages that Superintendent of Police would seek the concurrence of the District Magistrate before holding any departmental enquiry. Somewhat similar proposition came up for consideration before M.S. Liberhan, J., in case **State of Haryana and another v. Surjan Singh, 1990 (2) SLR, page 88**, wherein it was held that since the concurrence of the District Magistrate had not been obtained, any order passed would be void. Thus I find no merit in the appeal and dismiss the same. The parties will, however, bear their own costs.”

In the present case, the respondent was on duty at the time of incident at Mandir Sita Ram. It is the case of the

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defendants that respondent had consumed liquor and had misbehaved with Punjab Police Home Guard at the time of the incident, while he was present at a public place.

Admittedly, Parsa Ram, with whom the respondent had allegedly quarreled, did not support the case of the Department during inquiry proceedings and the said witness had stated that the respondent had not quarreled with him. Inspector Harinder Pal Singh admitted in his cross-examination during inquiry proceedings that the respondent had not misbehaved with him. Admittedly, no blood or urine test had been conducted to ascertain the fact that the respondent was drunk at the time of incident. However, Medical Officer was examined during inquiry proceedings, who stated that the respondent was found smelling of alcohol.

Rule 16.38(1) of the Rules reads as under:-

“Criminal offences by police officers and strictures by Courts – Procedure regarding.

-(1) Immediate information shall be given to the District Magistrate of any complaint received by the Superintendent of Police, which indicates the commission by a police officer of a criminal offence in connection with his official relations with the public. The District Magistrate will decide whether the investigation of the complaint shall be conducted by a police officer, or made over to

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a selected [Executive Magistrate].”

Thus, as per the above Rule, information has to be given to the District Magistrate of any complaint received by the Superintendent of Police indicating that police official has committed criminal offence in connection with his official relation with public.

Section 510 of the Indian Penal Code 1860 ('IPC' for short) reads as under:-

“Misconduct in public by a drunken person.-Whoever, in a state of intoxication, appears in any public place, or in any place which it is a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person, shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to ten rupees, or with both.”

Thus, as per the above provision whoever, in a state of intoxication, conducts himself in such a manner so as to cause annoyance to any person in a public place, is liable for punishment.

In the present case, respondent was alleged to be under the influence of liquor in a public place. Hence, in the facts of the present case it can be said that an offence under Section 510 IPC could be said to have been committed by the

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respondent. Thus, Rule 16.38 of the Rules was liable to be complied with in the facts of the present case. Learned First Appellate Court has rightly held that in the facts and circumstances of the present case, the punishment order were liable to be set aside as it had been passed in violation of Rules 16.38(1) of the Rules.

The judgments relied upon by the learned State counsel are not applicable to the facts of the present case as they are based on different facts. In **Chandigarh Administration's case (supra)**, the police official was running a kitty group and the said official could not be said to have misbehaved while on his official duty. So far as **Shri Bhagat Ram's case (supra)** is concerned, in the said case, the employee had procured illicit liquor and had consumed the same in the house of one Shyam Singh. However, in the present case, respondent was present in a public place at the time of the incident.

Thus, no substantial question of law arises in this case, warranting interference by this Court.

Dismissed.

January 13, 2016
kapil

(SABINA)
JUDGE