

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 4919 of 2010 (O&M)
Date of Decision : 12.02.2016

Rattan Singh

....Appellant

Versus

Punjab State through its Secretary, Department of Home Affairs,
Punjab, Chandigarh and another others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. R.S. Malhotra, Advocate
for the appellant.

Mr. L.C. Aggarwal, AAG
for the respondents.

Surinder Gupta, J.

Plaintiff-Rattan Singh (appellant) was employed as volunteer of Home Guard and given No. 3204 in the year 1993. Case of plaintiff, in brief, is that due to illness of his wife, he applied for leave from 05.06.1996 to 10.07.1996. However, due to deterioration of health of his wife he sought further extension from 11.07.1996 to 18.07.1996 and then upto 25.07.1996. On expiry of his leave he reported for duty but Contingent Incharge did not allow him to join duty. Thereafter, he submitted various representations to the defendants (respondents) and served legal notice and also filed writ petition in this Court which was disposed of with direction to defendants to treat legal notice of plaintiff as his representation and to pass a speaking order. Thereafter, plaintiff kept on visiting the defendants but no speaking order was passed. The defendants passed order dated 06.07.1998, which was never conveyed to plaintiff and this order came to his knowledge after 31.01.2001. Order dated 06.07.1998

was illegal and non-speaking order. Plaintiff sought his reinstatement in service by setting aside order dated 06.07.1998

2. In later part of the judgment, parties will be referred as 'plaintiff' and 'defendants' as per civil suit.

3. The defendants contested claim of plaintiff *inter alia* pleading that he was appointed as part time volunteer and was not a regular employee, as such, no cause of action accrued to plaintiff to file suit. All the other averments of plaintiff regarding getting his leave sanctioned in the year 1996 were denied and it was averred that he had remained absent from duty. As per order passed in the writ petition filed by plaintiff, a speaking order dated 06.07.1998 was passed.

4. Suit of plaintiff was decreed by Civil Judge (Junior Division), Amritsar but Ist Appellate Court set aside the judgment and decree passed by learned Civil Judge (Junior Division) while making reference to observation of this Court in ***CWP No. 5142 of 2005*** titled ***Ramesh Chander and others vs. State of Punjab and others***, wherein it was held that persons engaged in a honourary capacity has no civil right and no formalities need to be complied with before terminating their services. It was also observed that Home Guard Volunteers in Punjab are to be governed by Punjab Home Guards Act, 1947 (later to be referred as 'the Act') and Punjab Home Guards Rules, 1963 (later to be referred to as 'the Rules of 1963'). Ist Appellate Court also looked into the conduct of plaintiff and found order dated 06.07.1998 (Ex. PC) as speaking order.

5. A substantial question of law which arises for

consideration in this appeal is as to whether any civil right has accrued to plaintiff to challenge his dismissal from service without affording him any opportunity of being heard as required under the Rules of 1963?.

6. This question came for consideration before Hon'ble Supreme Court in the case of **Davinder Singh and others vs. State of Punjab and others, 2010 (13) SCC 88** and it was observed in paras 7 and 19, as follows:-

“7. The respondents submit that there is a distinction between the ‘volunteers’ and ‘members of the service’ of the Punjab Home Guards. It was argued before us, that the 1963 Rules were still applicable to the ‘volunteer’ members of the Punjab Home Guards and that they are not to be considered as ‘members of the service’ as mentioned under Rule 20 of the 1983 Rules. The question before us is, whether the 1983 Rules provide for the repeal of the 1963 rules only in matters relating to ‘members of the service’ and whether the 1963 rules are still applicable for the purpose of recruitment, discharge and dismissal of ‘volunteers’ of the Punjab Home Guards.

8to18 xx xx xx xx xx

19. The repeal applies only to the members of the service mentioned under Annexure ‘A’ and not to volunteers. Furthermore, the 1983 rules do not confer upon the appointing authority any power to discharge the volunteer when his services are no longer required as provided under Rule 18 of the 1963 Rules. This is because, the 1983 Rules are not meant to apply to volunteers. Under the 1983 Rules, a member of the service can be dismissed only after following the procedure prescribed for

that purpose under the Punjab Civil Services (Punishment and Appeal) Rules, 1970. But such a detailed procedure is not envisaged while discharging a volunteer under 1963 rules. It is therefore evident that the legislature intended to preserve this distinction between the ‘volunteers’ and ‘members of the service’ within the scheme of the 1983 Rules. That being the case, we think that it is neither possible nor desirable to dilute the distinction which the legislature intended to preserve, something which falls squarely in the realm of policy. Therefore, in our opinion, the 1963 Rules are applicable to the appellants in these appeals.”

7. The above observations are directly applicable to the facts and circumstances of present case. Even, Ist Appellate Court has observed that Home Guard Volunteers in Punjab are governed by the Punjab Home Guards Rules, 1963. Rule 27 of the Rules 1963 provides as follows:-

“Dismissed :- (1) Any officer may for misconduct or for absence without sufficient cause, be dismissed from service.

Provided that an order of dismissal shall not be passed unless reason of dismissal are recorded in writing and the member concerned has been given a reasonable opportunity of showing cause against the action proposed to be taken against him.”

8. Admittedly, plaintiff was not given any opportunity of hearing or notice before terminating his services. In similar circumstances, the Apex Court in the above referred case observed that services of Home Guard Volunteers could not be terminated without complying with procedure prescribed in the

statutory rules.

9. In view of settled proposition of law, the substantial question of law framed in this appeal is answered in favour of appellant. Consequently, this appeal is accepted. Termination of service of plaintiff is held as illegal, against law and service rules governing the appellant and he is ordered to be reinstated in service. In the case of ***Davinder Singh (supra)***, the Apex Court ordered reinstatement of appellants without back wages. However, keeping in view the fact that the judgment was passed by the Apex Court on 10.09.2010 and even thereafter a period of more than 5 years has elapsed, it is ordered that the appellant will be allowed financial emoluments (not allowances) attached with this post for a period of previous three years from the date of this judgment.

February 12, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether to be referred to the Reporters? Yes/No