

RSA-465-2016(O&M)

[1]

In the High Court of Punjab and Haryana at Chandigarh.

RSA-465-2016(O&M)

Date of Decision:28.03.2016

Union of India and others

....Appellants

Versus

Som Dutt Sharma

...Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Sunil Kumar Sharma, Advocate,
for the appellants.

SABINA, J.

Respondent had filed suit for declaration challenging the order dated 01.12.2008 passed by defendant No.3, whereby respondent was removed from service and order dated 06.06.2009 passed by defendant No.2, whereby appeal filed by the respondent was dismissed.

Case of the respondent, in brief, was that he had joined the service of defendant as a Constable on 03.12.1990. Vide order dated 01.12.2008, respondent was removed from service on the charge that he had misbehaved with the Company Commander. The said order was illegal, null and void and had been passed against the provisions of law. Respondent was placed under suspension w.e.f. 07.07.2008 under Rule 10(2) of CCS (CCA) Rules 1965 on the ground that

RSA-465-2016(O&M)

[2]

he had remained in judicial custody for more than 48 hours. Memorandum of charges dated 19.08.2008 was served on the respondent. In fact, brother of the respondent had died and respondent had applied for two months leave. When the respondent visited the office of Company Commander, he became furious and misbehaved with the appellant No.3. Departmental proceedings had not been conducted in accordance with law. Appeal filed by the respondent was dismissed by the Appellate Authority vide order dated 06.06.2009. Hence, the suit was filed by the respondent.

Appellants in their written statements averred that the respondent had been dismissed from service in accordance with law.

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

- “1. *Whether the plaintiff is entitled to declaration as prayed for? OPP*
2. *Whether the suit is not maintainable in the present form? OPD*
3. *Whether the plaintiff is estopped by his own act or conduct from filing the present suit? OPD*
4. *Whether no legal and subsisting cause of action has arisen to the plaintiff to file the present suit? OPD*
5. *Whether the plaintiff has concealed the material facts and has not come to the court with clean hands? OPD*

RSA-465-2016(O&M)

[3]

6. *Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD*
7. *Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD*
8. *Whether the suit is not properly signed and verified in accordance with law? OPD*
9. *Whether the suit is pure misuse of the process of the court and have been filed with the ulterior motive to harass and humiliate the defendants? OPD*
10. *Whether the Civil Court has got no jurisdiction to try and entertain the suit and is barred under the Administrator Tribunal Act? OPD*
- 11 *Relief.”*

Parties led their evidence in support of their respective pleas.

Trial Court vide judgment/decreed dated 02.07.2013 dismissed the suit of the plaintiff. In an appeal filed by the respondent, the First Appellate Court decreed the suit of the respondent vide judgment/decreed dated 17.07.2015. The First Appellate Court while allowing the appeal filed by the respondent held as under:-

“In view of discussion made above, the findings of learned trial Court on issues No. 1 are reversed and it is held that the plaintiff is entitled for declaration as prayed for. Consequently, impugned judgment and decree are set aside. However, the defendants can pass fresh

RSA-465-2016(O&M)

[4]

order as per provisions of Section 11(1) of the Central Reserve Police Force Act, 1949 only. The appeal is allowed and suit of the plaintiff is decreed with costs throughout for declaration to the effect that order dated 1.12.2008 passed by the defendant No.3 vide which the plaintiff has been removed from service and the order dated 6.6.2009 passed by defendant No.2 who rejected the appeal of the plaintiff are illegal, unconstitutional, null and void and not binding upon the rights of the plaintiff and the plaintiff is deemed to continue in service on the same terms and conditions with all consequential benefits relating to increments, seniority, promotion, etc. However, plaintiff shall be entitled to only 50% of the arrears of pay, allowances, etc. for the period he remained out of service, which shall be paid within six months from today failing which plaintiff shall be entitled to interest @ 6% per annum on such arrears from the due date till actual payment. Decree sheet be drawn. Record be sent back. Appeal file be consigned to the record room.”

Hence, the present appeal by the appellants-defendants.

I have heard learned counsel for the appellants and have gone through the record available on the file carefully.

RSA-465-2016(O&M)

[5]

Admittedly, in the present case, notice was issued to the respondent under Section 11(1) of the Central Reserve Police Force Act, 1949 ('of the Act' for short). The punishing authority passed the order dated 01.12.2008, on the basis of the inquiry report submitted by the Inquiry Officer.

Section 11(1) of the Act, reads as under:-

“11. Minor punishments.-(1) The Commandant or any other authority or officer as may be prescribed, may, subject to any rules made under this Act, award in lieu of, or in addition to, suspension or dismissal any one or more of the following punishments to any member of the Force whom he considers to be guilty of disobedience, neglect of duty, or remissness in the discharge of any duty or of other misconduct in his capacity as a member of the Force, that is to say,-

- (a) reduction in rank;
- (b) fine of any amount not exceeding one month's pay and allowances;
- (c) confinement to quarters, lines or camp for a term not exceeding one month;
- (d) confinement in the quarter-guard for not more than twenty-eight days, with or without punishment drill or extra guard, fatigue or other

RSA-465-2016(O&M)

[6]

duty; and

- (e) removal from any office of distinction or special emolument in the Force.”

Thus, Section 11(1) of the Act deals with minor punishments. Punishments proposed under Section 11(1) of the Act could be awarded in lieu of or in addition to suspension or dismissal. However, punishment of dismissal could not have been awarded by serving notice under Section 11(1) of the Act.

In these circumstances, learned First Appellate Court, rightly held that punishment of dismissal could not have been awarded to the respondent as he had been issued notice under Section 11(1) of the Act which deals with minor punishments.

No substantial question of law arises in this appeal, warranting interference by this Court.

Dismissed.

March 28, 2016
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(SABINA)
JUDGE