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

RSA No.6038 of 2015 (O&M)

Date of decision: March 17, 2016

State of Punjab and others

.....Appellants

Versus

Head Constable Ravinder Kumar

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. K.D.S. Sidhu, Addl. AG Punjab.

SABINA, J

Respondent had filed suit for declaration challenging the order dated 18.07.2011 passed by Inspector General of Police, whereby, five years service of the respondent for increments was forfeited with permanent effect.

The case of the respondent, in brief, was that he had faced trial in FIR No.60 dated 29.04.2002, registered at Police Station Balachaur, District Nawanshahar, under Sections 279, 427, 304-A of the Indian Penal Code, 1860 ('IPC' for short). Trial Court ordered the conviction and sentence of the respondent vide judgment/order dated 13.09.2007. Appeal filed by the respondent against judgment/order of his conviction and sentence was dismissed by the Appellate Court. In revision filed by the respondent, this Court vide order dated 25.01.2011

maintained the conviction of the respondent as ordered by the Courts below, but further ordered the release of the respondent on probation under Section 4 (1) of the Probation of Offenders Act, 1958 ('Act' for short). Thereafter, show-cause notice was served on the respondent by the appellants and without considering the reply submitted by the respondent, the impugned order was passed. The case of the respondent was that since he has been ordered to be released on probation by this Court, the impugned order was liable to be set aside.

Appellants in their written statement averred that respondent was dismissed from service vide order dated 09.01.2009 on account of his conviction in the criminal case. Appeal filed by the respondent was dismissed by the Appellate Authority vide order dated 28.03.2009. The Inspector General of Police vide order dated 25.06.2009 ordered the reinstatement of the respondent, subject to the final decision of the criminal case. The impugned order had been passed as per department rules.

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

- “1. Whether order dated 18.7.2011 so passed by the Inspector General of Police is illegal, null and void?OPP
2. Whether the plaintiff is entitled to get the relief of declaration as prayed for?OPP
3. Whether the suit of the plaintiff is not

maintainable in the present form?OPD

4. Whether this Court has got no jurisdiction to entertain this suit?OPD
5. Relief.”

Parties led their evidence in support of their respective pleas.

Trial Court vide judgment/decree dated 19.11.2013 dismissed the suit filed by the respondent. Appeal filed by the respondent against the said judgment/decree was allowed by the First Appellate Court vide judgment/decree dated 29.04.2015. Hence, the present appeal by the appellants-defendants.

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

Facts in the present case are not in dispute. Admittedly, respondent was convicted and sentenced in FIR No.60 dated 29.04.2002, registered at Police Station Balachaur, District Nawanshahar, under Sections 279, 427, 304-A IPC. Appeal filed by the respondent was dismissed by the Appellate Court. However, in revision filed by the respondent, this Court vide order dated 25.01.2011 maintained the conviction of the respondent as ordered by the Courts below, but ordered the release of the respondent on probation. Since the respondent was ordered to be released on probation, as per Section 12 of the Act, respondent was not to suffer any disqualification, if any,

attached to his conviction. In these circumstances, the respondent could not be imposed a major penalty without following due process of law. Admittedly, in the present case, the punishment had been passed without holding any departmental inquiry against the respondent. Since in the present case, major penalty had been imposed on the respondent, the appellants were required to hold departmental inquiry against the respondent. The learned First Appellate Court had thus, rightly set aside the punishment order and has also granted liberty to the appellants to pass a fresh order after adopting due procedure of law.

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

Dismissed.

**(SABINA)
JUDGE**

March 17, 2016
mahavir