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

RSA No.3485 of 2014 (O&M)

Date of decision: February 08, 2016

Baljit Singh

.....Appellant

Versus

The Punjab State and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Kuldeep V. Singh Ahluwalia, Advocate
for the appellant.

SABINA, J

Appellant had filed suit for declaration challenging the orders dated 28.09.2001, 18.11.2002 and 11.11.2003.

The case of the plaintiff-appellant, in brief, was that his father was working as a Constable with the defendants and was killed in an anti-terrorist operation in the year 1988. Appellant was appointed as a Constable on 19.07.1996 on compassionate grounds. Appellant was advised bed-rest on 23.05.1997 as he was suffering from Jaundice. On the allegation that the appellant had remained absent from duty w.e.f. 18.01.1997 to 29.12.1997, he was dismissed from service vide order dated 05.03.1998. Thereafter, appellant was reinstated in service. On 23.09.2000, appellant again fell ill and reported back for duty on 07.10.2000. Appellant had remained absent from

duty on many occasions, when he had fallen ill. Appellant was ordered to be dismissed from service vide order dated 28.09.2001. Appeal filed by the appellant against the said order, was dismissed by the Appellate Authority vide order dated 18.11.2002 and the revision filed by the appellant was dismissed vide order dated 11.11.2003. Hence, the suit was filed by the appellant challenging the impugned orders on the ground that they had been passed in an illegal manner without complying with the principles of natural justice and Rules.

Defendants in their written statement averred that the appellant was dismissed from service as he had remained absent from duty without leave. It was further averred that the appellant was a habitual absentee. Appellant was placed under suspension vide order dated 10.04.2001 and had failed to join the departmental proceedings. The impugned orders were legal and valid.

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

- “1. Whether the plaintiff is entitled for the declaration as prayed for?OPP
2. Whether the order dated 11.3.2003 passed by DGP, Punjab, Chandigarh and order dated 18.11.2002 passed by Inspector General, PAP, and order dated 28.09.2001 are illegal?OPP
3. Whether the suit is not maintainable in the present form?OPD

4. Whether the plaintiff has no cause of action to file the present suit?OPD
5. Whether this court has no jurisdiction to try and entertain the suit?OPD
6. Relief.”

Parties led their evidence in support of their respective pleas.

Trial Court vide judgment/decreed dated 08.11.2010 dismissed the suit of the plaintiff-appellant. The said judgment/decreed were upheld in an appeal filed by the plaintiff-appellant by the First Appellate Court vide judgment/decreed dated 22.01.2014. Hence, the present appeal by the appellant.

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

Admittedly, appellant was working as a Constable with the defendants. However, appellant absented from duty and departmental proceedings were initiated against the appellant. It has been noticed by the Courts below that a perusal of the inquiry proceedings reveals that the appellant had himself received the notice on 22.04.2001 sent to him by the Inquiry Officer intimating him about the pendency of the proceedings. However, appellant failed to join the inquiry proceedings. Appellant was served with the charge-sheet on 03.05.2001 and the same was received by the appellant personally along with other documents.

Another notice dated 29.05.2001 was issued to the appellant to appear before the Inquiry Officer and the same was served on the appellant personally. Despite having received the said notice, appellant failed to join inquiry proceedings. Consequently *ex parte* inquiry was held against the appellant. The charge levelled against the appellant was that he had absented from duty. The said charge was duly established during inquiry proceedings. Rather appellant was a habitual absentee.

The scope of judicial review regarding interference with punishment order is very limited. The jurisdiction of this Court is only to see the method/manner of awarding punishment. The Court is only concerned with the procedure adopted by the Punishing Authority. If the procedure adopted by the Punishing Authority is according to rules and natural justice, then no interference with the punishment order is called for. This Court cannot go into the merits of the case. In case, the finding of the Inquiry Officer is based on some evidence, then the Court cannot re-appreciate the evidence or weigh the same like the Appellate Authority. So long as there is some evidence in support of the conclusion arrived at by the departmental authority, the same has to be sustained. Some defect in the inquiry has to be pointed out before this Court can interfere with the punishment order. Further more, if defect is

pointed out then the delinquent employee has to show as to what prejudice has been caused to him on account of the said defect. The Court exercising jurisdiction of judicial review is not to interfere with the finding of the fact arrived at in a departmental inquiry excepting in a case of mala fide or perversity.

Since in the present case, appellant had failed to join the inquiry proceedings despite notices having been issued to him, the department was left with no other option but to hold *ex parte* inquiry against the appellant. Due procedure had been followed in departmental proceedings. Consequently, the Courts below rightly held that the impugned orders had been passed in accordance with law. Hence, the suit filed by the appellant was liable to be dismissed.

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

Dismissed.

(SABINA)
JUDGE

February 08, 2016
mahavir