

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

RSA No. 5206 of 2012 (O&M)
Date of decision : December 08, 2017

State of Punjab & another

..... Appellants

v.

Ex. Ct Swaran Singh 1602/FZR

..... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Aditya Sharda, AAG Punjab
for the appellant.

Mr. Kamaldip Singh Sidhu, Advocate
for the respondent.

Ajay Tewari, J (Oral)

This appeal has been filed against the concurrent judgments of the Courts below partly decreeing the suit filed by the respondent.

The respondent was working as a Constable when he allegedly absented himself unauthorizedly for about eleven months. An inquiry was conducted and punishment of dismissal was imposed upon him. The appeal and the revision having been dismissed, he approached the Court below. Both the Courts below found that the respondent was never supplied a copy of the inquiry report so that he could make a representation against that.

Learned AAG Punjab has argued that both the Courts below fell in error in mechanically following the catch words of the judgment in Managing Director ECIL, Hyderabad etc v. B. Karunakar etc. AIR 1994 (SC) 1074 because, as per him, the real issue was the prejudice test, and for the respondent to have succeeded on this issue it was incumbent upon him

to show what prejudice was caused to him for non-supply of the copy of the inquiry report.

Counsel for the respondent has argued that he has no quarrel with this proposition of law but the appeal filed by the appellant against the judgment of the trial Court only on a limited ground has been allowed by the lower appellate Court and now the appellant cannot amplify that judgment. A relevant part of the said judgment is quoted below :-

“10. The learned Government Pleader for the State has challenged the impugned judgment and decree only to the limited extent that the learned trial Court while decreeing the suit has ordered reinstatement of the plaintiff, which will result into the grant of consequential benefits during the period the appellant remained out of service on account of punishment order. He argued that the learned trial Court should have directed holding of enquiry afresh and during the period the delinquent should have been ordered to be under suspension subject to the final outcome of the disciplinary proceedings. He, thus, pressed the present appeal to the aforesaid extent only.”

Counsel for the respondent has further argued that the above contention of the appellant was accepted by the lower appellate Court and consequently, there was no occasion for the appellant to have filed the present appeal.

Learned AAG Punjab is not in a position to show as to how the scope of appeal can be amplified. In the circumstances, this appeal is dismissed.

Since the main case has been decided, the pending C.Ms, if any, also stand disposed of.

(AJAY TEWARI)
JUDGE

December 08, 2017
'kk'

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No

