

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

207

**RSA-4661-2013 (O&M)
Date of Decision:27.11.2017**

STATE OF PUNJAB AND OTHERS

....APPELLANTS

VS

RAJINDER SINGH

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. H.S.Sitta, AAG, Punjab
for the appellants.

Mr. J.S.Dhumal, Advocate
for the respondent.

AJAY TEWARI, J.(Oral)

CM-12561-C-2016

This is an application for condonation of delay of 10 days in filing the appeal.

For the reasons recorded in the application the same is allowed and delay of 10 days in filing the appeal is condoned.

Main Case

This appeal has been filed against the judgment and decree of lower Appellate Court reversing that of the trial Court and thereby decreeing the suit filed by the respondent.

Brief facts of the case are that the respondent was enlisted as a Constable on 16.11.1989. He remained absent without leave from 8.11.1991 to 10.12.1991 (41 days). He was put under suspension on 7.4.1992 and ultimately

order dated 5.2.1993 was passed dismissing him from service. His appeal was rejected whereupon he filed a civil suit which was dismissed on 29.8.1997. In appeal that judgment was reversed and the appellate Court held that order of dismissal to be void on the ground that even copy of the chargesheet had not been served upon him. Liberty was granted to the appellants to initiate fresh proceedings if felt necessary in accordance with law. The appellants filed an appeal in this Court which was also rejected. Thereafter, the appellants initiated fresh proceedings. However instead of starting the proceedings from the initial stage i.e. service of chargesheet, what the appellants did was to serve upon the respondent a copy of the old enquiry report alongwith a show cause notice. On this occasion after considering his reply punishment of forfeiture of two years service with permanent effect (which can be translated into stoppage of two increments with cumulative effect) was passed against him. He filed an appeal and the appellate authority reduced it to forfeiture of 2 years services with temporary effect (which can be translated into minor penalty of two increments without cumulative effect). He again challenged this order. The trial Court again dismissed it and again the lower Appellate Court allowed the appeal. The lower Appellate Court held that after the first round of litigation it was incumbent upon the appellants to have restarted the enquiry from the stage of service of charge sheet and their action in started it from the service of show cause notice was illegal. Consequently, the lower Appellate Court also set aside the entire order and held him entitled for all the consequential benefits including full salary for the period that he remained out of service under the original order of dismissal.

Learned Assistant Advocate General has argued that even if the

appellants had erred in not restarting the enquiry from the stage of service of chargesheet and lower Appellate Court had set aside the order, it was incumbent upon it to have given liberty to the appellants to again initiate the enquiry. He has further pointed out that even if the story of the respondent that he was sick is believed yet being a member of a disciplinary force it was at least incumbent upon the respondent to either sought leave or informed the superiors about his sickness. On the other hand, counsel for the respondent has argued that the respondent has been undergoing the trauma of these proceedings almost a quarter century now. He has referred to the order of the Supreme Court in the matter of “Capt. M.Paul Anthony vs. Bharat Gold Mines Ltd. 1991 (1) CLR 1032” wherein the Supreme Court ultimately held as follows:-

For the reasons stated above, the appeal is allowed, the impugned judgment passed by the Division Bench of the High Court is set aside and that of the learned Single Judge, in so far as it purports to allow the Writ Petition, is upheld. The learned Single Judge has also given liberty to the respondents to initiate fresh disciplinary proceedings. In the peculiar circumstances of the case, specially having regard to the fact that the appellant is undergoing this agony since 1985 despite having been acquitted by the criminal court in 1987, we would not direct any fresh departmental inquiry to be instituted against him on the same set of facts. The appellant shall be reinstated forthwith on the post of Security Officer and shall also be paid entire arrears of salary, together with all allowances from the date of suspension till his reinstatement, within three months. The appellant would also be entitled to his cost which is quantified as Rs.15,000/-.

In my considered opinion, this argument by itself would not suffice to dismiss the appeal. The fact remains that the respondent was absent

without either applying for the leave or even informing his superiors. In these circumstances, punishment of stoppage of 2 increments without cumulative effect cannot be taken to be disproportionate.

Learned Assistant Advocate General has then argued that the direction of granting him all salary with 6% interest is illegal because the punishment authority was well within its domain to determine the way the previous period of dismissal had to be treated. Counsel for the respondent has very fairly argued that once the order of dismissal was set aside by the lower Appellate Court on the first occasion it would mean that the respondent was restored back to the position immediately prior to the order of dismissal i.e he would be deemed to be under suspension. In the circumstances, he has submitted that the award of full wages for the period during which the respondent remained out of service under the previous order of dismissal be substituted with an order of payment of suspension allowance for the period during which he remained out of service under the earlier order of dismissal.

In my considered opinion, this is the right course of action to follow. In the circumstances, I hold that the order of stoppage of two increments without cumulative effect is restored. I further hold that the award of full pay during the period the respondent remained out of service is wrong and is substituted with a direction to the appellants to treat him on suspension during the period he remained out of service and grant him those arrears with interest @ 6% per annum. It is further clarified that the appellants would now work out the effect of stoppage of two increments without cumulative effect and thereafter to release him the full arrears after working this out (if the same have not already been released) within 3 months from the date of receipt of certified

copy of this order. In event of default the respondent would be entitled to claim the same through execution with interest @ 8% per annum from the date/s the amount/s fell due.

The appeal stands disposed of in the above terms.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stand disposed of.

27.11.2017
anuradha

(AJAY TEWARI)
JUDGE

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Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No