

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 221

Regular Second Appeal No.5267 of 2014 (O & M)
Date of Decision: September 04, 2017

The Financial Commissioner & Principal Secretary, Government of Haryana
and others

..... APPELLANTS

VERSUS

Constable/EHC Satish Kumar

..... RESPONDENT

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

. . .

PRESENT: - Mr. C.S. Bakshi, Additional Advocate General, Haryana.

Mr. Inderjit Singh, Advocate, for the respondent.

. . .

Jaspal Singh, J

Delay condoned.

The instant regular second appeal has been preferred by the defendants – appellants challenging judgment & decree dated May 07, 2014 passed by the District Judge, Ambala, whereby an appeal filed by the plaintiff – respondent against judgment & decree dated April 30, 2013 passed by the Civil Judge (Junior Division), Ambala, dismissing his suit for declaration, was allowed. Consequently, the suit preferred by the respondent – plaintiff stood decreed for declaration to the effect that Order No.22/Steno dated May 09, 2005 of Superintendent of Police, Ambala for stoppage of three increments with permanent effect of plaintiff; order of appeal dated May 18, 2009 of Inspector General of Police, Ambala Range, Ambala Cantt.; and order dated November 06, 2009 passed by the Director General

with permanent effect was reduced to two increments was imposed, were set aside and appellant is held entitled to all the arrears and consequential benefits except for the suspension period.

2. Brief facts of the case are that plaintiff is a permanent employee of Police Department, Government of Haryana. During his posting at District Panipat, he was a member of Escort party for production of under trials/ prisoners in the District Courts at Panipat on August 16, 2002 alongwith other members of Escort Party in Bus No.3661 driven by Jagir Singh. The bus was in service to shift the under-trials back in Karnal and Ambala Jails. One accused Luxmi Narain son of Nihal was found missing in the bus. The plaintiff being a member of the Escort Party produced prisoners in the courts at Panipat on August 16, 2002 was placed under suspension alongwith other officials of the Escort party. FIR No.271 dated August 16, 2002 under Sections 223/224 IPC was got registered at Police Station, Model Town, Panipat. One Deputy Superintendent of Police was appointed as Inquiry Officer. Meanwhile, plaintiff was transferred to Ambala District and a show cause notice vide Memo No.254/Steno dated April 20, 2005 alongwith copy of inquiry report was issued by the DSP Panipat. It was duly replied. A penalty of stoppage of three increments with permanent effect was imposed upon the plaintiff vide order dated May 09, 2005. The appeal filed by the plaintiff against the aforesaid order of penalty was dismissed by the Inspector General of Police, Ambala Range, Ambala on May 18, 2009 being time barred. Subsequently, plaintiff filed a revision before the Director General of Police, Haryana, wherein, vide order dated November 06, 2009, punishment of stoppage of three grade increments with permanent effect was reduced to two increments with permanent effect with no orders for treating the suspension period as duty period. Meanwhile, the plaintiff was acquitted

in the criminal case (FIR No.271 dated August 16, 2002) vide judgment dated July 11, 2007 by the JMIC, Panipat. The appeal filed by the State against the said judgment of acquittal was also dismissed vide judgment dated January 13, 2009 by the Additional Sessions Judge, Panipat.

3. Plaintiff instituted a civil suit for declaration to the effect that orders dated May 09, 2005; May 18, 2009; and November 06, 2009 passed by the police authorities are illegal, null and void. He also sought consequential benefits of arrears, allowances and increments. Plaintiff alleged that imposition of stoppage of increments with permanent effect was illegal and wrong as enquiry was conducted in total breach of provisions of Punjab Police Rules, 1934 (for short, 'PPR'). Mandate of Rules 16.34 and 16.35 of the PPR was not followed and mandatory Rule 16.38 of PPR has been totally ignored. No permission of District Magistrate was obtained by the SSP, Panipat at the time of registration of the FIR.

4. Defendants – appellants contested the suit by filing joint written statement. They took preliminary objections with regard to cause of action, locus standi, suit being false and frivolous; civil court having no jurisdiction to entertain and try the suit; and suit being not properly valued. It was averred that on August 16, 2002, plaintiff alongwith other officials was deputed to produce the prisoners from Karnal to Panipat. After the court proceedings, on return from Karnal, one prisoner namely Luxmi Narain was missing from the bus, upon which, FIR No.271 dated August 16, 2002 was registered with Police Station and a departmental enquiry was conducted against the plaintiff and other officials, who were found guilty by the Enquiry Officer. Consequently, penalty of stoppage of three increments with permanent effect was imposed. However, in revision filed by the plaintiff,

with permanent effect. On merits, it was pleaded that as per provisions of Haryana Government Employees Conduct Rules, as applicable to all employees, all employees are supposed to and expected to do nothing which is unbecoming of a Government Servant.

4. No replication was filed. On the basis of pleadings of the parties, issues were framed. Parties led evidence. After hearing learned counsel for the parties and perusing the documents on record, trial court, vide judgment & decree dated April 30, 2013 dismissed the suit of plaintiff, against which, plaintiff went up in appeal. The lower appellate court, vide judgment & decree dated May 07, 2014 allowed the appeal and decreed the suit of plaintiff to the effect referred in first para of this judgment.

5. Aggrieved by the aforesaid judgment & decree dated May 07, 2014 rendered by the lower appellate court, instant appeal has been filed by the defendants.

6. Heard.

7. The question for determination in this case is whether there is violation of Rule 16.38 of the Rules before initiating departmental proceedings against the plaintiff – respondent and whether he is entitled to all wages and consequential reliefs after his acquittal in the criminal case?

8. As far as the provisions of Rule 16.38 of the Rules is concerned, DW-1 ASI Dharamvir Singh admitted that he did not know whether before initiating departmental enquiry, directions of District Magistrate were obtained. He also averred that he did not know whether any preliminary enquiry was conducted in this case as provided under Rule 16.34 of Rules. For proper adjudication of the matter in controversy, Rules 16.34 and 16.38 of the Rules are reproduced as under:-

“16.34: Suspension of officer immediately responsible. If a prisoner escapes or is rescued from police custody the enrolled police officer immediately responsible shall forthwith be suspended from duty. A searching department inquiry shall at once be held by or under the orders of the Superintendent. The object of this inquiry shall be the elucidation of all the circumstances connected with the escape or rescue and the determination of the issue whether the escape or rescue could have been prevented by the exercise of such vigilance and courage on the part of the enrolled police officer immediately responsible as might reasonably have been expected, and whether it was rendered possible or facilitated by any neglect or omission of duty on the part of any superior enrolled police officers.

XXXX XXXX XXXX XXXX

16.38 Criminal offences by police officers and strictures by courts – procedure regarding – (1) Immediate information shall be given to the District Magistrate of any complaint received by the Superintendent of Police, which indicates the commission by a police officer of a criminal offence in connected with his official relations with the public. The District Magistrate will decide whether the investigation of the complaint shall be conducted by a police officer, or made over to a selected magistrate having Ist Class powers.

(2) When investigation of such a complaint establishes a prima facie case, a judicial prosecution shall normally follow; the matter shall be disposed of departmentally only if the District Magistrate so orders for reasons to be recorded. When it is decided to proceed departmentally the procedure prescribed in rule 16.24 shall be followed. An officer found guilty on a charge of the nature referred to in this rule shall ordinarily be dismissed.”

9. There is no evidence on record to establish that there is compliance of Rule 16.38 of the Rules which is mandatory to provide immediate information to the District Magistrate of any complaint received by SSP and the District Magistrate will decide whether departmental proceedings are to be initiated against the delinquent official or not as the procedure laid down under Rule 16.24 of the Rules. It is a settled law that

the basis of enquiry report which is invalid being in violation of mandatory provisions of Rule 16.38 of the Rules. Moreover, in the case in hand, plaintiff was acquitted in FIR case lodged against him under Sections 223, 224 IPC.

10. As regards entitlement of plaintiff to wages and consequential benefits after acquittal, there is no evidence on record to prove that plaintiff – respondent was exclusively responsible for escape of the accused from custody of an escort party, particularly when plaintiff was the junior most official of the said party. There is no document or attending circumstance present on record so as to hold the plaintiff exclusively responsible for the escape of accused from custody of escort police party.

11. In the light of what has been discussed above, this Court is of the opinion that there is no infirmity or illegality in the impugned judgment & decree passed by the lower appellate court. Accordingly, the same is affirmed. Consequently, the instant appeal is dismissed.

September 04, 2017
avin

(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No