

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

1182

**RSA-3977-2003 (O&M)
Date of decision:26.02.2018**

Sham Lal

...Appellant

Versus

State of Punjab and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. M.S.Joshi, Advocate for the appellant.

Mr. Rana Harjasdeep Singh, A.A.G. Punjab.

P.B. BAJANTHRI, J. (ORAL)

In the present appeal, appellant has questioned the validity of the trial and appellate courts orders dated 13.11.2002 and 23.04.2003. Appellant while he was in service FIR was filed on 08.12.1994 for the offences under Section 304 (b)/34 IPC in connection with dispute with in-laws of his son. Appellant was arrested on 10.12.1994. Competent authority imposed penalty of dismissal from service on 16.06.1998 from the date of arrest namely w.e.f. 10.12.1994. Feeling aggrieved by the retrospective dismissal from service appellant filed suit before the trial court. Trial court passed the following order:-

“17. Keeping in view my observations on the above said issues, the suit of the plaintiff has been partly decreed for declaration with costs, to the effect that the impugned order of dismissal dated 16.6.98 is legal and valid as far as the dismissal of the plaintiff is concerned but the same shall be deemed to be effected from the date of order i.e. 16.6.98 and not from 10.12.94. The competent authority is directed to calculate the allowances for this period and pay the arrears to the plaintiff within six months. Decree-sheet be prepared. File be consigned to the Record Room.”

Still aggrieved by the trial court decree dated 13.11.2002, preferred an appeal before the appellate court. Appellate court passed the following order:-

“20. Resultantly, appeal filed by State of Punjab bearing C.A.No.3 of 03.01.2003 allowed by ordering modification in the judgment and decree of the trial court to the effect that impugned order of dismissal of appellant Sham Lal from service will be effective from the date of order namely 16.6.98 and not from 10.12.1994. Direction given by the trial court to competent authority to calculate the allowances for the period from 10.12.1994 to 16.06.1998 is set aside. Now State of Punjab/competent authority given liberty to decide the claim of appellant Sham Lal qua grant or non-grant of monetary service benefits during period from 10.12.94 to 16.06.98 with in three months from today positively, but after hearing Sham Lal appellant. Civil Appeal No. 5 of 04.01.2003, titled as Sham Lal Versus State of Punjab is dismissed. Both these appeals decided together through this common judgment.

Original judgment be kept in file of Civil Appeal No. 5 of 4.1.2003, titled as Sham Lal Versus State of Punjab and copy of this judgment be kept in file of Civil Appeal No. 3 of 3.1.2003, titled as State Punjab versus Sham Lal. In view of peculiarity of the circumstances of the case, there is no order as to costs in both the appeal. Decree sheets be drawn up accordingly and there after both the files be consigned to the record room.”

Still aggrieved by the appellate court order dated 23.04.2003 presented this appeal. Crux of the matter in the present appeal is whether respondent-disciplinary authority can pass order of dismissal with retrospective effect or not? Undisputedly, there is no provision dismissing employee with retrospective effect. Therefore, order of dismissal dated 16.06.1998 is read down to the extent that dismissal from service would be prospectively from the date of passing order i.e. 16.06.1998. If the order of dismissal is treated w.e.f. 16.06.1998 what remains in the present appeal is how to determine the service from 10.12.1994 to 16.06.1998. Undisputed facts are that appellant was arrested on 10.12.1994. He was in custody for more than 48 hours Therefore, one has to draw inference that he has to be deemed to have been placed under suspension. In view of these facts and circumstances, appellant is entitled to subsistence allowance for the period from 10.12.1994 to 16.06.1998 i.e. intervening period from the date of arrest till passing of dismissal order dated 16.06.1998. The concerned respondent/authority is hereby directed to calculate subsistence allowance in accordance with law for the intervening the period from 10.12.1994 to 16.06.1998 and disburse the same within a period of six months. Appellant

is entitled to interest on the monetary benefits @ 6% per annum w.e.f.
16.06.1998.

26.02.2018
pooja saini

(P.B.BAJANTHRI)
JUDGE

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No