

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-3300-2016 (O&M)

Date of Decision:-23.02.2018.

Tarwinder Kumar

.....Appellant

Versus

State of Punjab and others

.....Respondents

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

Present: Mr. R.K. Arora, Advocate for the appellant.

Mr. Rana Harjasdeep Singh, AAG, Punjab.

P.B. BAJANTHRI, J. (Oral)

Appellant has challenged Trial and Appellate Court order dated 29.04.2014 and 14.1.2016, respectively.

(2.) Appellant while working as a Constable, he remained absent for which disciplinary proceedings were initiated and it was concluded in imposing the penalty of dismissal from service by the Commandant. Feeling aggrieved by the order of dismissal, appellant has exhausted the remedy of appeal before the Deputy Inspector General of Police, wherein, he has suffered order. In other words, Appellate Authority affirmed the decision of the Commandant. When things stood thus, appellant has submitted representation to the highest authority. He has exhausted the remedy of second appeal before the Inspector General of Police, wherein he has also suffered order. He has approached the Director General of Police

by making a representation. Appellant's representation was entertained while setting aside the impugned order of dismissal. He was taken back to duty while treating the absence period as leave of the kind due. Such a communication has been made on 24.03.2003 to the Inspector General of Police. Consequently, appellant was taken back to duty on 14.04.2003. Thus, he is discharging the duties of the post of Constable for the purpose of intervening period from the date of dismissal till reinstating whether appellant is entitled to service benefits including arrears of pay or not. In this regard, he has filed a suit. Suit was decreed on 29.09.2014. Feeling aggrieved by the decree, respondents filed appeal. Appeal was allowed on 14.01.2016. Hence, the present appeal in challenging the order of the Appellate Court dated 14.01.2016.

(3.) Learned counsel for the appellant submitted that when the order of dismissal is set aside by the highest authority in the Police Department, consequently, all service conditions are treated to be protected including arrears of salary from the date of dismissal till reinstatement. Trial Court has appreciated these facts and circumstances and decreed the suit. Appellate Court has not appreciated relating to quashing of dismissal order and reinstatement. It is not a fresh appointment so as to deny the service benefits during the intervening period from the date of dismissal till reinstatement. Thus, Appellate Court has erred in allowing the respondents' appeal.

(4.) On the other hand, learned counsel for the respondents vehemently contended that Director General of Police has no authority to decide appellant's dismissal order. Only on sympathetic ground, appellant's representation was entertained by the Director General of Police. Therefore,

dated 24.03.2003 has no statutory force so as to extend service benefits to the appellant. Thus, there is no infirmity in the Appellate Court order dated 14.01.2016.

(5.) Heard learned counsel for the parties.

(6.) Crux of the matter in the present appeal is whether appellant is entitled to service benefits including arrears of salary during the intervening period from the date of dismissal till reinstatement or not?

(7.) It is undisputed that Director General of Police while passing the communication dated 24.03.2003 wherein he has set aside the order of dismissal such decision is without their being any statutory power. Even to this day such decision by the Director General of Police dated 24.03.2003 has not been either withdrawn, modified or cancelled. Therefore, as long as it is intact even to this day and further appellant was permitted to discharge the duties of the post of Constable from 16.04.2003, therefore, it is not appropriate to hold that appellant is entitled to all service benefits including monetary benefits. Hence, appellant is entitled to notional benefits for the intervening period from the date of dismissal till reinstatement like seniority, increments and re-fixation of pay from time to time. It is to be noted that Director General of Police being head of the Police Unit in the State, he must have had the knowledge of entertaining representation against a dismissal order. Perusal of communication dated 24.03.2003, there is not even a reference to the appeal or second appeal decided against the appellant. In view of the lapses on the part of the respondent-Police Department in not looking into the statutory provision and the fact that there is inordinate delay to take any further action either on the appellant or on

litigation, appellant is entitled to notional benefits of increments pay fixation and seniority. These service benefits shall be extended to the appellant within a period of 6 months from today.

Appeal stands disposed of.

(P.B. BAJANTHRI)
JUDGE

February 23, 2018.
sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.