

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

RSA-3325-1998 (O&M)

Date of Decision: 21.08.2019

State of Haryana and another

... Appellants

Vs.

Subhash Devi and others

... Respondents

CORAM : HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present : Mr. Saurabh Mohunta, D.A.G. Haryana,
for the petitioners.

Mr. S.S. Mor, Advocate
for the respondents.

AUGUSTINE GEORGE MASIH, J. (Oral)

Challenged in this appeal is to the judgment and decree passed by the learned Additional District Judge, Hissar, dated 12.03.1998 vide which the judgment and decree dated 20.03.1996 passed by the Additional Civil Judge (Sr. Division) Hissar dismissing the suit of the respondent-plaintiff, has been set aside and the suit of the respondent-plaintiff was accepted by holding that the order of dismissal passed by the Superintendent of Police, Hissar dated 2.9.1992 is illegal and not sustainable as it is violative of principles of natural justice. As a consequence thereof, the order passed by the Appellate Authority dated 19.3.1993 upholding the same also cannot be sustained as the reasoning assigned for violation of principles of natural justice would hold good for the said order as well.

2. Learned counsel for the appellant submits that the respondent-plaintiff Karan Singh was appointed as a constable and was working as such

in District Hissar. He was posted at Police Station Civil Lines, Hissar, when he proceeded on 10 days' leave with effect from 25.2.1992 to 7.3.1992 after getting the leave sanctioned. He was to report back on duty on 7.3.1992 but did not do so and remained absent till 17.3.1992 when he again reported back for duty.

3. The stand of the respondent, on the other hand was, that he reported for duty on 8.3.1992 but he was not allowed to join duty as it was asserted that he had over stayed his leave as he was required to report on 7.3.1992. A charge-sheet was issued to him in which detailed departmental inquiry was held wherein he was found guilty. A show cause notice was also served upon him to which he filed reply but finding no merit in the said reply, the Superintendent of Police, Hissar, proceeded to order his dismissal on 2.9.1992. Appeal preferred by the respondent was also ismised by the Deputy Inspector General of Police, Hissar Range, Hissar on 19.3.1993. This led to the filing of the suit by the respondent-Karan Singh Ex. Constable. The suit which has been preferred was dismissed by the trial Court leading to the filing of an appeal which stands allowed.

4. Learned counsel for the appellant submits that the judgment and decree passed by the lower Appellate Court dated 12.3.1998 is not sustainable in the light of the fact that in the show cause notice, necessity of mentioning earlier punishment which has been imposed upon respondent Ex. Constable were not required as he was well aware of those punishments. Mentioning of the same would only be a sheer formality as he had been given proper opportunity during the proceedings for which he had already been punished. He, thus, contends that conclusion as has been drawn by the lower Appellate Court cannot sustain and deserves to be set aside.

5. Learned counsel for the legal representatives of respondent-Karan Singh, who unfortunately died during the pendency of the civil suit, leading to the filing of an application for impleading the legal representatives who have been permitted to be brought on record, submits that that the mentioning of the earlier imposed punishments in the show cause notice was essential so that he would have been in a position to explain and response not only to the enquiry report which was subject matter of show cause notice but would have explained with regard to the earlier punishments which were to be taken into consideration. Because of non mentioning of those punishments which have ultimately been taken into consideration by the Superintendent of Police, Hissar, while passing the order of dismissal dated 2.9.1992, the principles of natural justice have been violated and he has been punished without giving him an opportunity of being heard which itself is good ground for setting aside such an order as the same is not in accordance with law. He, thus, supports the judgment and decree passed by the Additional District Judge, Hissar.

6. I have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the records of the case.

7. The facts, as narrated above, are not in dispute. The question which requires to be considered and decided by this Court is; “whether while issuing show cause notice to the respondent, mentioning of punishments, which have already been imposed upon him and which were sought to be relied upon by the Punishing Authority, were required to be mentioned therein or not”?

8. There is no dispute that while issuing show cause notice the

report of the Enquiry Officer as well as tentative opinion of the Punishing Authority including the proposed punishments had been mentioned and provided to the respondent. There was no mention with regard to the punishment(s) which have already been imposed upon him during his service tenure. The respondent, therefore, had taken into consideration and responded to the show cause notice which was limited to the extent of enquiry report which was held against him and the charge of absence from duty which was proved against him.

9. If that be so, the Punishing Authority was only required to consider the contents of show cause notice to which the respondent had filed his reply. Taking into consideration the punishments which have already been imposed upon the respondent during his service career without giving him any opportunity to respond thereto, wherein he would have explained the effect and the reason as to why such punishments were imposed, amounts to depriving him of his right of being heard, thus, violating the principles of natural justice. Non intimation of the punishments which have been earlier imposed and were sought to be taken into consideration by the Punishing Authority for determining the quantum of punishment amounts to not only violation of the statutory rules i.e. Rule 16.2 of the Punjab Police Rules, 1934, as applicable to the State of Haryana, but also violative of the principle of natural justice.

10. The judgment and decree, therefore, as passed by the Lower Appellate Court cannot be said to be, in any manner, violative of any of the provisions of statute rather the same is based upon proper appreciation of facts and legal position apart from the statutory rules.

11. In view of the above, finding no merit in the present appeal, the

same stands dismissed. However, there shall be no order as to costs.

21.08.2019
rajeev

(AUGUSTINE GEORGE MASIH)
JUDGE

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