

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

125

Regular Second Appeal No.2669 of 2019 (O&M)
Date of Decision: May 27th, 2019

Joginder Singh

...Appellant

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Ajay Pal Singh Rehan, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM-7361-C-2019

Prayer in this application is for condonation of delay of 1213 days in re-filing the appeal.

Having considered the submissions made by the counsel for the applicant-appellant and keeping in view the reasons assigned for the delay in re-filing the appeal, which application is duly supported by the affidavit of the Clerk of the counsel, the present application is allowed.

Delay of 1213 days in re-filing the appeal stands condoned.

RSA No.2669 of 2019

Challenge in this appeal is to the judgment and decree dated 09.05.2013 passed by the Additional Civil Judge (Senior Division), Gurdaspur, whereby suit for declaration to the effect that the order dated 26.12.2005 passed by the Senior Superintendent of Police, Gurdaspur, imposing punishment of forfeiture of one year approved service of the appellant-plaintiff with permanent effect, which on departmental appeal having been preferred by the appellant, has been upheld vide order dated 16.04.2006 passed by the appellate authority and the order dated 19.08.2010, which has been passed by the revisional authority

dismissing the revision preferred by the appellant, are illegal, unconstitutional and of punitive nature, was dismissed, appeal against which preferred by the appellant-plaintiff stands dismissed by the Additional District Judge, Gurdaspur, vide judgment dated 09.09.2015.

2. It is the contention of learned counsel for the appellant-plaintiff that the order of punishment and the dismissal of his appeal and revision by the authorities cannot sustain in the light of the fact that the charge-sheet was issued to the appellant on the ground of registration of an FIR No.33 dated 08.04.2005 against him under the Excise Act, where the allegations were that he was found in possession of 20 bottles of liquor without any permit or licence, in which he was acquitted by the Chief Judicial Magistrate, Gurdaspur, on 24.02.2010. He contends that with the acquittal of the appellant in the FIR which was registered against him, the charge against the appellant would not survive in the departmental inquiry and, therefore, the punishment orders deserve to be set aside.

3. I have considered the submissions made by learned counsel for the appellant and with his assistance, have gone through the impugned judgments but do not find myself in agreement with the said submissions of the counsel.

4. As per the charge-sheet which was issued to the appellant-plaintiff, the appellant was posted at Police Lines Gurdaspur City, when on 07.04.2005 he was attached on duty as a Security Guard of one accused Harjinder Singh, who was admitted in Guru Teg Bahadur Hospital, Amritsar. Instead of performing his duties, he absented himself from there without any leave or permission from the competent authority not only on 07.04.2005 but on 08.04.2005 as well. On 08.04.2005, appellant was found

in possession of 20 bottles of liquor without any permit or licence leading to registration of an FIR against him. It is on these aspects that his absence from duty on 07/08.04.2005 and for registration of an FIR against him and that too under the Excise Act, departmental inquiry was initiated against him, in which he was given due opportunity to defend himself and all the rules and procedures prescribed under the Punjab Police Rules have been duly complied with. At each stage of the inquiry, appellant has participated therein and has even cross-examined the witnesses who have been produced by the department in the inquiry. Detailed show cause notice has been served upon him, to which he has responded by filing reply, where the plea which he has taken is that his wife was not well and his son has brought her to Amritsar for medical check-up. After the medical check-up, he had accompanied his wife back to Gurdaspur to leave her at the house. Nothing has come on record as to whether he had intimated any official with regard to the situation, where he had taken his wife back to his native place Gurdaspur, where his family was residing nor was any application for leave or request for leave submitted.

5. The departmental inquiry which has been held against the appellant-plaintiff led to the conclusion ultimately on the basis of the evidence led by the department and taking in view the defence which has been taken by the appellant, which was found to be without any basis as no documentary evidence could be produced by him in support of his contentions, leading to the imposition of the punishment of forfeiture of one year's service with permanent effect vide order dated 26.12.2005 by the Superintendent of Police, Gurdaspur, against which the appeal and revision preferred by the appellant stand dismissed.

6. Judgments which have been passed by the Courts below are based upon well settled principle of law that the Civil Court cannot sit as Appellate Authority in the departmental proceedings and has a limited jurisdiction to interfere in such like matters, where there is any violation of statutory rules or the principle of natural justice having been violated. Merely because he has been acquitted in the criminal case, which was registered against him on 08.04.2005, would not entitle him to the setting aside of the order of punishment, especially when the charge-sheet was issued to him on two separate scores i.e. absence from duty on 07/08.04.2005 and registration of FIR under the Excise Act on 08.04.2005. The other charge of absence from duty in any case stood proved against him and thus, the impugned orders of punishment have rightly been upheld by the Courts below.

7. In view of the above, it cannot be said that the judgments as passed by the Courts below are not in accordance with law.

8. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

9. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

10. In the light of the dismissal of the appeal, the application for stay i.e. CM No.7362-C of 2019, stands disposed of as infructuous.

May 27th, 2019

Puneet

(AUGUSTINE GEORGE MASIH)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No