

RSA-1129-2018 (O&M)

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

RSA-1129-2018 (O&M)

Date of Decision: 11th January, 2019

Devi Lal

...Appellant

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Ms. Shashi Himshika, Advocate for
Mr. Rajeev Anand, Advocate
for the appellant.

AUGUSTINE GEORGE MAS IH, J. (ORAL)

CM-2782-C-2018

Prayer in this application is for condonation of delay of 32 days
in re-filing the appeal.

For the reasons mentioned in the application, which is duly
supported by the affidavit of the Clerk of the counsel, the same is allowed.
Delay of 32 days in re-filing the appeal stands condoned.

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Challenge in this appeal is to the judgment and decree passed
by the Additional Civil Judge (Senior Division), Fatehabad, dated
25.02.2016, whereby, suit for declaration preferred by the appellant –
plaintiff to the effect that the order dated 31.01.1999 passed by the

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Superintendent of Police, Hisar, imposing punishment of stoppage of two increments with permanent effect be set aside being illegal and arbitrary with a further prayer for mandatory injunction directing the defendants to release all the benefits which were withheld in pursuance to the impugned order along with interest, was dismissed, appeal against which preferred by the appellant – plaintiff was also dismissed by the District Judge, Fatehabad, vide judgment dated 11.01.2017.

2. It is the contention of the learned counsel for the appellant that the Courts below have failed to appreciate that the evidence which has been led by the respondent – Department has been duly countered by the appellant – plaintiff by producing his evidence, which has not been properly appreciated and the finding, therefore, recorded by the Enquiry Officer in its enquiry report (Ex.P-6) is not sustainable. Further contention has been raised that no approval of the District Magistrate has been obtained as required under Rule 16.38 of the Punjab Police Services Rules, 1934 (hereinafter referred to as '1934 Rules'). It has further been asserted that the order dated 25.04.1999 which has been passed by the respondents, whereby, the earned leave and half pay leave have been deducted during his suspension period is illegal. She, therefore, submits that the impugned order dated 31.01.1999 passed by the Superintendent of Police, Hisar, whereby, two increments with permanent effect have been ordered as punishment, could not sustain. The Courts below have not appreciated the legal position and therefore, the said judgments cannot sustain.

3. Reliance has been placed upon the judgment of Hon'ble

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Supreme Court in **Krushnakant B. Parmar Vs. Union of India & another** 2012 (3) SCC 178 to contend that where the misconduct attributed to the delinquent employee, the stand of the employee has to be taken into consideration. She, thus, contends that the present appeal deserves to be allowed and the suit as filed by the appellant – plaintiff deserves to be decreed.

4. I have considered the submissions made by the learned counsel for the appellant and with her assistance, have gone through the impugned judgments.

5. The first contention which has been raised by the counsel for the appellant relates to non-consideration rather not properly considering the stand of the appellant as taken by him during the departmental proceedings. The said aspect has been rightly considered and while considering the scope of the judicial review in the departmental proceedings of the Civil Court, the same has been dealt with in para 12 of the judgment passed by the lower Appellate Court, which reads as follows:-

“12. The scope of judicial review of the departmental proceedings is limited and Civil Court cannot sit in appeal over the findings of disciplinary authority. Civil Court has got jurisdiction to find out regularity of proceedings of enquiry and question as to whether there is violation of principles of natural justice. It is also open to the Civil Court to go into the question as to jurisdiction of inquiring authority and disciplinary

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authority either to hold disciplinary proceedings or to impose penalty. It also can go into a question whether the penalty imposed is proportionate to the misconduct proved. However civil Court cannot reappreciate the evidence adduced before the enquiry officer unless finding of enquiry officer is found to be based on no evidence. In the present case enquiry report has been placed on file by the plaintiff is Ex.P6. After going through the enquiry report Ex.P6 it cannot be held that enquiry report Ex.P6 is based on no evidence. Sufficient evidence was led during the enquiry proceedings regarding wilful absence of plaintiff from his duty. Perusal of enquiry report Ex.P6 also reveals that proper opportunity of hearing was given to the plaintiff before submitting his report. Therefore, it cannot be held that enquiry report is perverse and based on no evidence.”

6. The above reproduced reasoning as assigned by the lower Appellate Court takes care of the arguments which have been raised by the learned counsel for the appellant. The Courts have gone into the aspect with regard to there being no evidence or not in the enquiry report produced by the Department where it has positively found to be there and therefore, it cannot be said that the order passed by the Court below is not in consonance with law on this aspect.

7. The plea which has been taken by the learned counsel for the

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appellant with regard to the non-seeking/grant of approval by the District Magistrate as required under Rule 16.38 of 1934 Rules, the same is also not acceptable. Perusal of Rule 16.38 of 1934 Rules would show that the approval of the District Magistrate is only required when a criminal offence is alleged to have been committed by the police officer and he is to be prosecuted. Present is not such a case. Here is a case where enquiry which was initiated against the appellant – plaintiff was for deliberate absence from duty for 61 days. Rule 16.38 of 1934 Rules, therefore, would not be applicable to the case in hand.

8. As regards the plea of the learned counsel for the appellant that the appellant – plaintiff has been punished twice for the misconduct, the same cannot be accepted in the light of the fact that the order dated 25.04.1999 which is alleged to be the order which has been passed in pursuance to the absence period, whereby, his earned leave and half pay leave have been deducted, has not been challenged in the Civil Court nor has it been produced during the proceedings before the Courts below and therefore, the same cannot be taken into consideration.

9. The judgments as passed by the Courts below are based upon proper appreciation of the pleadings and evidence as well as statutory rules and the law on the same.

10. The judgment which has been relied upon by the learned counsel for the appellant in *Krushnakant B. Parmar's* case (supra), the same cannot be made applicable to the case in hand for the simple reason that the matter was based upon a situation where jurisdiction of the Civil Court was

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not in question. That apart, the present is a case where evidence is led by the Department to prove the allegations against the appellant which has been found to be so by the Courts below on appreciation of the evidence. The judgment, therefore, would not be of any help to the appellant.

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

11th January, 2019
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No