

RSA-2487-2017

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

RSA-2487-2017**Date of Decision: 30th September, 2019****Sanjiv Kumar**

...Petitioner

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. G.S. Sandhu, Advocate, for the appellant.

Mr. T.P.S. Chawla, DAG, Punjab.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree dated 04.03.2016 passed by the Civil Judge (Junior Division), Faridkot, whereby, suit for declaration preferred by the appellant – plaintiff to the effect that the final order dated 26.04.2013 regarding rejection of the revision petition against the forfeiture of 5 years' approved service, order dated 20.01.2014 passed by the Secretary, Department of Home and Justice Affairs and order dated 14.08.1999 passed by the Senior Superintendent of Police, Bathinda, vide which, 5 years approved service of the appellant – plaintiff was forfeited by treating the absence period as non-duty period and forfeiture of the full pay and allowance of suspension period i.e. from 28.05.1999 to 30.05.1999, stands dismissed, appeal against which preferred by him has also been dismissed by the District Judge, Faridkot, on 29.09.2016.

2. It is the contention of the learned counsel for the appellant that the Competent Authority has not taken into consideration the fact that the appellant – plaintiff has more than 10 years of service to his credit and

while passing the impugned orders, the factum of his conduct, which was not even a subject matter of the enquiry, had been taken into consideration i.e. his absence from duty other than the 66 days of absence, which has been attributed to him and was an issue of enquiry. He, thus, contends that the punishment orders deserve to be set aside and the civil suit preferred by the appellant – plaintiff decreed by setting aside the impugned judgments and decree passed by both the Courts below.

3. On the other hand, learned counsel for the State has submitted that the Competent Authority has taken a lenient view while passing the order of forfeiture of service especially when he had been absenting himself from duty without sanction of leave. The total period of his absence comes to 538 days, as has been detailed in the pleadings. The order, therefore, as passed by the Competent Authority being already a lenient view taken, does not call for any interference by this Court. Prayer has, thus, been made for dismissal of the appeal.

4. I have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the impugned judgments.

5. The settled position in law is that the Civil Court cannot exercise its jurisdiction as an Appellate Authority against an order passed by the Punishing Authority. It can interfere, therefore, in case of gross violation of the applicable statutory rules governing the service and the disciplinary proceedings. In case of violation of any of the provisions of the statute/instructions/regulations, the Court has jurisdiction to interfere.

Perusal of the impugned judgments would show that no illegality or

violation of any statutory rule/instruction/regulation has been found by the Courts below. Counsel for the appellant has also not been able to point out any such violation by the Enquiry Officer or the Punishing Authority during the enquiry proceedings and while passing the order of punishment respectively.

6. Even otherwise, the misconduct which has been attributed to the appellant – plaintiff i.e. absence from duty for 66 days without sanction of leave by the Competent Authority has been found to be correct in the enquiry proceedings, which has been held to be a gravest act of misconduct, which would invite extreme punishment of dismissal from service especially when this is not a stray incident as in his ten years of service, he has remained absent from duty for 538 days without sanction of leave. A lenient view has been taken by the Disciplinary Authority while imposing the punishment, which does not call for any interference by this Court.

7. In the impugned judgments, concurrent findings have been returned by both the Courts below which, being in accordance with the pleadings and the evidence brought on record, do not call for any interference by this Court, as there is no misreading or non-consideration of the material available on record nor is there any perversity or illegality in the same.

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

(AUGUSTINE GEORGE MASIH)
JUDGE

30th September, 2019
Harish

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