

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

101

Regular Second Appeal No.2637 of 2017 (O&M)
Date of Decision: September 18th, 2019

Suresh through LR Azad Kaur

...Appellant

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Sanjay Panghal, Advocate
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.6540-C of 2017

Prayer in this application is for condonation of delay of 375 days in filing the appeal.

The reasons which have been given by the applicant-appellant is that the applicant is widow and a poor lady and, therefore, having no source of income or money could not file the appeal and it is after raising money from her relatives that she has been able to engage a counsel leading to the filing of the appeal after a delay of 375 days. Application is supported by the affidavit of the applicant-appellant.

For the reasons mentioned in the application, the same is allowed.

Delay of 375 days in filing the appeal stands condoned.

CM No.6411-C of 2018

Prayer in this application is for placing on record the documents Annexures P-1 to P-3.

Application is allowed subject to just exceptions.

Annexures P-1 to P-3 are taken on record.

RSA No.2637 of 2017

Challenge in this appeal is to the judgment and decree dated 26.08.2014 passed by the Additional Civil Judge (Senior Division), Panchkula, whereby the suit preferred by plaintiff-Suresh Kumar for declaration that the order dated 31.03.2009 passed by the Superintendent of Police, Panchkula and the order dated 31.07.2009 passed by the Appellate Authority, are against the fact and law and unconstitutional and for injunction for reinstatement of the appellant-plaintiff along with all arrears due of service benefit with interest etc., has been dismissed, appeal against which preferred by the appellant-plaintiff has also been dismissed by the District Judge, Panchkula, vide judgment dated 09.12.2015.

2. It is the contention of learned counsel for the appellant that the charges levelled against the appellant were that he after being drunk on duty misbehaved with the public. His contention is that there was a consolidated single charge against the appellant i.e. on he being drunk, he misbehaved with the public. When the basic charge of he being drunk on duty has not been found to be proved by the Inquiry Officer himself, misbehaviour with the public, which charge was as a consequence of he being drunk, was not sustained and the same could not have been made the basis for passing the order of his dismissal from services. He, thus, contends that the said order on this basis is unsustainable. That apart, he asserts that Rule 16.38 (1) of the Punjab Police Rules, 1934, as applicable to Haryana, mandates the sanction and approval of the District Magistrate prior to holding of an departmental inquiry, where a criminal offence is made out against a police official, the said sanction having not been obtained, the departmental proceedings held against the appellant and as a consequence thereof, the

dismissal order as also the Appellate Authority's order cannot sustain and 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.

4. The assertion of the counsel for the appellant that there was a consolidated charge against the appellant that he had, while being drunk, misbehaved with the public at large, is not sustainable while he was on duty in the PCR vehicle at Dussehra Ground, Barwala.

5. This contention is not acceptable in the light of the fact that there are two different charges levelled against the appellant, which may although appear to be connected to each other but are independent of each other as they constitute two different acts. Being drunk on duty itself is a misconduct and misbehaving with the public while on duty is another aspect. It is true that in the departmental inquiry, which was held against the appellant, the charge of he being under the influence of liquor and thus, drunk, was not proved. However, the charge with regard to he misbehaving with the public at Dussehra Ground, Barwala, while on duty was duly proved on the basis of the evidence led by the department against him. The said charge has been found to be serious and the punishing authority as well as the Appellate Authority proceeded to pass orders as per the Punjab Police Rules. The said contention of the counsel for the appellant, therefore, stands rejected.

6. As regard the contention of learned counsel for the appellant that provisions of Rule 16.38 (1) of the Punjab Police Rules as applicable to the State of Haryana have not been complied with, is also not acceptable in

the light of the judgment dated 03.11.2012 passed by this Court in CWP No.10062 of 2011 titled as *Balbir Singh s/o Ram Kishan Versus State of Haryana and others*, where it has been held as follows:-

“Rule 16.38 Criminal offences by police officers and strictures by courts-procedure regarding:

(1) Where a preliminary enquiry or investigation into a complaint alleging the commission by an enrolled police officer of a criminal offence in connection with his official relations with the public, establishes a prima facie case, a judicial prosecution shall normally follow. Where, however, the Superintendent of Police proposes to proceed in the case departmentally, the concurrence of the District Magistrate shall be obtained.”

A perusal of the above Rule would show that where the Superintendent of Police on the basis of the preliminary enquiry or investigation conducted into a complaint prima-facie establishes allegations of commission of a criminal offence in connection with an enrolled police official in relations with the public and if the Superintendent of Police instead of initiating judicial prosecution, which should normally follow, takes a decision and proposes to proceed in the case departmentally, he has to seek the concurrence of the District Magistrate prior to initiating the departmental enquiry. It, therefore, indicates that in case the Superintendent of Police decides not to proceed with the judicial prosecution and instead proceed against the enrolled police officer departmentally, prima-facie commission of a criminal offence in connection with the official relations with the public should be established. If this is not there, the Superintendent of Police, on its own, can proceed against the enrolled police officer and concurrence of the District Magistrate is not required. Therefore, the applicability of Rule 16.38 of the 1934 Rules would depend from case to case and the facts involved therein, which has to be primarily determined by the Superintendent of Police.”

7. In the present case, admittedly no criminal case was initiated against the appellant as there was no FIR registered. The competent authority had, in the peculiar facts and circumstances, proceeded to hold a departmental inquiry, where in the light of the above judgment of this Court, concluded that the concurrence of the District Magistrate is not required to proceed in the departmental inquiry. It is not in dispute and has been found by the Courts below that the statutory rules for holding a departmental inquiry have been duly complied with. The Court, therefore, would not be in a position to appreciate the adequacy or otherwise of the evidence as this is not a case where no evidence has been led by the department against the appellant in the departmental inquiry.

8. There are concurrent findings recorded by the Courts below and nothing illegal has been found in those orders, which would call for any interference by this Court.

9. No question of law is involved which would further persuade this Court to accept the plea of the appellant.

10. Finding no merit in the present appeal, the same stands dismissed.

September 18th, 2019
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No