

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

212

Regular Second Appeal No.5754 of 2014
Date of Decision: September 23rd, 2019

Vinod Kumar

...Appellant

Versus

Haryana State through Collector, Karnal and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Vivek Khatri, Advocate
for the appellant.

Mr. Manish Dadwal, Assistant Advocate General, Haryana.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree dated 17.09.2014 passed by the District Judge, Karnal, whereby the appeal preferred by State of Haryana against the judgment and decree dated 22.11.2011 passed by the Civil Judge (Junior Division), Karnal, partly decreeing the suit of the appellant-plaintiff, has been allowed, dismissing the suit of the appellant-plaintiff by setting aside the judgment and decree dated 22.11.2011 passed by the trial Court.

2. It is the contention of learned counsel for the appellant that a well reasoned and justified judgment dated 22.11.2011 passed by the trial Court has been set aside by the Appellate Court without taking into consideration the mandatory Rules of the Punjab Police Rules, 1934 as applicable to the State of Haryana, especially Rule 16.38 and 16.2. He contends that as per Rule 16.38 (1) and (2), approval of the District Magistrate had to be obtained by the punishing authority prior to proceeding with the departmental inquiry when a criminal offence for the same incident has taken place, for which an FIR has been registered as in

for which a criminal trial ensued, in which the appellant has been acquitted. He contends that in the absence of the sanction given by the District Magistrate, the departmental inquiry could not have been held against the appellant and, therefore, the consequential proceeding including the issuance of a charge-sheet, the inquiry report, the punishing order and the order of the Appellate Authority including a Revisional Authority, cannot sustain and deserve to be set aside. His further contention is that as per Rule 16.2 of the Punjab Police Rules, while passing an order against a delinquent employee, the punishing authority has to take into consideration the length of service of the employee and since the appellant has more than 16 years of service to his credit, the claim of the appellant-plaintiff with regard to he being entitled to pension has not been considered and, therefore, the order as passed by the punishing authority is unsustainable and deserves to be set aside with a consequential effect thereof that the order of the Appellate Authority as well as the Revision Authority would fall. Learned counsel for the appellant has placed reliance upon the judgment of this Court in *Punjab State and others Versus Mohinder Singh 2002 (3) RSJ 231* and *Haryana State through Collector, Karnal and another Versus Raghubir Singh 2002 (1) RSJ 196*. He accordingly prays for setting aside the judgment passed by the Lower Appellate Court and for granting the benefit as per the trial Court judgment.

3. On the other hand, learned counsel for the respondents submits that the sanction of the District Magistrate would be required in case the misconduct, which is attributed to the appellant-plaintiff, had something to do with the performance of his duties. Since the offence for which an FIR has been registered against the appellant has no connection whatsoever with

his official duties, therefore, the sanction of the District Magistrate was not required prior to initiating departmental proceedings against him. His further contention is that the minimum period of service rendered by an employee, which would entitle him to be considered for grant of pension, is 20 years qualified service as per the Punjab Civil Services Rules. Since the appellant-plaintiff had only 16 years of service to his credit, his claim could not have been considered by the punishing authority for grant of the benefit of pension as he would not be entitled to the same. Prayer has, thus, been made for dismissal of the present appeal and for upholding the judgment passed by the Lower Appellate Court.

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

5. The factum of FIR No.229 dated 25.07.2006 registered at Police Station Gharaunda under Section 384 IPC read with Section 25, 54, 59 of the Arms Act, has not been disputed. The FIR and the allegations therein admittedly are not relatable to the duties of the appellant-plaintiff. As per the provisions of Rule 16.38 of the Punjab Police Rules, the sanction of the District Magistrate would not be required in the given circumstances of the present case. This Court had an occasion to deal with the provisions of Rule 16.38 in a similar matter i.e. *CWP No.24413 of 2012* titled as *Constable Pale Ram Versus State of Haryana and others* matter decided on 14.12.2012, 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.”

6. In the present case admittedly offence which is alleged to have been committed by the appellant-plaintiff has no connection whatsoever with his duties and, therefore, the sanction of the District Magistrate has rightly been held to be not required by the Lower Appellate Court.

7. Nothing has been found as far as the departmental proceedings which have been held against the appellant to be violative of any statutory rules. In the light of there being no violation of any statutory rules during

8. Plea of learned counsel for the appellant that the appellant would be entitled to the benefit of consideration of his length of service for the purpose of granting him pension, also cannot be accepted in the light of the fact that he does not fulfill the requisite period of qualified service for being entitled for pension. The judgments, on which reliance has been placed by learned counsel for the appellant i.e. in *Punjab State and others Versus Mohinder Singh* and *Haryana State Versus Raghbir Singh*, suffice it to say that it was not brought to the notice of the Court that as per the Punjab Civil Services Rules as applicable to the State of Punjab and Haryana, minimum qualified service prescribed for grant of pension is 20 years of qualifying service. The minimum 10 years qualifying service as mandated in Rule 6.16 Volume II of the Punjab Civil Services Rules is only in case of an employee superannuating. Present is not a case of superannuation and, therefore, the said Rule would not be applicable. In the absence of 20 years of qualifying service to the credit of the appellant-plaintiff, the question of consideration of his length of service for grant of pension and other retiral benefits does not arise and, therefore, the order of dismissal passed by the punishing authority cannot be faulted with.

9. In view of the above, especially in the light of the fact that there is no question of law involved in the present case, which would require adjudication in the light of what has been stated above, the appeal deserves dismissal being devoid of merit.

10. Ordered accordingly.

September 23rd, 2019
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE