

**IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH
112**

RSA-3101-2017

Date of decision: 14.01.2019

EX CONSTABLE HARVAIL SINGH

...APPELLANT

VS.

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

**Present: Mr. Deepak Arora, Advocate,
for the appellant.**

AUGUSTINE GEORGE MASIH, J. (ORAL)

Present in an appeal preferred by a Police Constable who has been dismissed from service after holding a regular departmental enquiry against him. The suit for declaration preferred by the appellant to the order dated 07.07.1995 passed by the SSP Ludhiana dismissing the appellant-plaintiff, order dated 30.07.2008 passed by the Deputy Inspector General of Police/ Ludhiana Range, Ludhiana rejecting the appeal and the order dated 25.10.2008 passed by the Inspector General of Police, Zonal-II, Jalandhar rejecting the revision petition and order dated 28.07.2009 passed by the Director General of Police, Punjab Chandigarh rejecting the revision-cum-mercy petition, has been dismissed by the learned Civil Judge (Junior Division) Gurdaspur vide judgment dated 20.09.2016, which order has been upheld by the Additional District Judge, Gurdaspur vide judgment dated 16.03.2017.

It is the contention of the learned counsel for the appellant that the appellant was appointed as a Constable on 14.02.1989 and continued as such where an objection was raised with regard to the authenticity of his matriculation certificate. In pursuance thereto, FIR No. 20 dated 04.02.1993 was registered under Sections 420/468/471 IPC, Police Station Civil Lines, Ludhiana, because of which, the appellant was upset and further he was indicated that till the conclusion of the trial in the FIR, which was registered against the appellant, he would not be reinstated and, therefore, the appellant, in these circumstances, absented himself from duty. He further contends that after the trial, appellant has been acquitted on 23.11.2007. After his acquittal by the Additional Chief Judicial Magistrate, Ludhiana, the appellant had proceeded to file his appeal as also the revision-cum-mercy petition. He contends that these aspects have not been taken into consideration by the Appellate Authority as well as the Revisional Authority. That apart, he contends that the absence period of the appellant is 04.02.1993 to 07.07.1995 which comes to 881 days. He contends that it is because of the circumstances, which were beyond the control of the appellant, that he could not join the enquiry proceedings initiated against him which resulted in an ex-parte enquiry report as also the order of dismissal from service dated 07.07.1995. Counsel, thus, contends that the appeal, as preferred by the appellant, deserves to be allowed by setting aside the impugned judgments and decreeing the suit of the appellant-plaintiff.

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

A perusal of the judgments passed by the Courts below would show that proper opportunity was given to the appellant to take part in the enquiry proceedings. It has come on record that the notice was served, at each stage, to the appellant through his father Ajit Singh. During the enquiry proceedings, father of the appellant as well as his uncle Sukhdev Singh had given a statement that the appellant had gone out of country i.e. United States of America. In these circumstances, the enquiry proceedings, which were initiated against the appellant, were proceeded against ex-parte. At the stage of enquiry report having been received, a show cause notice was also served upon the father of the appellant. Since the appellant did not appear, the punishing authority had no option but to pass an order of dismissal dated 07.07.1995 especially in the light of the fact that the absence of the appellant from service for a period of 881 days had been duly proved having based upon the evidence led by the department. It is true that an FIR was registered against the appellant on 04.02.1993 but that alone does not give him the leverage and excuse to remain absent from duty especially in a disciplined force. The explanation, which has been put forth by the appellant for his absence from duty, is not acceptable as the same is neither reasonable nor justified. No illegality or violation of any statutory Rule has come to light which would call for interference by a Civil Court in exercise of its jurisdiction.

It would not be out of way to mention here that the services of the appellant have not been dismissed because of his matriculation certificate being not genuine but because of his absence from duty.

The findings, as recorded by the Courts below, being based upon proper appreciation of the evidence and on the basis of the statutory

Rules, no ground for interference in the present appeal is made out.

The appeal, therefore, stands dismissed.

January 14, 2019

**(AUGUSTINE GEORGE MASIH)
JUDGE**

pj

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No