

IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH

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**CM-4174-C-2019 &
RSA No.4455-2017**

Date of decision: 03.04.2019

SURINDER PAUL

...APPELLANT

VS.

PUNJAB STATE AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Swaran Sandhir, Advocate,
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM-4174-C-2019

Prayer in this application filed under Order 41 Rule 27 read with Section 151 CPC is for permission to produce copies of letter dated 11.01.2006, Office Order dated 03.11.1998, 22.06.1999 and 30.06.1999 as Annexures A-1, A-2, A-3 and A-4 respectively as additional evidence in the appeal.

A perusal of the said application would indicate that the reasons as to why the said copies could not be produced before the trial Court or the First Appellate Court, have not been given. Nothing has been mentioned with regard to the knowledge of the applicant-appellant as to when he became aware of the same and the reasons as to why the said copies were, at the time of the trial, not produced and proved before the

Courts below. The application does not fulfil the mandate of the statutory requirements, as provided under Order 41 Rule 27 read with Section 151 CPC and, therefore, the same stands dismissed.

RSA No.4455-2017

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Ludhiana dated 07.05.2015, whereby the suit for declaration preferred by the appellant that the office order dated 07.11.2006 was illegal, null and void, arbitrary, mala-fide and violative of the Rules and principle of natural justice as also the Punjab Civil Services Rules with a further prayer for directing the respondents to release the pay of the appellant-plaintiff for the period of his suspension i.e. 01.12.1998 to 30.06.1999 along with interest @ 18% per annum as also the declaration to the effect that the proficiency step-up of increment be given to him from the date it became due by setting aside the Annual Confidential Report, which has been wrongly incorporated by the respondents was dismissed, appeal against which has also been dismissed by the learned Additional District Judge, Ludhiana vide judgment dated 15.02.2017.

It is the contention of the learned counsel for the appellant that the respondents have failed to appreciate that the period of suspension i.e. 01.12.1998 to 30.06.1999 was ordered to be treated as leave of the kind due denying him the benefit of salary, which is not permissible. He contends that the appellant, although, was initially punished by imposing punishment of stoppage of two annual grade increments by the punishing authority but on an appeal having been preferred, the appellate authority had reduced it to stoppage of one annual grade increment. He, thus, contends that the period of suspension could have been treated as duty period and the appellant

could have been granted the salary for the said period. His further contention is that the proficiency step-up increment, which the petitioner has been granted, is delayed because of the Annual Confidential Report, which has been, with a mala-fide intention, recorded by the respondents. He, thus, contends that the civil suit, which has been preferred by the appellant-plaintiff, deserves to be allowed and the impugned judgments set aside.

I have considered the submissions made by the learned counsel for the appellant and with his assistance, have gone through the records of the case.

As far as the plea of the counsel for the appellant that the appellant was entitled to pay for the period of his suspension, suffice it to say that the appellant-plaintiff has not been exonerated in the departmental enquiry which was initiated against him. Merely because the appellate authority has reduced the punishment, which was imposed by the punishing authority i.e. stoppage of two annual grade increments to one annual grade increment, does not mean that the appellant-plaintiff has been exonerated of the charges which had been levelled against him. The authority, in the light of the punishment order, is competent to pass orders with regard to treating the period of suspension in the manner which would be befitting keeping in view the facts and circumstances of the case. The said authority has ordered treatment of the suspension period as leave of the kind due, which is in accordance with law and the statutory Rules governing the service, therefore, no interference in this regard is required to be made by this Court.

As regards the contention of the learned counsel for the appellant that the Annual Confidential Report of the appellant-plaintiff has

been recorded wrongly with a mala-fide intention of one Sh. Ripudaman Singh, District Employment Officer, suffice it to say that neither he has been impleaded as a party to the civil suit nor even the District Employment Officer is a party by designation and further no evidence has been brought on record, with regard to the assertion that the Annual Confidential Report has been wrongly incorporated by the competent authority what to say of with a mala-fide intention, thus, this contention cannot be accepted and the Courts below have rightly rejected the said claim.

As regards the contention of the learned counsel for the appellant that the appellant has not been granted the proficiency step-up increment from the date it became due cannot be accepted for the reason that because of his adverse Annual Confidential Report, the appellant could not have been granted the proficiency step-up increment as the grant of proficiency step-up increment is dependent upon the Annual Confidential Report being satisfactory/good as per the criteria laid down therein. Since the appellant-plaintiff could not fulfill the said criteria, he could not have been granted the ACP at the relevant time when he would have otherwise been granted.

It is an admitted position as per the evidence brought on record, as is apparent from para-17 of the judgment of the appellate Court, that the ACP has been granted to the appellant as and when he became eligible and even the bills have been prepared.

That being so, it cannot be said that the appellant has been denied any of his claims as per the statutory Rules to which he was entitled to.

The judgments passed by the Courts below being based upon

proper appreciation of the pleadings, evidence and the record cannot be faulted with. Further, there are concurrent findings recorded by the Courts below which do not call for interference by this Court in this appeal.

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

April 03, 2019

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No