

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

RSA-602-2020 (O&M)
Decided on : 23.08.2022

Harbans Singh

..... Appellant

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Anupam Bhardwaj, Advocate
 for the appellant.

Manjari Nehru Kaul, J.(Oral)

CM-1735-C-2020

Application is allowed as prayed for and the delay of 10 days in filing the appeal is condoned.

Main case

Plaintiff filed a suit for declaration to the effect that order/endorsement No.1197/98 dated 03.05.1993 vide which the defendants terminated his services was illegal, null and void, arbitrary and against the principles of natural justice along with relief of mandatory injunction for directing the defendants to allow the plaintiff to join back his service.

Trial Court vide judgment and decree dated 29.04.2019 dismissed the suit of the plaintiff in toto. The appeal preferred before the Lower Appellate Court against the aforesaid judgment and decree met the same fate and was dismissed vide order dated 21.10.2019. The plaintiff being aggrieved by the concurrent findings recorded by the Courts below is, now in Regular Second Appeal before this Court. Parties to the lis,

hereinafter, shall be referred to by their original positions in the suit.

Brief facts of the case as pleaded in the plaint by the plaintiff may be noticed as thus: the plaintiff was appointed on the post of Constable by the defendants. His services were terminated on 30.04.1993 due to his absence from duty for a continuous period of 120 days. The plaintiff alleged that the inquiry conducted by the defendants was not in accordance with the principles of natural justice and thus, the order terminating his services was not binding upon the plaintiff. All relevant documents for the reasons behind his absence from duty including medical certificates etc. were produced by the plaintiff, still his services were terminated. The plaintiff filed CWP No.11303 of 1995, which was dismissed on 16.11.1998. A revision petition preferred by the plaintiff, which had been pending before defendant No.2 was disposed of by it vide letter dated 07.01.2013. However, the copy of the order was delivered to the plaintiff only on 23.01.2013 while the appeal/revision was still pending before the higher authorities. It was pleaded that the absence of the plaintiff from duty was due to unavoidable circumstances but the authorities had been unduly harsh towards him by awarding hard punishment.

In the written statement, it was submitted by the defendants that the plaintiff had lost his claim upto the Hon'ble Supreme Court and hence, he was estopped from filing the suit in question. It was further asserted that the order terminating the services of the plaintiff w.e.f. 30.04.1993 on account of his absence from duty for 120 days could not be faulted with as a departmental inquiry was got conducted, chargesheet was delivered to the plaintiff, received by him under his own signatures and thereafter an

opportunity too was given to the plaintiff to cross-examine the witnesses. It was thus, submitted that principles of natural justice were followed before passing of the impugned order dated 03.05.1993. Besides this, it was also submitted that all the appeals preferred against his dismissal by the plaintiff were rejected by the Deputy Inspector General of Police, Ferozepur, Director General of Police, Punjab, Chandigarh and by Home Department, Punjab vide order dated 27.10.1993, 13.07.1994 and 03.04.1995 respectively. Even a civil writ petition i.e. CWP No.11303 of 1995 preferred before this Court was dismissed, LPA No.176 of 1999 impugning the dismissal of the aforementioned writ petition was dismissed vide order dated 13.08.1999. It was further submitted that review application No.5 of 2003 preferred by the plaintiff also came to be dismissed on 01.12.2005. Finally, the Special Leave Petition No.948-949 of 2015 filed by the plaintiff against the aforementioned order was dismissed by the Hon'ble Apex Court vide order dated 09.01.2015. All other averments made by the plaintiff were vehemently denied by the defendants.

On the basis of material and other evidence led, both the Courts below concluded that proper procedure had been followed before and while passing the impugned order dated 03.05.1993 coupled with the fact that the plaintiff had been given due opportunity of being heard and as such there was no reason to interfere with the impugned order and decreed the suit filed by the plaintiff.

Learned counsel for the appellant vehemently argued that while passing the impugned order terminating the services of the appellant, both the Courts below had failed to appreciate that the appellant had absented

himself from duty on account of genuine reasons and unavoidable circumstances. He submitted that the appellant had produced medical certificates during the inquiry conducted, however, the department had still gone ahead and terminated his services. He further submitted that the appellant was not a habitual offender and it was for the first time that he had absented from his duty for 120 days qua which he had adduced enough evidence, however, still the respondent-department adopted a very harsh approach and terminated his services. A prayer, therefore, was made for setting aside the impugned judgment and decree.

Heard learned counsel and perused the relevant material on record.

This Court does not find any error in the impugned judgment and decree, which would warrant any interference of this Court. Admittedly, the plaintiff was employed and appointed as a Constable in the Punjab Police. On account of his wilful absence from duty for a period of 120 days i.e. from 14.05.1992 to 14.09.1992, his services were terminated w.e.f. 30.04.1993. Before passing of the termination order, the defendants served a show cause notice upon the appellant, which was duly replied by him. It was only thereafter on the basis of his reply, chargeheet dated 18.09.1992 was served upon the appellant which was then followed by a departmental inquiry. The Inquiry Officer while conducting the inquiry granted full opportunity to the appellant to defend himself. After the appellant was found guilty by the inquiry officer, a show cause notice was served upon him, which was replied by him. On consideration of his reply and after following the due procedure, the services of the appellant were

rightly terminated vide order dated 03.05.1993. It is also a matter of record that all the departmental appeals preferred by the appellant were rejected. Not only this, a Civil Writ Petition i.e. CWP No.11303 of 1995 preferred by this appellant before this Court was dismissed on 16.11.1998. LPA preferred against the dismissal of the writ petition was also dismissed and the review application too was dismissed by this Court. It is a matter of record that the Special Leave Petition preferred by the appellant against the dismissal of LPA was also dismissed by the Hon'ble Apex Court.

In the aforementioned circumstances, once admittedly the termination order dated 03.05.1993 of the appellant stands upheld right upto the Apex Court, the Courts below rightly dismissed the appeal as the pleas of the plaintiff have already been considered and adjudicated upon by this Court as well as the Supreme Court.

On being pointedly asked, learned counsel for the plaintiff failed to bring to the notice of this Court anything on record to show that the conclusions arrived at by the Courts below were either contrary to record or suffered from any material illegality.

In the circumstances, this Court does not find any error in the judgments and decree passed by the Courts below, which would warrant any interference. Accordingly, the appeal stands dismissed.

23.08.2022
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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned:
Whether reportable :

Yes/No
Yes/No