

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

RSA No.1202 of 2022 (O&M)
Date of decision : 14th September, 2022

Rakesh

... Appellant

Versus

Haryana State & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Sanjay Verma, Advocate for the appellant.

MANJARI NEHRU KAUL, J.

The suit for declaration filed by the plaintiff was dismissed by the learned Trial Court vide its judgment and decree dated 12.01.2021. The appeal preferred against the aforementioned judgment and decree by the plaintiff was also dismissed vide order dated 16.11.2021 of the lower Appellate Court, Gurugram. The plaintiff is now before this Court in the instant Regular Second Appeal challenging the concurrent findings of both the Courts below. The parties to the *lis* hereinafter shall be referred to by their original position in the suit.

The pleaded case of the plaintiff may be noticed as thus:

The plaintiff filed a suit for declaration to the effect that findings of the Inquiry Officer vide orders dated 28.01.1994, dismissal

of his appeal vide order dated 26.03.2004 and dismissal of mercy petition vide order dated 18.04.2017 were illegal, void and against the principles of natural justice.

The plaintiff was employed in the Department of Home. While posted in the English Branch of DPO, Bhiwani, he was selected for Commando course at Jind. He was asked to report at Police Lines, Bhiwani on 26.03.1993, but he failed to do so, as a result of which his absence was recorded and a departmental inquiry initiated against him where he was found to be negligent in his duties. Consequently, he was awarded punishment of stoppage of five increments with cumulative effect vide order dated 28.01.1994. The plaintiff claimed that at the time of alleged absence, he was suffering from mental disease for which he was undergoing treatment and the said fact was well within the knowledge of the defendant Department as well as the Inquiry Officer. However, no opportunity of personal hearing was given to him which thus, was violative of the principles of natural justice. The plaintiff also claimed that though he had submitted a medical certificate and filed a detailed reply before defendant No.2-Superintendent of Police, Bhiwani, however, the same was ignored. Still further, an appeal preferred by him before defendant No.3 was rejected vide order dated 26.03.2004.

In their written statement, the defendants submitted that despite the plaintiff having been served through several notices dated 05.08.1993; 24.08.1993 and 26.11.1993, he did not join the inquiry proceedings. It was submitted that the punishing authority had duly considered the reply filed by the plaintiff to the show-cause notice dated 20.01.1994 and had also given him the opportunity of a personal hearing on 24.01.1994, however, the plaintiff had not produced any evidence qua his illness much less any medical certificate in support thereof was produced before the authorities concerned. Hence, defendant No.2 had rightly awarded punishment of stoppage of five future increments vide order dated 28.01.1994. Still further, it was pleaded that the plaintiff's suit was barred by limitation as the mercy petition was preferred by him after 13 years of dismissal of his appeal vide order dated 26.03.2004. It was submitted that once the departmental inquiry had been conducted by the competent officer, the scope of interference by the Civil Court was very limited. The defendants thus, prayed for dismissal of the suit as no procedural defect could be pointed out or proved in the departmental proceedings which were initiated against the plaintiff.

Both the Courts below, after considering the material on record and evidence led, recorded concurrent findings. It was held that when the appellant/plaintiff filed the reply dated 20.01.1994 to the

show-cause notice, he was well aware of the fact that an inquiry had been instituted against him and therefore, he had the opportunity to seek permission to join the inquiry, however he did not avail the same. Further, notice was served upon him at every stage of the inquiry such as notice dated 05.08.1993 calling upon plaintiff to join inquiry and notice dated 26.11.1993 calling upon the plaintiff to file his written statement, moreover he was afforded opportunities at different stages of the inquiry as well. Hence, his plea that he had not been afforded any opportunity of hearing, was devoid of merit. The courts below, further, did not find any force in the plea of the appellant/plaintiff that report submitted by the inquiry officer was without evidence as the only evidence which could have been tendered by the defendant was qua the absence of appellant and the same stood proved from the attendance register during the course of the inquiry. Still further, the factum of absence was even admitted by the appellant himself. Furthermore, after the dismissal of his appeal by authorities vide order dated 26.03.2004, the appellant moved a mercy petition after a gap of 13 years and no explanation had been given by him qua the said delay.

I have heard learned counsel for the appellant and perused the relevant material on record.

Learned counsel has reiterated the submissions made in the plaint and before the courts below.

In the totality of circumstances, I am unable to be persuaded that findings of fact recorded by the courts below warrant any interference by this Court. It is well settled law that Civil Court cannot act as a forum of appeal against inquiry proceedings and the scope of interference is only available in case some defect is pointed out in the conduct of such proceedings. However, no such defect has been pointed out in the instant case and hence, the courts below have not erred in holding that the appellant was not entitled to the relief sought for, in the suit in question.

On being pointedly asked, learned counsel has failed to bring to the notice of this Court any material on record from which it could be inferred that the conclusions drawn by both the courts below were either contrary to the record or suffered from any material illegality. Resultantly, the appeal being devoid of any merit stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

September 14, 2022

rps

Whether speaking/reasoned	Yes/No
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Whether reportable	Yes/No
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