

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

RSA 2887 of 2000 (O&M)

Date of Decision: February 23, 2022

State of Punjab ...Appellant

Versus

Gurdip Singh ... Respondent

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. R.D. Bawa, Advocate
for the appellant.

Ms. Anju Sharma Kaushik, DAG, Punjab.

FATEH DEEP SINGH, J. (Oral)

The factual background in the present case, which has been preferred by way of Regular Second Appeal by the State of Punjab is that the respondent then plaintiff Head Constable Gurdip Singh during the course of his duties is alleged to have absented himself on 12.01.1994 and on 05.03.1994 vide DDR No. 5 dated 05.03.1994 returned to his duties and is alleged to have remained absent/on unauthorized leave for a period of 21 days 10 hours and 25 minutes. The

appointing authority instituted a departmental inquiry and found him guilty. It was vide order dated 22.09.1994 the punishing authority passed punishment order whereby three years of approved service was forfeited with permanent effect. The appeal filed by the delinquent official was rejected on 11.01.95 by the Inspector General of Police, Border Range, Amritsar. It is as a consequence of this the plaintiff filed a suit for declaration challenging the orders dated 22.09.1994 passed by the defendants being illegal and unsustainable.

The Court of learned Additional Civil Judge (Junior Division) Gurdaspur framed the following issues:-

- 1. Whether the plaintiff is entitled to declaration as prayed for? OPP.*
- 2. Whether the suit of the plaintiff is not maintainable in the present form? OPD.*
- 3. Whether the notice under Section 80 C.P.C. is legal and valid. OPD.*
- 4. Whether the plaintiff has cause of action to file*

present suit? OPD.

*5. Whether the suit of the plaintiff is under
valued for the purpose of the Court fee and
jurisdiction.*

6. Relief.

To prove his case, the plaintiff himself stepped into the witness box as PW1 and, thereafter, closed the evidence.

Defendants examined Surinder Singh as DW1 who tendered departmental enquiry file as Ex.D1 and closed the evidence.

The Court of learned Additional Civil Judge (Junior Division) Gurdaspur vide judgment and decree dated 14.05.1998 decreed the suit of the plaintiff.

The appeal by the State was disposed off vide impugned judgment and decree dated 12.11.1999 by the Court of Additional District Judge, Gurdaspur, whereby, upholding the orders of the trial Court and dismissing the appeal.

In the light of admitted legal proposition as has been

laid down in 'Kirodi (since deceased) through his L.R. Vs. Ram Parkash and others' Civil Appeal No. 4988 of 2019; SLP(C) No. 11527 of 2019 decided on 10.05.2019, the Court is not supposed to frame substantial question of law in view of the provisions enshrined under Section 41 of the Punjab Courts Act, 1918 which has its application to the States of Punjab and Haryana.

Upon hearing Mr. R.D. Bawa, Advocate for the petitioner and Ms. Anju Sharma Kaushik, DAG, Punjab and perusal of records.

The moot point involved in the present suit permeates as to the affect of forfeiture of service. Though Punjab Police Rules 1934 by way of Chapter 16, Rule 16.1 prescribes the authorized punishments where stoppage of increments or stoppage of approved service of increment has been detailed at serial No. 3.

The order under challenge passed by the Superintendent of Police, Gurdaspur dated 22.09.1994 which

has merged with order dated 11.01.1995 is to the effect that on account of unauthorized absence of the plaintiff now respondent forfeiture of three years of approved service with permanent effect has been made.

It has been well discussed in **Chamba Singh Vs. State of Punjab 1997(2) S.C.T. 631** and in a prior view in **Punjab State Vs. Joginder Singh 1993(3) S.C.T. 671** where it has been clearly held that forfeiture of service of the grant of increments only cannot be termed to have bearing on qualifying service and only the right to receive increments alone has been affected and which is based on the preposition that forfeiture of service under Rule 16.5 (2) is to be deducted from the qualifying service for compulsory retirement, it would have paradoxical affect on granting longer service to such a employee for compulsory retirement and even view of this Court in **Punjab State's case (supra)** holds out that approved service of a police personnel with permanent affect can be forfeited and thus affects only the stoppage of increments and cannot be

interpreted to mean that approved service of a police official with permanent effect can be forfeited which is purely for the purposes of gratuity, pension and seniority. The Court below have held in unison while interpreting Rule 16.2 of the Punjab Police Rules and the impugned findings enlist that the then defendants department were wrong in inflicting punishment for forfeiture of three years of approved service with permanent effect and in the light of what has been detailed and discussed above in view of the settlement preposition of law, the impugned judgment is upheld and appeal being hopelessly without merits stands dismissed.

February 23, 2022
amit rana

(FATEH DEEP SINGH)
JUDGE

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