

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

RSA-2643-2015 (O&M)

Date of decision: 15.02.2022

The Punjab State through the Secretary
Government of Punjab and others

.....Appellants

versus

Gurdev Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Ms. Anju Sharma Kaushik, DAG, Punjab
for the appellants-State.

Mr. R.S. Bajaj, Advocate
for the respondent.

FATEH DEEP SINGH, J.

The then plaintiff now respondent, ex-constable-Gurdev Singh, joined the Punjab Police Department as Special Police Officer (SPO) on 02.12.1993 in Jalandhar District and was allotted No.5222/Jalandhar. It is during the course of time, an FIR No.565 dated 22.08.2001 under Sections 323, 324 and 427 read with Section 34 of the Act was registered against him and others in Police Station Sadar, Jalandhar on the complaint of one, Amritpal. The plaintiff was subsequently acquitted vide judgment/order

dated 20.11.2001 by the Court of the learned Additional Chief Judicial Magistrate, Jalandhar. Subsequently, in line with the policy of the State on the directions of the Director General of Police, Punjab vide letter No.2445/CB-PC dated 15.02.2007, the plaintiff was absorbed in the Police Department as a regular Constable and vide letter No.1355/E-1(2) dated 18.01.2008, Gurdev Singh was absorbed as a regular Constable in the Police Department and enlisted so under Belt No.1024 in 80th Battalion of PAP Jalandhar with effect from 07.02.2008 on the order of the Additional Director General of Police Armed Battalion, Jalandhar.

It is subsequent thereto, a notice bearing No.22160/AC dated 05.10.2009 was issued by the Commandant 80th Battalion PAP asking the plaintiff to show cause why he be not discharged from service. The said notice was based on the premise that while working as an SPO, he was involved in a criminal case. In spite of reply having been submitted by the plaintiff and highlighting the facts that he stands acquitted in the said case, the plaintiff was dismissed from service vide order bearing letter No.10092-102/AC-Court dated 12.02.2010 issued by the Commandant of the Battalion. The Departmental appeal too was dismissed by the DIG vide order dated 25.06.2010.

Aggrieved over this, the plaintiff had invoked the jurisdiction of the Civil Court by filing a suit for declaration challenging the order dated 25.06.2010 rejecting his appeal and upholding the order dated 12.04.2010 of the Commandant whereby, he was dismissed from service.

The defendants in their stand took the plea that there was no illegality in the orders of dismissal of the plaintiff and there has been total compliance of the provisions of Article 14 of the Constitution of India. The main plea raised by the defendant-State was that mere acquittal in a criminal case does not come in the way of the authorities to administratively deal with the plaintiff and, therefore, denying the contentions of the plaintiff sought dismissal of the suit being ill-founded and without any basis. The Trial Court framed the following issues:-

- 1. Whether the plaintiff is entitled to declaration to the effect that the order dated 12.04.2010 passed by the Commandant, 80th Battalioon, PAP Jalandhar, Cantt and the order dated 25.06.2010 passed by the Deputy Inspector General of Police (Admn.) PAP, Jalandhar Cantt now Inspector General of Police, are illegal, null and void, unlawful and unconstitutional, arbitrary, capricious, null, wanton, unlawful, unconstitutional, arbitrary and against the provisions of law and service rules etc as prayed for the plaint? OPP.*
- 2. Whether the plaintiff is entitled to the declaration that he continues to serve the department as Constable as before 12.04.2010 and to all rights, privileges and other service benefits as prayed for? OPP.*

3. *Whether the suit of the plaintiff is not maintainable?*
4. *Whether the plaintiff is estopped by his own act and conduct? OPD.*
5. *Relief.*

The plaintiff examined Kabal Singh as PW-1 and the defendant examined DW-1 Head Constable Harjit Singh and DW-2-Sardari Lal. The Court of the learned Civil Judge (Junior Division), Jalandhar vide judgment/order dated 30.08.2014 decreed with costs the suit of the plaintiff. Upon appeal by the State, the Court of the learned Additional District Judge, Jalandhar vide impugned finding dated 25.02.2015, dismissed the appeal of the State, who have come up before this Court in the instant RSA.

In view of the recent pronouncement in **'Kirodi (since deceased) through his LR vs. Ram Parkash and others'** Civil appeal No.4988 of 2019; SLP(C) No.11527 of 2019 decided on 10.05.2019, the Hon'ble Supreme Court has clearly held under Section 41 of the Punjab Courts Act, 1918 which has its application to the States of Punjab and Haryana, that there is no necessity of framing substantial question of law for disposal of an appeal.

Heard learned counsel for the parties and perused the records.

It is an admitted fact as far as the engagement of the plaintiff his involvement in a criminal case and subsequent thereto his acquittal are not at all subject to questioning by the opposite side. It needs to be kept in mind that the alleged incident pertains to the year 2001 and when the plaintiff was a SPO and it is after much delay belatedly when he became a regular Constable in the Punjab Police, he was dismissed from service in the year 2010 after almost 09 years.

The learned State counsel for the appellant was squarely at loss of words as to how and by what means, the State has woken up from its slumber. Rather what one can come across is that after his acquittal on the recommendation of the higher authorities including the Director General of Police, the plaintiff was enrolled as a regular Constable in the Police Department and by that analogy, such an act of the appellant-State reflects that all the previous acts of the plaintiffs stand exonerated and he has been given a clean slate. How or by what means, the Commandant of the PAP Battalion after so many years had thought it prudent to dismiss the plaintiff from service after such a long interval rather smacks of vindictiveness and the very order itself appears to be impregnated with illegalities purely for a certain purpose.

Moreover, being a regular Constable of the Punjab Police without holding a regular Departmental inquiry in terms of Rule 16.24 of the Punjab Police Rules such an order on the face of it is rendered illegal, null and void.

No doubt, the State is invested with unbridled powers to dismiss a Constable in a disciplined force but the same is subject to scrutiny by the Courts. The very timing of the passing of the dismissal order and there being no substantial reasoning put forth before this Court in the arguments of the State counsel for the appellant rather strengthens the plea for the Court that all is not well with the Department. The learned First Appellate Court in the impugned findings has passed a detailed judgment holding that the plaintiff was absorbed in the Punjab Police on the orders Exhibit P-4 passed by the Director General of Police, Punjab and, therefore, the Commandant of the Battalion, being lower in rank, could not overrun the same and to the specific query of the Court, the learned State counsel could not make any submissions on that. The case of the plaintiff is certainly squarely covered by the judgment of this Court in the case of 'Gurmeet Singh versus State of Punjab and others' 2013 Vol. III PLR 378 where facts are akin to that of the plaintiff's case.

Thus, during the submissions of the learned State counsel, she could not convince this Court of any illegality or perversity in the findings of the Courts below and, thus, the same being correct appreciation of the evidence and the law, the present appeal being wholly devoid of merits stands dismissed.

15.02.2022

Neha

**(FATEH DEEP SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No