

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

**RSA-1168 of 1992 (O&M)
Date of Order: 28.08.2023**

The Haryana Government Chandigarh and others

.Appellants

Versus

Amrik Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Ms. Vibha Tewari, AAG, Haryana
Mr. Jaspal Singh Pannu, AAG, Haryana**

**Mr. J.S.Cooner, Advocate
for the respondent.**

ANIL KSHETARPAL, J

1. The respondent is stated to have died, however, the learned counsel representing the respondent submits that he is representing the legal representatives of the respondent in terms of the amendment as applicable to the States of Punjab, Haryana and UT Chandigarh in Order 22 of the Code of Civil Procedure, 1908.

2. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

3. This is the defendant's appeal against the findings of fact arrived at by the First Appellate Court while setting aside the judgment and decree passed by the trial court.

4. In order to comprehend the controversy involved in the present appeal, the relevant facts, in brief, are required to be noticed:

5. The respondent (plaintiff) before the trial court was dismissed from service on 25.01.1981, on the allegations that he misbehaved with

Head Constable Bant Ram as he did not permit the plaintiff's brother to talk to him on phone. It is also alleged that the plaintiff threatened Head Constable Bant Ram. An inquiry proceedings were held against the plaintiff resulting in his dismissal by the disciplinary authority. The order of punishment was challenged by the plaintiff before the civil court.

6. The defendants while contesting the suit, alleged that the inquiry proceedings were held in accordance with law and the plaintiff has been awarded as many as five different punishments on various occasions.

7. On appreciation of the evidence, the trial court dismissed the suit, however, the First Appellate Court found that the Inquiry Officer as well as the punishing authority had erred in relying upon a statement of a witness who never appeared in the regular inquiry before the Inquiry Officer. The Court found that the transposition of a statement from preliminary inquiry filed would be permissible only under the contingencies envisaged under Rule 16.24 of Punjab Police Rules, 1934 (hereinafter referred to as 'the 1934 Rules'). The court further found that the Inquiry Officer did not even record a finding that the contingencies envisaged in the order under Rule 16.24 have been fulfilled by the department. Rule 16.24 of the 1934 Rules is extracted as under:-

“Whenever possible, witnesses shall be examined direct, and in the presence of the accused, who shall be given opportunity to take notes of their statements, and cross-examine them. The officer conducting the enquiry is empowered, however, to bring on to the record the statement of any witness whose presence cannot, in the opinion of such officer, be procured without undue delay and expense or inconvenience if he considers such statement necessary, and provided that it had been

recorded and attested by a police officer superior in rank to the accused officer or by a magistrate, and is signed by the person making it.”

8. The statement of Head Constable Bant Ram was transposed from the file of preliminary inquiry to the file of the regular inquiry. Such course is permissible only in the contingencies that the inquiry officer finds that such presence of the witness cannot be procured without undue delay, expense or inconvenience.
9. Moreover, Head Constable Bant Ram was a star witness on behalf of the management. His evidence was of utmost importance. Moreover, in this case, the appointment was made by the Deputy Inspector General of Police, whereas the order dismissing the respondent from service has been passed by the Superintendent of Police, who is junior in rank from the appointing authority.
10. Keeping in view the aforesaid discussion, no ground to interfere is made out.
11. Dismissed.
12. All the pending miscellaneous applications, if any, are also disposed of.

August 28, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :YES/NO
Whether reportable :YES/NO