

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(103)

CM-2588-C-2023 in/and
RSA-2870-2019

Date of Decision : May 15, 2023

Gurcharan Singh

.. Appellant

Versus

State of Punjab and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Bhupinder Ghai, Advocate and
Mr. Mohit Makkar, Advocate, for the applicant-appellant.

Mr. Gurpreet Singh, Additional Advocate General, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-2588-C-2023

Present application has been filed for recalling the order dated 01.02.2023 by which, the regular second appeal was disposed of having been not pressed.

Learned counsel for the applicant-appellant submits that though the said order dated 01.02.2023 was passed after taking due permission from the appellant, but after the passing of the said order, he is raising all kind of allegations against the counsel and it will be appropriate that the order is recalled and appropriate order on merits is passed.

This is unfortunate that the present application has been filed but as this Court has no problem in passing the order on merits, the order dated 01.02.2023 is recalled and the regular second appeal is restored to its

original number and status.

CM stands allowed.

RSA-2870-2019

1. Present Regular Second Appeal has been filed challenging the judgments and decrees of the Courts below by which, the suit filed by the appellant-plaintiff has been dismissed.

2. Certain facts may be noticed for the correct appreciation of the issue in hand.

3. The appellant-plaintiff was appointed as a Constable on 13.10.1976. An FIR was registered against him being FIR No.23 of 2005 under Section 7.13 (2) and 88 of the Prevention of Corruption Act at Police Station Vigilance Bureau, Patiala. After the trial qua the said FIR, the guilt was proved and the appellant-plaintiff was convicted and sentenced to two years rigorous imprisonment and fine of Rs.5000/- by the District and Sessions Judge, Fatehagarh Sahib vide judgment dated 27.11.2007. It is a conceded position that the said conviction has already attained finality.

4. Keeping in view the conviction of the appellant-plaintiff under the Prevention of Corruption Act, he was dismissed from service by the punishing authority vide order dated 01.02.008 by exercising power under Article 311 of the Constitution of India. The said order was appealed against by the appellant-plaintiff and his appeal was also rejected by the appellant authority on 25.01.2013 and feeling aggrieved against the order of dismissal and rejection of his appeal, the appellant-plaintiff had filed a civil suit.

5. Keeping in view the evidence and fact which came before the trial Court, the trial Court held that as the appellant-plaintiff has been convicted of an allegation under the Prevention of Corruption Act which

reflected upon his moral, keeping in view the Article 311 of the Constitution of India, the punishing authority has rightly dismissed him from service and the suit filed was dismissed.

6. Aggrieved against the judgment and decree of the trial Court dated 17.12.2016, an appeal was preferred which also came to be dismissed by the lower Appellate Court vide order dated 13.12.2018, hence, the present Regular Second Appeal.

7. Learned counsel for the appellant-plaintiff argues that in the present case, the appellant-plaintiff had more than 30 years of service to his credit when the FIR was registered against him, hence instead of dismissal from service, he should have been compulsorily retired so that he could have got the pensionary benefits, which authorities concerned failed to appreciate. The said argument has been raised so as to seek the benefit of pensionary benefits/pension.

8. It may be noticed that the appellant-plaintiff has been convicted for the offence of corruption and was sentenced to undergo imprisonment. In the present case, a person who has been held guilty of corruption, is seeking the benefit of pension by pleading that the punishment imposed upon him is disproportionate to the charges alleged and proved keeping in view the length of service rendered by him. A person who has been guilty of corruption, cannot plead leniency in any manner much less to seeking the benefit of pension. Even if the appellant-plaintiff had 30 years of service to his credit, that will not give him right to indulge in corrupt practices. Once, the misconduct of corruption has already been proved before the criminal Court and the appellant-plaintiff has undergone the punishment of rigorous imprisonment for a period of two years and fine, the punishment of

dismissal by the authorities concerned, cannot be disproportionate to the act proved against the appellant.

9. Further, it may be noticed that in the present case, the prayer is that the benefit of 30 years service should be given to a person who has conducted misconduct while discharging the duties so as to grant him the pensionary benefits. It may be noticed that an honest employee who is working with due diligence and has more than 10 years of service in his credit but is not able to continue in service for any reason and resigns from service, he forfeits all the rights qua his service benefits.

10. Accepting the argument of the learned counsel for the appellant would mean that an employee who has misconducted himself while discharging the duties, is to be placed at a better position than an employee who has done his duties diligently but had to resign for some reason. Rather acceptance of the said argument will create indiscipline as rather than resigning from service, the employees will start indulging in malpractices and misconduct so as to get the pensionary benefits. Hence, the said argument cannot be accepted.

11. Keeping in view the facts and circumstances of the present case, as learned counsel for the appellant has not been able to point out any perversity in the judgments of the Courts below especially when the appellant-plaintiff has been convicted under the Prevention of Corruption Act which duly reflects upon the morals of an employee, the punishment of dismissal from service was rightly been imposed upon the appellant-plaintiff and the same does need any interference at the hands of this Court.

12. Dismissed.

May 15, 2023

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No