

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

**(102) CM-8069-C-2022 and
CM-8075-C-2022 in/and
RSA-3141-1994 (O&M)
Date of Decision : February 10, 2023**

Shri Pal Singh .. Appellant

Versus

State of Punjab .. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ish Puneet Singh, Advocate, for the applicant-appellant.

Mr. Gurvinder Singh, Assistant Advocate General, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-7992-C-2001

Present application has been filed to bring on record the additional evidence/facts which are necessary for deciding the present Regular Second Appeal.

When the said application came up for hearing, the Coordinate Bench of this Court ordered on 03.10.2001 that the present application was to be heard with the main case.

Learned counsel for the applicant-appellant argues that certain facts which are necessary needs to be brought to the notice of the Court. As per the learned counsel for the applicant-appellant, along with the appellant herein, another employee namely Malkiat Ram was also dismissed from

service by the order of same date on the same ground of absence relating to

the same case. Both the employees filed civil suit challenging the order of termination dated 23.09.1988. The suit filed by the appellant herein was dismissed on 08.02.1993 against which, the appellant filed an appeal before the lower Appellate Court and in the suit filed by Malkiat Ram challenging the same dated order of termination, as passed in the case of appellant herein, the trial Court dismissed his suit on 26.04.1994 and he also preferred an appeal before the lower Appellate Court.

The appeal filed by the appellant came to be decided by the lower Appellate Court on 07.06.1994 and the same was dismissed against which, the present Regular Second Appeal i.e. RSA No.3141 of 1994 was filed.

During the pendency of the present appeal, the appeal filed by Malkiat Ram against the judgment and decree of the trial Court dated 26.04.1994 came to be allowed on 18.01.1997 and the termination order in case of Malkiat Ram was found to be bad and the same was set aside by the lower Appellate Court but with liberty to the Department to enquire into the allegations afresh.

Against the said order passed by the lower Appellate Court in the case of Malkiat Ram, RSA No.360 of 1998 was filed by the State, which was dismissed by the Coordinate Bench of this Court after which date, Malkiat Ram was reinstated in service and disciplinary proceedings were again initiated against him.

Though, again after the proceedings, Malkiat Ram was found guilty of the absence from duty for a period of 69 days but he was only imposed punishment of stoppage of two increments with cumulative effect

instead of dismissal from service which was initially imposed upon him.

Learned counsel for the applicant-appellant submits that once the Department itself has substituted the punishment of dismissal of service to that of stoppage of two increments in the case of the similarly situated employee Malkiat Ram, who was also facing the same allegations qua the same incident, therefore, the applicant-appellant is also entitled for the same benefits.

Learned counsel for the respondents concedes the factum and the arguments noticed hereinbefore keeping in view the instructions which he has received from the officials of the Department who have come present in the Court during the hearing.

Learned counsel for the respondents submits that as per his instructions, Malkiat Ram served the Department from the year 1998 till he attained the age of superannuation and the punishment of dismissal was reduced to the punishment of stoppage of two increments with cumulative effect.

Keeping in view the facts mentioned hereinbefore, as the same are necessary and no objection has been raised by the learned State counsel for bringing on record the said facts so as to decide the accompanying Regular Second Appeal filed by the appellant, the application is allowed. The judgment in the case of Malkiat Ram passed by the lower Appellate Court along with the subsequent facts are taken on record for consideration in the present Regular Second Appeal.

CM stands disposed of.

CM-8069-C-2022

As prayed for, the application is allowed.

Annexures A-2 to A-5 are taken on record.

CM-8075-C-2022

Present application has been filed for fixing the appeal for some actual date of hearing.

Notice of the application to the counsel opposite.

Mr. Gurvinder Singh, Assistant Advocate General, Punjab, who is present in the Court, accepts notice on behalf of respondent-State and raises no objection for the grant of prayer as raised in the present application.

Keeping in view the averments made in the application, the same is allowed and the main appeal i.e. RSA No.3141 of 1994 is taken up for hearing today.

RSA-3141-1994

Present Regular Second Appeal has been filed challenging the judgment and decree of the trial Court dated 08.02.1993 by which the suit filed by the appellant-plaintiff challenging the order dated 13.09.1988 by which order, he was dismissed from service, was dismissed as well as the judgment and decree of the lower Appellate Court dated 07.06.1994, vide which judgment and decree of the trial Court was upheld.

Certain facts needs to be mentioned herein for appreciating the controversy in the correct perspective.

The appellant-plaintiff was recruited as Constable in the Punjab

Police on 04.12.1983. While working on the said post on 16.11.1987, a

case was registered against the appellant-plaintiff under Sections 382 and 353 of the IPC being FIR No.86 in Police Station GRP Patiala. The said case was registered against the appellant-plaintiff and one another Constable namely Malkiat Ram. After the registration of the FIR, SHO of the Police Station GRP wanted to arrest the appellant-plaintiff without ascertaining the correct facts of the allegations alleged in FIR No.86 dated 16.11.1987 and the appellant-plaintiff wanted to avail the legal remedy of seeking anticipatory bail. In order to avail the legal remedy, the appellant-plaintiff applied for anticipatory bail and the competent Court of law granted the concession of anticipatory bail to the appellant-plaintiff on 01.01.1988. Appellant-plaintiff reported back to duty on 04.01.1988. Though the appellant-plaintiff was allowed to join service but he was shown absent from duty on 26.11.1987 to 04.01.1988.

The similar allegations of absence from duty were raised against the other Constable namely Malkiat Ram also and departmental enquiry was conducted against both the employees. In the enquiry report, both the officials i.e. appellant-plaintiff Shri Pal Singh and Malkiat Ram were found guilty of the allegations of absence and ultimately, on the basis of said enquiry, appellant-plaintiff and Malkiat Ram were dismissed from service though by separate order but on the same date i.e. 23.09.1988.

Thereafter, departmental appeals were preferred by both the officials which appeals were also dismissed and ultimately, the order of dismissal was challenged by the appellant-plaintiff by filing a civil suit. It may be noticed that Malkiat Ram also filed a separate suit challenging the order of dismissal by filing a separate civil suit.

In the suit filed by the appellant-plaintiff, the respondents appeared wherein, they have mentioned that keeping in view the FIR registered against the appellant-plaintiff on 16.11.1987, the appellant-plaintiff was directed to join the investigation but he did not join the investigation for a period of 39 days and have only joined the said investigation after getting the order of anticipatory bail on 04.01.1988 and therefore, the said absence of the appellant-plaintiff which was registered vide report No.17 dated 26.11.1987 as per which, the appellant-plaintiff remained absent unauthorizedly, which charge was proved during the departmental proceedings, hence, keeping in view the gravity of the said charge, the impugned orders of termination of his services were passed on 23.09.1988, which order was upheld by the Appellate Authority on 06.01.1989. The similar plea was taken qua Malkiat Ram though the absence in the case of Malkiat Ram was much more than the appellant-plaintiff herein. In the case of appellant-plaintiff, the alleged absence was for 39 days whereas, in the case of Malkiat Ram, it was for 65 days.

Keeping in view the evidence, which came on record, the trial Court came to the conclusion that though the period of absence was regularized by the punishing authority as leave without pay but once the appellant-plaintiff remained absent, which absence was proved during the enquiry, the dismissal of the appellant-plaintiff from service needs no interference by the Court.

It may be mentioned herein that the trial Court recorded the said finding despite the fact that by the time the trial Court decided the suit, the appellant-plaintiff as well as Malkiat Ram were acquitted in the FIR

No.86 dated 16.11.1987.

The suit filed by the appellant-plaintiff against the punishment of dismissal was dismissed on 08.02.1993 by the trial Court whereas the suit filed by Malkiat Ram was dismissed by the trial Court on 26.04.1994.

The appellant-plaintiff being aggrieved against the judgment and decree of the trial Court dated 08.02.1993 filed an appeal before the lower Appellate Court. Same remedy was availed by the Malkiat Ram also by filing appropriate appeal before the lower Appellate Court challenging the dismissal of his suit vide judgment and decree of the trial Court dated 26.04.1994.

The appeal filed by the appellant-plaintiff came to be decided by the lower Appellate Court on 07.06.1994 and the appeal was dismissed and the judgment and decree of the trial Court was upheld. The lower Appellate Court though noticed that the the appellant-plaintiff has already been acquitted in the criminal case and the period of his absence was already condoned but, it was held that as there was an absence which was proved during the departmental proceedings and there was nothing wrong in the enquiry proceedings, the order dismissing the appellant from service cannot be interfered with.

Against the judgment and decree of the trial Court dated 08.02.1993 as well as the judgment and decree of the lower Appellate Court dated 07.06.1994, the appellant-plaintiff filed the present Regular Second Appeal in the year 1994, which was admitted on the first date of hearing with an order that same be heard within a period of six months, however remained pending before this Court.

It may be noticed herein that the appeal filed by Malkiat Ram against the judgment and decree of the trial Court dated 26.04.1994 came to be decided by the lower Appellate Court on 18.01.1997 and the lower Appellate Court held that enquiry proceedings conducted was not in accordance with law and the order dismissing said Malkiat Ram from service passed of the same date as passed in the case of appellant i.e. 23.09.1988, was held to be bad in law and a direction was issued to the respondent-Department to reinstate Malkiat Ram in service with all consequential benefits but with liberty to conduct departmental proceedings afresh.

The order passed by the lower Appellate Court dated 18.01.1997 in the case of Malkiat Ram was also challenged by the respondent-State by filing RSA No.360 of 1998 which came to be dismissed by the Court after which, Malkiat Ram was reinstated in service. It may be noticed that keeping in view the liberty granted by the Court to conduct the departmental proceedings afresh, same were conducted against Malkiat Ram and he was again found guilty of absence for a period of 69 days and was imposed a punishment of stoppage of two increments with cumulative effect.

The above mentioned fact of reinstatement of Malkiat Ram was brought on record by way of CM-7992-C-2001, which was directed to be heard with the main case, which prayer has been allowed by the Court today and facts relating to allowing of the appeal by the lower Appellate Court in case of Malkiat Ram and dismissal of RSA No.368 of 1998 in case of Malkiat Ram and his reinstatement in service has been brought on record as

additional evidence.

Though the appellant-plaintiff filed number of applications for placing on record the order passed by the lower Appellate Court in the case of Malkiat Ram holding the order of terminating the service dated 23.09.1988 as bad which order has already been upheld by this Court in RSA No.360 of 1998 as well as stating fact of reinstatement of Malkiat Ram in service and in first departmental proceedings, his punishment of dismissal being modified to that of stoppage of two increments but, the present appeal remained pending for a period of 29 years. The early hearing prayed by the appellant-plaintiff came to be rejected by this Court at different occasions. Though, while admitting the present appeal, the same was directed to be heard within a period of six months.

Learned counsel for the appellant-plaintiff argues that in the present case, the only ground raised for dismissing the appellant-plaintiff from service is that after the registration of FIR No.88 dated 16.11.1987, rather than joining the investigation, the appellant availed his legal remedy and only joined the investigation after getting the anticipatory bail and in the integrum, he remained absent for a period of 39 days and similar were the allegations against Malkiat Ram, who was also a co-accused in the same FIR and had also remained absent for a period more than which is attributed to the present appellant-plaintiff and both the employees were dismissed from service by the same dated order of 23.09.1988 but both have been treated in different manner not only by the Department but also the Courts.

Learned counsel for the appellant argues that the similar order

of dismissal from service in case of Malkiat Ram has been held to be bad by the lower Appellate Court on various accounts including the fact that the enquiry was not conducted in a manner envisaged under the Rules which order of the lower Appellate Court had already been upheld by this Court while passing order in RSA No.360 of 1998 whereas, despite the fact that absence in the case of the appellant in the present case was less as compared to Malkiat Ram he has been treated in different manner by the Department as well as the competent Court of law especially when there is no differentiating circumstances between the appellant herein and Malkiat Ram, who was reinstated in service in the year 1998 and was allowed to continue in service, therefore such discrimination is not permissible in law.

Learned counsel for the appellant prays that the present appeal also needs to be accepted as two contradictory findings by the lower Appellate Court cannot be recorded on similar allegations on same facts especially without there being any differentiating facts between the appellant-plaintiff and Malkiat Ram.

Learned counsel for the respondents submits that in the present case, the absence of the appellant-plaintiff was proved in the enquiry, which enquiry proceedings have been held to be valid by both the Courts below, hence, the claim of the appellant-plaintiff that the order dated 23.09.1988 dismissing him from service, is bad in law, is liable to be rejected.

Though the said argument has been raised by the respondents but learned counsel for the respondent-State very fairly concedes the fact that there was no differentiating circumstances between the appellant herein and Malkiat Ram as both faced the same charges and were facing the

same FIR and were acquitted therein by the competent Court of law. Learned counsel also conceded that in the case of Malkiat Ram, the enquiry held against him, which was also on the similar terms qua the similar allegations as done in the case of appellant, hence, held to be bad by the lower Appellate Court which order has already been upheld by this Court in RSA No.360 of 1998 and Malkiat Ram was reinstated in service. Learned State counsel concedes the fact that after reinstatement of Malkiat Ram, afresh departmental proceedings were conducted against him keeping in view the liberty granted by the Lower Appellate Court and though he was again found guilty of absence but only punishment of stoppage of two increments with cumulative effect were imposed upon him and he remained in service till he attained the age of superannuation.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The question which arise for determination in the present case is whether, once similar allegations are being alleged against two employees relating to the same incident and both the allegations are qua the absence, can there be two different opinions of the Court especially when no differentiating circumstances has been pointed out between the employees. Once it is conceded by the State that the enquiry proceedings which were conducted against the Malkiat Ram on the same allegations relating to the same incident has been held to be bad by the Lower Appellate Court vide judgment and decree dated 18.01.1997, and a direction was given to reinstate him in service by setting aside the order dated 23.09.1988 dismissing him from service, which judgment and decree of the lower

Appellate Court in the case of Malkiat Ram has been upheld by this Court in RSA No.360 of 1998, then, can a contradictory order be passed by this Court to hold that the enquiry proceedings in the case of the appellant-plaintiff in the present case were in accordance with law.

It may be noticed that in the case of Malkiat Ram, the Lower Appellate Court in its judgment and decree dated 18.01.1997 has held that the dismissal of the employee concerned was bad as the absence was treated as leave of the kind due and the previous record of the employee was taken into consideration for awarding the punishment and the order of punishment was passed without giving the proper opportunity to defend, which finding of the Lower Appellate Court in the judgment and decree passed dated 18.01.1997 in the case of Malkiat Ram was upheld by this Court in RSA No.360 of 1998. Once similar process was also adopted during the departmental proceedings in the case of the present appellant also wherein also, his 39 days absence was treated as on leave without pay, and concededly the appellant herein was similarly situated as Malkiat Singh qua the allegations alleged and the similar process was adopted by the enquiry officer and the punishing authority in conducting the disciplinary proceedings, contrary view cannot be taken by this Court in the present RSA, as two similarly situated employees cannot be treated on different footings. Once the lower Appellate Court has given a finding that departmental proceedings in the case of Malkiat Ram have been held to be bad, which finding of the Court has already been upheld by this Court in RSA No.360 of 1998, contrary finding of another Court below in the present case and upholding of the same will amount to passing an order

contrary to the one passed in RSA No.360 of 1998, which is not permissible in absence of any distinguishing facts or law.

Once, two employees facing similar allegations qua the same incident have been imposed with similar punishment, by the departmental authority, upon challenge whether they can be treated in a different manner by the competent Court of law so as to pass two contradictory orders when the State has conceded the factum that the process adopted in both the cases before inflicting the punishment was identical. The Courts cannot adopt two different yardsticks to access the same situation in case of two persons who are otherwise similarly situated. Therefore, once the conducting of the departmental proceedings was held to be bad in the case of Malkiat Ram by the Lower Appellate Court, which order has already been upheld by this Court in RSA No.360 of 1998 and the said judgment has already been implemented by the State of Punjab, there is no reason why, the appellant herein be treated different so as to hold that enquiry proceedings in his case are to be treated valid.

Further, it is not a case where no justification was available with the appellant for the alleged absence. It is a conceded position that an FIR was registered against the appellant on 16.11.1987 and he was directed to join the investigation on 26.11.1987 and as the appellant was apprehending his arrest keeping in view the Sections of IPC invoked in the FIR, he availed his legal remedy of securing the anticipatory bail, which benefit was allowed in his favour by the competent Court of law after which he reported on duty on 04.01.1988, it cannot be said that the absence in these circumstances was intentional in any manner so as to avoid the

performance of the duties especially when ultimately, in the said FIR, the appellant was found innocent. In the impugned order, the said factum has not been taken into account either by the punishing authority or by the Courts below while holding the punishment as valid in case of the appellant herein. In the case of Malkiat Ram, the Court held the same punishment imposed upon an employee vide the same order as bad in law. The punishment even otherwise was excessive as compared to the allegations alleged and proved. It may be noticed that in the case of Malkiat Ram, the Lower Appellate Court vide judgment dated 18.01.1997 allowed the department to hold the fresh enquiry against him.

Learned counsel for the respondent-State very fairly concedes that after reinstatement of Malkiat Ram, a fresh enquiry was ordered against him and even upon proving of the said allegations, only his two years service was withheld by withholding two increments with cumulative effect.

This fact shows that the department itself had come to the conclusion that in the facts and circumstances of the case, the punishment imposed upon the appellant, even as per the respondents was excessive as they themselves had amended the same punishment in case of Malkiat Ram from dismissal to that of stoppage of two increments. That being so, the order of dismissal in the case of the appellant dated 13.09.1988 as well as to the judgment and decrees of the Courts below cannot be allowed to be sustained.

Keeping in view the facts and circumstances mentioned hereinbefore, especially when the punishment imposed upon the similarly situated employee namely Malkiat Ram, who was also facing the same

allegations under same circumstances has already been reviewed by the respondent-Department and instead of dismissal, he has been imposed a punishment of stoppage of two increments, the punishment of dismissal passed in the case of the appellant cannot be sustained as the appellant herein also faced the same allegations and rather period of absence in case of the appellant herein was only 35 days as compared to 69 days in the case of Malkiat Ram.

The judgment and decree of the trial Court dated 08.02.1993, as well as the Lower Appellate Court dated 07.06.1994, are set aside and the suit filed by the appellant-plaintiff is allowed. Though, as done in the case of Malkiat Ram, this Court would have referred the case back to the authorities concerned for passing a fresh order but as the appellant has already attained the age of superannuation in the year 2016 itself, no useful purpose will be served in remanding the case back to the authorities concerned especially when regarding a similarly situated employee on remand, the said similarly situated employee has already been imposed a particular punishment on the same allegation arising out of the same incident by the Department itself.

The punishment of dismissal imposed upon the appellant vide order dated 13.09.1988 is modified to that of stoppage of two increments with cumulative effect and the appellant will be treated to be in service for all intents and purposes. The decree be drawn in terms of the order passed hereinbefore to state that the order of termination dated 23.09.1988 and consequential order passed on the appeal and the revision preferred against the orders of dismissal are set aside and the punishment imposed upon the

appellant, in the peculiar facts and circumstances of this case is modified to that of imposition of stoppage of two increments with cumulative effect, which punishment has been imposed upon the Malkiat Ram by the respondents themselves after holding the fresh enquiry.

It is also held that the appellant will be treated in service for all intents and purposes and will be entitled for all the pensionary benefits admissible by treating him to be in service from the date of his initial appointment. His pay be accordingly fixed keeping in view the modified punishment as per the modification done in the present order. The order be complied with within a period of three months from the receipt of certified copy of this order.

The present Regular Second Appeal is allowed in above terms.

February 10, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes