

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

**CM-17048-C-2018 in/and
RSA No.1122-1995 (O&M)
Date of Decision:21.03.2023**

Balisher Singh

.....Appellant

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Aditya Yadav, Advocate for the applicant-appellant.

Ms. Vibha Tewari, AAG, Haryana.

HARSIMRAN SINGH SETHI J.(Oral)

CM-17048-C-2018

Prayer in the instant application is for fixing the date of hearing in the main appeal.

Notice in the application.

Ms. Vibha Tewari, AAG, Haryana accepts notice.

In the light of the averments made in the application which are duly supported by an affidavit and by recording a 'no objection' from counsel opposite, prayer is allowed. Main case is taken up on board today itself.

Application stands disposed of.

Main case

Mr. Vivek Singla, Advocate for Mr. I.D. Singla, Advocate, appears on behalf of the applicant-appellant submits that henceforth Mr. Aditya Yadav,

Advocate will be assisting in this matter on behalf of the applicant-appellant and he may be allowed to withdraw his power of attorney.

Ordered accordingly.

In the present Regular Second Appeal, the challenge is to the judgment and decree passed by the Court below through which the suit filed by the appellant-plaintiff was dismissed by the Trial Court vide judgment and decree dated 24.08.1991 as well as against the judgment and decree passed by the lower Appellate Court dated 25.10.1994 by which the appeal preferred by appellant-plaintiff, was also dismissed.

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

While the appellant-plaintiff was posted as Constable in the office of the DIG, Gurgaon Range, Gurgaon, in February 1986, a complaint was made by the appellant-plaintiff to the Home Minister, Government of India raising concern about his security. The said application was marked by the Government of India to the Director General of Police, Haryana and ultimately the same was forwarded to Deputy Inspector General of Police, Gurgaon for consideration. Keeping in view the contents of the said complaint and considering the said act to the violation of the Rule 14.5 of the Police Rules amounting to misconduct, departmental proceedings were initiated against the appellant-plaintiff. The enquiry was conducted and on proving of the charges, punishment of dismissal from service was imposed upon the appellant-plaintiff. Against the said order dated 14.09.1986 dismissing the appellant-plaintiff from service, an appeal was preferred before the DIG, Gurgaon Range, Gurgaon, but the same was also

dismissed on 10.02.1987.

On a revision petition preferred before the Director General of Police, Haryana, vide order dated 12.12.1987, by taking a lenient view, the punishment was modified and the dismissal order was set aside but with the condition that for the period the appellant-plaintiff remained out of service, no benefit was to be extended to the appellant-plaintiff for the said period, meaning thereby that despite succeeding in revision petition, two years service of appellant-plaintiff stood forfeited automatically.

The order passed by the Director General of Police, Haryana dated 12.12.1987 was challenged before the Civil Court, Rohtak, qua the non-grant of benefit of the service for which the appellant-plaintiff remained out of service. Keeping in view the evidence which came on record, the Trial Court vide judgment and decree dated 24.08.1991 held that once the allegations were proved against the appellant-plaintiff in the enquiry, the order passed by the DGP, Gurgaon, dated 12.12.1987 cannot be faulted with as the Civil Court cannot sit in appeal over the decision of the department.

Against the judgment and decree of the Trial Court the appellant-plaintiff filed an appeal which appeal was also dismissed by the Lower Appellate Court on 24.10.1994.

Hence, the present regular second appeal.

Learned counsel for the appellant-plaintiff argues that once in the revision petition the punishment imposed upon the appellant-plaintiff was set aside and the said revision was accepted, there is no reason as to why, the service benefits admissible for the period he remained out of service will not be

admissible. Learned counsel further argues that once the punishment was withdrawn, alongwith the punishment, all the benefits accruing to the appellant-plaintiff should have been extended to him.

Learned counsel for the respondents-department submits that the order dated 12.12.1987 was passed by taking a lenient view, hence, the order of dismissal was withdrawn but the appellant was not given any back wages for the period he remained out of service which is perfectly valid.

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

The Courts below have only dismissed the claim of the appellant-plaintiff on the ground that the Civil Court cannot sit in appeal over the decision of the department in a departmental enquiry.

Though, there is no dispute with the said preposition of law but in the facts and circumstance of the present case, the punishment imposed upon the appellant-plaintiff was withdrawn in the revision filed before the Director General of Police, Gurgaon and once the punishment was withdrawn, it can be safely said that there was no wrong committed by the appellant-plaintiff. Non-grant of back wages for the period appellant remained out of service is permissible but the notional benefit for the said period could not have been taken away for the reason that same will amount to forfeiture of two years of service of appellant-plaintiff which is a major punishment in itself despite withdrawing the punishment of dismissal. Once the act of the department results in forfeiture of service, the same cannot be allowed as it will amount to punishment. The Courts below have failed to appreciate the said fact while passing the impugned orders.

Keeping in view the above, the judgment and decree of the Courts below dated 24.08.1991 and 25.10.1994 respectively are set aside. The suit filed by the appellant-plaintiff is only allowed to the extent that for the period the appellant-plaintiff remained out of service, he will be granted the benefit on notional basis only but without any back wages for the said period.

The present appeal is allowed in the aforesaid manner and the suit filed by the appellant-plaintiff is decreed partly in the above-said terms.

(HARSIMRAN SINGH SETHI)
JUDGE

21.03.2023

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