

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

205

RSA-2315-1997 (O&M)
Date of Decision :24.02.2023

Anup Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Sandeep Kotla, Advocate
for the appellant.

Ms. Vibha Tewari, AAG, Haryana.

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Harsimran Singh Sethi, J. (Oral)

In the present regular second appeal, the challenge is to the judgment and decree dated 19.04.1997 passed by the Lower Appellate Court, by which, the judgment and decree of the trial Court dated 07.02.1997 has been set aside and the suit filed by the appellant/plaintiff has been dismissed.

Certain facts need to be mentioned so as to appreciate the controversy in a correct perspective.

Appellant-plaintiff was appointed as constable in Haryana Police on 08.12.1988 and while working on the said post, the appellant-plaintiff absented himself from duty without seeking permission from the competent authority and remained absent for a period of more than 287 days for which misconduct, a departmental enquiry was ordered by the competent

authority i.e. Superintendent of Police, Hisar. After the disciplinary proceedings were initiated, the Deputy Superintendent of Police, Fatehabad was appointed as an Enquiry Officer who had issued a charge sheet to the appellant-plaintiff on 18.05.1993. Despite receiving the said charge sheet, appellant-plaintiff did not participate in the proceedings and keeping in view the evidence which had come on record, appellant-plaintiff was held guilty of unauthorized absence from duty by the Enquiry Officer. After the report of the enquiry officer, a show cause notice was issued to the appellant-plaintiff on 15.07.1993 as to why action be not taken against him and in reply to the said show cause notice, the appellant-plaintiff submitted the reply that he was not well during the period of absence. As the reply filed to the show cause notice proposing the punishment was not found satisfactory, an impugned order dated 08.09.1993 was passed dismissing the appellant/plaintiff from service.

The said action of the authorities concerned was challenged by the appellant-plaintiff before the civil Court raising the two grievance. First that before proceeding against the appellant-plaintiff, sanction from the District Magistrate was required to be obtained under Punjab Police Rules, 1939 and secondly the charge sheet was served by an Enquiry Officer having no authority to do so.

The trial Court keeping in view the evidence, which had come on record, allowed the suit of the appellant/plaintiff on the ground that the charge sheet was issued to the appellant/plaintiff by the Enquiry Officer i.e. Deputy Superintendent of Police, Fatehabad whereas, the competent authority was Senior Superintendent of Police hence, the Enquiry Officer

was not competent to serve the charge sheet upon the appellant-plaintiff and the consequential proceedings conducted against the appellant-plaintiff were bad in law and as the order dismissing the appellant-plaintiff from service which was based upon those enquiry proceedings, the same was set aside.

Feeling aggrieved against the judgment and decree of the trial Court dated 07.02.1997, an appeal was preferred by the State of Haryana which came to be decided on 19.04.1997. The Lower Appellate Court came to the conclusion that for the absence for which the appellant-plaintiff was being proceeded was not the sole incident as on earlier occasions also, appellant-plaintiff was absented without authorization and reason given by the trial Court that the charge sheet was served upon the appellant-plaintiff by the Deputy Superintendent of Police concerned, who was not authorized to do so, was not correct. By relying upon the statement of the witness as well as copy of the Ex.D-2, it had come on record that Superintendent of Police had approved the charge sheet dated 18.05.1993 before the same was served upon the appellant-plaintiff by the Enquiry Officer and the Judgement and decree of the trial Court dated 07.02.1997 was set aside being perverse to the facts and evidence on record. The said judgment and decree dated 19.04.1997 of the Lower Appellate Court is under challenge in the present regular second appeal.

The only argument which has been raised by the learned counsel for the appellant-plaintiff is that the enquiry proceedings were not conducted in a manner required for, hence order of dismissal dated 08.09.1993, which is based upon the enquiry which is not conducted in

accordance with law, cannot be sustained and the Lower Appellate Court has failed to appreciate the said fact.

It may be noted that appellant-plaintiff never participated in the proceedings despite serving of charge sheet and was proceeded exparte hence, the argument that enquiry proceedings were not conducted in a manner required cannot be allowed to be raised by an employee who himself chose not to participate in the enquiry proceedings.

Even otherwise, the argument that charge sheet was served upon the appellant-plaintiff by the Deputy Superintendent of Police concerned who had no jurisdiction to do so, has already been dealt with by the Lower Appellate Court on the basis of the evidence which had already come on record. Learned counsel for the appellant-plaintiff has not been able to rebut the evidence that charge sheet was duly approved by the Superintendent of Police before serving the said charge sheet to the appellant-plaintiff by the Deputy Superintendent of Police. That being so, it cannot be said that the Deputy Superintendent of Police issued the charge sheet to the appellant-plaintiff on his own without there being an approval of the competent authority, which had taken into account against the appellant hence, it cannot be said that the finding recorded by the Lower Appellate Court is perverse in any manner or contrary to the evidence and facts on record.

No other argument has been raised.

Keeping in view the above, no ground for interference by this Court has been made out and the appeal is accordingly dismissed.

Any miscellaneous application pending is also disposed of.

February 24, 2023

(HARSIMRAN SINGH SETHI)

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JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No