

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

367

RSA-2832-2012

Date of Decision: 06.12.2023

State of Punjab and others

...Appellants

VS

Kartar Singh

...Respondent

CORAM : HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Manipal Singh Atwal, DAG, Punjab.

None for the respondent.

AMAN CHAUDHARY, J

1. Challenge in the present regular second appeal is to the concurrent findings of facts returned by Courts below in favour of the of the plaintiff-respondent in a suit filed for permanent injunction.

2. The facts in a nutshell are that the plaintiff-respondent filed a suit for permanent injunction challenging the order of dismissal dated 27.01.2003, on the ground of his conviction in a case by the Learned Sessions Judge. He was appointed as Chowkidar in the Food and Supplies Department as of 12.01.1983 and was entitled to regularisation upon completion of 240 days of service but the same was not done. An FIR No.65 dated 30.08.1999 has been registered under Section 304-B IPC against him, wherein he was convicted and sentenced to undergo rigorous imprisonment for 7 years. On having filed an appeal against conviction, subsequently, he was granted bail by this Court. Thereafter, he had been placed under suspension w.e.f. 13.10.1999 and was dismissed from service vide order dated 27.01.2003. The dismissal order was never communicated to him resulting in the filing of the present suit.

3. In the written statement filed by the defendant-State, it had been submitted that no proper notice under Section 80 CPC was served on them and that the plaintiff-respondent while working as P.R. Chowkidar engaged on a temporary basis was convicted of a serious offence, which tantamounts to misconduct, wherein he had only been granted bail, therefore was not entitled to be reinstated. His dismissal from service was thus justified.

4. The learned trial Court after framing the issues, decreed the suit in favour of the plaintiff-respondent by setting aside the impugned order dated 27.01.2003 on the ground that termination has to consider conduct, in the dismissal order there is not even a single line regarding his improper behaviour, furthering the fact that his services were simply terminated because he was convicted, with a direction to the defendant-Department to pass the order “de novo” after considering the ‘conduct’ as per law.

5. Aggrieved defendant-State filed an appeal, pleading that the dismissal order was as per law and justified, since the plaintiff-respondent was found guilty by the Court in a criminal case and he was hired on a temporary basis, thus, was not entitled to regularisation. The lower Appellate Court returned concurrent findings, by taking notice of document Ex. D1, wherein he was dismissed from service, when neither any show cause notice was issued nor his reply was sought and there is no record of any misconduct on his part and that termination of his services was solely on the basis of his conviction. Hence, it was upheld that the defendant-appellants need to give an opportunity of being heard to the plaintiff to reconsider his representation and in accordance pass the appropriate orders. Hence, the present appeal.

6. Learned counsel for the State would submit that the appointment of the plaintiff-respondent was on temporary basis, thus, dis-entitling him of regularisation. He had no cause to file the suit, since he was convicted by the

Court, which was deemed as misconduct, therefore, the order of his removal was legal. The courts below have fallen in error by ruling in his favour.

7. Heard.
8. Notably, the Courts below have concluded that order of dismissal was not valid, primarily on the ground that the same was passed without granting a fair opportunity to the plaintiff-respondent, thus, the principles of equity and *audi alteram partem* were not adhered to. He had served as a P.R. Chowkidar for nearly 20 years, which fact was not taken into consideration while passing the order of dismissal, which was on account of his conviction.
9. Apparently, a liberty has been granted to the Department to proceed de novo, thereby, not foreclosing the right of the State to take action against the plaintiff-respondent in accordance with law.
10. During the course of hearing, learned State counsel has not been able to point out any jurisdictional error or illegality apparent on the record of the case so as to convince this Court to take a different view than the one taken by the Courts below. They have, after carefully examining and sifting through the evidence before recording their respective findings, arrived at a judicious conclusion by allowing the suit and dismissing the appeal.
11. As an upshot, there being neither question of law involved nor any infirmity or perversity in the impugned judgments and decrees, the present appeal is sans merit and accordingly dismissed.

(AMAN CHAUDHARY)
JUDGE

06.12.2023
Hemant

Whether speaking/reasoned

Whether reportable

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:

Yes / No

Yes / No