

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(102)

CM-5784-C-2023 in/and

RSA-3434-2016

Date of Decision : May 25, 2023

Karamjit Singh

.. Appellant

Versus

Union of India and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Krishan Singh Dadwal, Advocate,
for the applicant-appellant.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-5784-C-2023

Present application has been filed for recalling the order dated 25.04.2023, by which, the present appeal was dismissed for non-prosecution.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the same is allowed. The order dated 25.04.2023 is recalled and the appeal is restored to its original number and status.

RSA-3434-2016

1. Present Regular Second Appeal has been filed against the concurrent findings recorded by the Courts below by which, the civil suit filed by the appellant-plaintiff was dismissed by the trial Court vide

judgment and decree dated 24.07.2012, which judgment and decree of the trial Court has been upheld by the lower Appellate Court vide judgment and decree dated 29.09.2015.

2. In order to appreciate the issue in hand, certain facts needs to be noticed herein.

3. The appellant-plaintiff joined the BSF as Constable on 02.01.1995. In the year 2004, the appellant-plaintiff was transferred from Amritsar to Bikaner and he was given three days' joining time even after the expiry of the prescribed joining time, he did not report for duty. Thereafter, in April, 2005, the appellant-plaintiff went to join back the duty but thereafter once again, he absented himself and as the appellant-plaintiff was working in a disciplined force and was being in a process to be declared as a deserter, the information qua the location of the appellant-plaintiff was asked by the BSF from the local police. The appellant-plaintiff was arrested by the local police on 06.05.2005 and was sent to Bikaner. Upon reaching there, the appellant-plaintiff expressed his unwillingness to continue in service and tendered his resignation, which was accepted by the respondents.

4. Thereafter, the appellant-plaintiff filed a civil suit challenging that in fact, he never wanted to resign but he was forced to resign which act of the respondents actually means that he was dismissed from service hence, he should be treated in service for all intents and purposes and the order dated 30.09.2005 passed by the respondents be declared illegal, null and void.

5. Keeping in view the evidence and facts which came on record, the trial Court held that the appellant-plaintiff was at fault as he initially

absented himself and thereafter, resigned, hence, he cannot raise any grievance. Further, with regard to the allegation of coercive resignation, finding was recorded that nothing has come on record to prove the said allegation. It has further come on record that prior to the said resignation, during the service career, the appellant-plaintiff was a habitual absentee and he was awarded 7 days rigorous imprisonment in forced custody in 1997 and then again for a period of 28 days rigorous imprisonment in forced custody in the year 1997 and thereafter once again 7 days rigorous imprisonment in forced custody in the year 1999 as well. Hence, keeping in view the track record of the appellant-plaintiff, the suit filed by the appellant-plaintiff was dismissed by the trial Court vide order dated 24.07.2012.

6. Even the appeal preferred against the judgment and decree of the trial Court dated 24.07.2012 was also dismissed by the lower Appellate Court on 29.09.2015. Hence, the present Regular Second Appeal.

7. Learned counsel for the appellant-plaintiff argues that the absence of the appellant-plaintiff from service was not willful as he was not well hence, keeping in view the said factor, it cannot be said that the appellant-plaintiff was intentionally absent from duty after he was transferred from Amritsar to Bikaner, which fact has not been considered by the Courts below in the correct perspective.

8. In this regard, it may be noticed that in the present case, it is the appellant-plaintiff who had resigned from service. Once, the appellant-plaintiff himself resigned from service, it cannot be said that any action has been taken by the respondent-Department on the alleged unauthorized

absence.

9. The argument of the learned counsel for the appellant that he was forced to submit resignation has not been proved on record. Learned counsel for the appellant-plaintiff has not been able to show that the said finding of fact is perverse to the evidence/facts on record, hence, the assertion of the appellant-plaintiff that the action taken against him is incorrect, cannot be accepted in the facts and circumstance of the present case as appellant-plaintiff himself resigned from service.

10. No other argument was raised.

11. Keeping in view the facts and circumstances of the present case, which have been noticed hereinbefore, no perversity in the findings of the Courts below has been pointed out and in the absence of any perversity, no interference is called for by this Court in the present Regular Second Appeal.

12. Dismissed.

May 25, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No