

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(266)

CM-995-C-2020 in/and
RSA No. 2626-2015 (O&M)
Date of Decision : 16.05.2023

Kiran Kumar

...Appellant

Versus

Commissioner of Police, Gurgaon and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Shailender Singh, Advocate for the appellant.

Ms. Vibha Tewari, Assistant Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

CM-995-C-2020

Present application has been filed for placing on record documents as Annexures A-4 to A-6 as well as seeking exemption from filing certified copies of the same.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the application is allowed and documents as Annexures A-4 to A-6 are taken on record.

On the joint request of learned counsel for the parties, the appeal is taken up for hearing today.

RSA-2626-2015

1. The present regular second appeal has been filed against the judgments and decrees of the courts below by which, the suit filed by the appellant-plaintiff challenging the enquiry report as well as the order passed by the authority imposing punishment and dismissal of appeal, as null and void, have been dismissed.

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

3. The appellant-plaintiff was working as Constable in Bhiwani, he was deputed to guard to 02 hard core under trial criminals, who were admitted in General Hospital, Bhiwani for treatment. Along with the appellant-plaintiff, other Constables, namely, Pawan Kumar and Bhim Singh were also on the said duty. Unfortunately, one of under trial criminal, namely, Suresh Dhangaria escaped from the General Hospital and due to the said incident, a charge-sheet was issued against all the concerned deputed Constables including the appellant-plaintiff Kiran Kumar.

4. The allegations alleged against all the charged officials were identical as the same related to the same incident and all employees concerned were dismissed from service as in the disciplinary proceedings held against them, they were found guilty of the allegations. Against the order of dismissal, the appeal was filed, which was also dismissed but in the revision petition filed by Constable Bhim Singh and Constable Pawan Kumar, the punishment of dismissal from service was reduced to punishment of stoppage of five increments with permanent effect.

5. As the appellant-plaintiff was also claiming the same relief, his revision petition was also accepted and his punishment of dismissal from

service was reduced to stoppage of five increments with permanent effect.

6. It may be noticed that Pawan Kumar challenged the said punishment by filing a civil suit, which civil suit was dismissed vide judgment and decree of the trial court dated 05.12.2012 and thereafter, Pawan Kumar filed an appeal, which appeal came to be allowed on 02.03.2015, wherein findings were recorded that the enquiry conducted by the department before imposing punishment, was not in accordance with rules governing the service and any punishment imposed on the basis of said enquiry was liable to be set-aside. The punishment of stoppage of five increments in case of Pawan Kumar was held to be bad and was set-aside by the lower appellate court. The said judgment attained finality and Pawan Kumar was released benefits of five increments, which were stopped.

7. It may be noticed that the appellant-plaintiff also filed a suit challenging the imposition of punishment of stoppage of five increments, which suit was dismissed by the trial court on 25.05.2013 and the appeal filed against the said order of the trial court was also dismissed on 08.12.2014, which judgments and decrees of the courts below have been challenged in the present regular second appeal.

8. Learned counsel for the appellant-plaintiff argues that subsequent to the filing of the present appeal, the lower appellate court in the case of Pawan Kumar held the enquiry proceedings to be bad in law and set-aside the punishment imposed and, therefore, as joint disciplinary proceedings were conducted against all the charged officials including the appellant-plaintiff herein, the imposition of punishment in the case of appellant-plaintiff is also liable to be set-aside as the same punishment imposed on similar allegations has already been set-aside against Pawan

Kumar.

9. Learned counsel for the respondents-defendants has not been able to rebut the fact that the same enquiry proceedings, wherein the guilt of the appellant-plaintiff was proved, have already been declared to be bad in law by the competent court of law while passing order in case of Pawan Kumar, who was also charged with the same allegations in the same incident.

10. Keeping in view the facts and circumstances of the present case, when a competent court of law has already held that the disciplinary proceeding conducted by the department was bad in law and the said judgment has already attained finality and a co-employee, namely, Pawan Kumar against whom the same allegations were alleged and similar punishment was imposed for the same incident, the benefit has already been released, there is no ground to pass a contradictory order. The orders passed by the courts below in the present case are contradictory to the order passed by the civil court in the case of Pawan Kumar in the same facts and circumstances, which judgment has already attained finality, hence, the judgments and decrees of the courts below are set-aside.

11. Keeping in view the fact that disciplinary proceedings in pursuance to which, the punishment was imposed upon the appellant has already been set-aside by the competent court of law while deciding the case of Pawan Kumar, the same enquiry proceeding cannot be treated to be a valid against the appellant-plaintiff so as to uphold the punishment of stoppage of five increments. The judgment and decree of the trial court dated 25.05.2013 as well as judgment and decree of the lower appellate court dated 08.12.2014 are set-aside. The suit filed by the appellant-

plaintiff is allowed and the punishment imposed of stoppage of five increments with permanent effect against him is set-aside. The appellant-plaintiff will also be entitled for the consequential benefits as extended to Pawan Kumar.

Appeal is allowed. Decree sheet be prepared accordingly.

May 16, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No