

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

**RSA-1040-2017(O&M)
Date of decision:24.04.2023**

GURMAIL SINGH

....Appellant

Verses

STATE OF PUNJAB & ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rishu Mahajan, Advocate with
Mr. Ajay Kumar, Advocate
for the petitioner.

Mr. Rohit Bansal, DAG, Punjab.

HARSIMRAN SINGH SETHI, J (Oral):

CM-2367-C-2017

Application is allowed as prayed for.

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The present regular second appeal has been filed against the concurrent findings recorded by the Courts below. The suit filed by the appellant-plaintiff challenging the orders of punishment dated 25.07.1996 and 21.10.1997 of forfeiture of one year service for the purpose of increments has been dismissed by the Trial Court vide order dated 18.01.2016 and even the appeal preferred against the judgment and decree of the trial Court has been dismissed by the lower appellate Court vide order dated 02.11.2016.

Certain facts need to be mentioned for the correct appreciation of the controversy in question.

The appellant-plaintiff was working as a head constable with the Punjab police and in year 1974, he remained absent from 29.06.1994 till 30.07.1994 and resumed his duties after 143 days of absence. Again,

the appellant-plaintiff stopped performing the duties starting from

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29.09.1995 and remained absent up to 14.11.1995 i.e. for a period of 49 days. For the said unauthorized absence, departmental proceedings were initiated by serving him a chargesheet. Reply to the allegations submitted by the appellant-plaintiff was not found satisfactory and an Inquiry Officer was appointed who conducted the inquiry and the allegations against the appellant-plaintiff of unauthorized absence were proved and keeping in view the allegations which were alleged against the appellant-plaintiff, an order was passed on 25.07.1996 imposing a punishment of forfeiture of one year approved service with permanent effect. The period of absence was treated as non duty period. The said order dated 25.07.1996 was appealed against but the appeal was also dismissed on 21.10.1997 after which, the appellant filed a mercy petition which was also dismissed and after exhausting all the possible remedies, the said punishment order was challenged by filing a civil suit.

Keeping in view the evidence which had come on record and by interpreting the same keeping in view the facts and circumstances of the present case, the trial Court held that the inquiry proceeding was conducted in accordance with law and as the trial Court cannot set in appeal of the decision in departmental proceedings, hence the challenge raised to the order of punishment cannot be accepted and even the suit filed by the appellant-plaintiff was beyond the limitation keeping in view the order of punishment and accordingly, the civil suit was dismissed vide judgment of decree dated 18.01.2016.

Feeling aggrieved against the decision of the trial Court dated 18.01.2016, the appellant-plaintiff filed an appeal before the lower

appellate Court which also came to be decided on 02.11.2016 and the

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findings of the trial Court were upheld. Hence, the present second regular appeal.

Learned counsel for the appellant submits that in the present case, the suit filed by the appellant-plaintiff was within the limitation as his mercy petition dismissed by the authorities concerned in the year 2011 and immediately the suit was filed. Hence, treating the suit beyond limitation by the Courts below was bad keeping in view the facts and circumstances of the present case. It is a settled principle of law that an employee upon whom punishment is imposed, is entitled to avail the remedy of appeal or even the revision as provided under the rules governing the service. Only the statutory remedies, when being availed, it can be said that the limitation will start upon a decision of the authorities concerned while deciding the statutory remedy being availed. In the present case, the appeal filed by the appellant-plaintiff was dismissed in the year 1997. No evidence on record has been brought to the notice of this Court that the remedy of the mercy appeal being availed by appellant-plaintiff was provided in the rules governing the service so as to start the limitation period from the date when the mercy petition was dismissed i.e. from the year 2011. The limitation period will start from the date when the remedy availed under the statute stood exhausted and in the present case, statutory remedies stood exhausted after the dismissal of appeal filed by the appellant/plaintiff against the order of punishment. Hence, the learned counsel for the appellant has not been able to show that the finding recorded by the Court below are perverse or contrary to any rules governing to the service as no rule has been brought on record to show that mercy petition was availed under the statute, hence it cannot be said that

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suit filed by the appellant was within limitation provided to challenge the order of punishment or the order passed in appeal by the department.

Learned counsel for the appellant further submits that there was a valid justification for his absence from duty. It may be noticed that the absence was for two different periods and if there was any valid justification, the same should have been brought to the notice of the authorities concerned. The Courts are not required to set an appeal over the decision of the departmental authorities as only jurisdiction of the Court is to ensure that proper procedure envisaged under the rule is adopted while conducting the departmental proceedings. Learned counsel for the appellant has not been able to show that there was any deviation from the rules governing the service while conducting the departmental proceedings so as to cause any prejudice to the appellant.

Hence, in view of the above, no question of law arises for determination of this Court especially when no perversity in the findings of the Courts below have been pointed out so as to invite any interference by this Court in the present second regular appeal.

The present regular second appeal is dismissed.

CM-15155-C-2019

Application is disposed of.

Pending application, if any, is also disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

24.04.2023
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Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No