

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 9694 of 2018 (O&M)

Date of Decision: 22.08.2023

Ex. Constable Gurdeep Singh

... Appellant(s)

Versus

State of Punjab and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Inderjit Sharma, Advocate
for the appellant(s).

Mr. Sandeep Chopra, Deputy Advocate General,
Punjab, for the respondents.

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.

2. The correctness of the concurrent findings of facts arrived at by both the Courts below is challenged by the plaintiff in this second appeal.

3. At the relevant time, the appellant was posted as a Head Constable in the Punjab Police. He along with the other police officials was deputed to produce a famous smuggler, namely Balwinder Singh alias Jagjit Singh alias Doctor alias Sidhu in the Court at Delhi. They were required to travel in train along with the aforesaid smuggler. However, rather than

travelling on the railway warrants which were issued by the competent

authority, they went by a private vehicle and allowed the aforesaid Balwinder Singh alias Jagjit Singh alias Doctor alias Sidhu to escape. On their return, they did not inform about the escape, rather took a stand that the aforesaid Balwinder Singh alias Jagjit Singh alias Doctor alias Sidhu was produced in the Court at Delhi. On coming to know of the aforesaid facts, the competent authority, while exercising its power under Article 311 (2)(b) of the Constitution of India, removed the appellant and the other employees from their service. While dispensing with the departmental inquiry, the competent authority has recorded the following reasons:-

- “1. That no Government witness would dare to depose against the plaintiff and his co-officials, as they are linked to a very dangerous an and anti national Smuggler.*
- 2. That the life of the Inquiry Officer can also be at risk as the plaintiff and his co-officials being linked to anti national elements can take the life of an officer in an illegal manner, in order to achieve their anti social and illegal motive.*
- 3. That the conclusion of the inquiry shall take a long time and till then retention of the plaintiff as well as his co-officials in the police department would neither be safe, nor desirable in public interest.”*

4. The plaintiff's suit to challenge the order passed by the disciplinary authority, which, in appeal, was affirmed by the Deputy Inspector General of Police, has been dismissed by both the Courts below.

5. An application under order XLI Rule 27 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”), has been filed by the appellant to produce in additional evidence a copy of the judgment passed on 25.05.2018 in the case of Head Constable Rakesh Kumar. In the aforesaid judgment, the First Appellate Court has held that the regular departmental inquiry against the appellant, by affording him a reasonable opportunity of hearing, would be proper. The learned counsel representing the appellant contends that the role of Rakesh Kumar and that of the appellant is parallel, therefore, removal of the appellant from his service is bad in law.

6. On the other hand, the learned State counsel, on the instructions from Mr. Rajinder Kumar, LR/Assistant Sub Inspector, Civil Suit Branch, Amritsar City, submits that Rakesh Kumar was not permitted by the other members of the party to accompany them in the car to Delhi. He was dropped at the Railway Station, therefore, there is a distinction between the case of the appellant and that of Rakesh Kumar.

7. In any case, the judgment passed in the case of Rakesh Kumar by the First Appellate Court, which is sought to be produced in the additional evidence, is only directing the Disciplinary Authority to hold an inquiry. In this case, the allegations are grave. The appellant was a police official. His duty was to prevent the escape of a criminal who was involved in the smuggling activities. However, not only the smuggler was allowed to escape, but even an attempt was made by the appellant to mislead the authorities by giving the incorrect information.

8. Keeping in view the aforesaid facts, this Court does not find it appropriate to interfere with the concurrent findings of facts arrived at by

both the Courts below. Hence, the present appeal is dismissed.

9. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

August 22, 2023
“DK”

Whether speaking/reasoned :Yes/No
Whether reportable : Yes/No