

CM-12772-C-2023
RA-RS-71-2023 in
RSA-1325-2008

2023:PHHC:150743

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

CM-12772-C-2023
RA-RS-71-2023 in
RSA-1325-2008
Date of Decision: 28.11.2023

State of Punjab and others

...Appellants

Versus

Hardip Singh

...Respondent

CORAM:- HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rajesh K. Dadwal, Advocate
for the applicant/respondent.

Mr. Rohit Ahuja, D.A.G., Punjab
for the non-applicant/appellants.

HARSIMRAN SINGH SETHI, J. (Oral)

CM-12772-C-2023

Prayer in the present application is for condonation of delay
of 202 days in filing the present review application.

Notice of the application.

Mr. Rohit Ahuja, D.A.G., Punjab, accepts notice on behalf of
non-applicant/appellants.

Keeping in view the averments made in the application,
same is allowed. Delay of 202 days in filing the present review
application stands condoned.

CM stands disposed of.

RA-RS-71-2023

The present review petition has been filed for reviewing the
order dated 21.03.2023 (Annexure P-1) passed by this Court in RSA

No.1325 of 2008. Before deciding the argument being raised in the review application, it may be noticed that Mr. Amit Gupta, Advocate had appeared for the review-applicant/respondent and the order sought to be reviewed was dictated in his presence in the Court itself. All the arguments raised before the Court were considered and appropriate order was passed. Now, the present review petition has been filed through another counsel, raising a finger towards the earlier counsel having not argued in accordance with the facts of the present case.

It is a settled principle of law that a review petition cannot be filed by another counsel.

As, this Court is required to do justice with the parties, the filing of the present application through a different counsel is being waived of so as to hear the review applicant.

Learned counsel appearing on behalf of the review-applicant/respondent submits that in the order dated 21.03.2023 it has been recorded that learned counsel for the review-applicant/respondent has not been able to rebut the submission of learned State counsel that the review-applicant/respondent was imposed 13 punishments qua the unauthorized absence earlier to the impugned order of punishment challenged in the civil suit. Learned counsel submits that nothing has come on record to substantiate that there were any punishments imposed upon the respondent prior to the one which was taken into account for dismissing him from service which was main subject matter of the civil suit.

Learned counsel for the review-applicant/respondent further submits that earlier punishments were not even pleaded in the written

statement. Hence, the question of the earlier punishment imposed upon the review-applicant being not denied by the review-applicant/respondent, does not arise.

During the hearing of the present application, learned counsel for the review-applicant/respondent concede the factum that the inquiry report, which was made the basis of passing the order of punishment against the review-applicant terminating his services, is already on record as exhibit. Learned counsel for the review-applicant/respondent concedes the fact that as per the inquiry report Mr. Onkar Singh, Prosecution Witness No.3 had clearly deposed before the Inquiry Officer that review-applicant remained absent on earlier occasions also and was a habitual absentee and was punished earlier also qua said allegations. Learned counsel for the review applicant also conceded the fact the review-applicant did not cross-examine the said witness so as to accept the said factual position. Hence It is a matter of fact that prior to the imposition of punishment in question, review-applicant was punished several times earlier due to being absent from duty, which fact is on record and has not been rebutted by the review-applicant before the Inquiry Officer. Faced with the said fact, learned counsel for the review-applicant has not been able to show as to on what basis, an argument has been raised in the present application that the factual averment qua the earlier unauthorized absence is not on record so as to be rebutted by the review applicant.

The learned counsel for review-applicant/respondent further submits that the said fact qua earlier unauthorized absence was not pleaded by the respondents in their reply so as to prove the same. It may

be noticed that in the judgment of the trial Court, in Paragraph-13, the following facts have been recorded:-

‘13. On the other hand, the learned Government pleader for the defendants argued that the proper opportunity was given to the plaintiff before passing the impugned order of dismissal of the plaintiff. He further argued that the plaintiff was habitual absentee and he remained absent from his duty on number of occasions. He further argued that the impugned order of dismissal of the plaintiff passed by the defendants is legal and valid and the suit of the plaintiff is false, and without any merit, hence prayed that the suit of the plaintiff be dismissed.’

Keeping in view the above, the said factum that the review applicant was a habitual absentee is also part of the pleading by the respondent hence, the contention raised that the earlier punishments were not pleaded by respondents, is factually incorrect.

Learned counsel for the review-applicant further submitted that the factum that the wife of the review applicant was bitten by a snake due to which, he remained absent without authority. On being asked to point out whether the said fact was brought to the notice of the inquiry officer during departmental inquiry along with the document to support the said plea, learned counsel submits that as per the inquiry report, no document relating to the fact that wife of the review applicant suffered a bite snake, was brought on record. That being the factual position where, no such document was brought to the notice of the inquiry officer, terming the findings of the inquiry officer as bad by the Courts below on the basis of the documents which came up for consideration before the Courts below for the first time, cannot be sustained in the eyes of law.

At this stage, learned counsel for the review -applicant submits that the statement of PW-1 Vijay Kumar who was produced before the Inquiry Officer had conceded the factum that all the record was produced before the Department. From bare perusal of the statement, which is also part of the inquiry report, it is clear that PW-1 Vijay Kumar, never stated any factum with regard to receiving of any document qua the sickness of the wife of the review applicant. Learned counsel for the review applicant, read the statement of the PW-1 Head Constable Vijay Kumar and conceded the fact that there is no such averment made qua the receipt of the medical certificate qua the sickness of the wife of the review applicant due to snake bite. Learned counsel also conceded that the review applicant, who was present at the time of the recording of the said statement before the Inquiry officer, refused to cross-examine the said witness so as to accept the statement of said witness

Keeping in view the above, not only the application for review has been argued but the main case has also been re-argued once again by the learned counsel for the review-applicant but keeping in view the facts and circumstances mentioned hereinbefore, no ground is made out for recalling the order dated 21.03.2023 and the present review application, is accordingly, dismissed.

28.11.2023
ps-I

(HARSIMRAN SINGH SETHI)
JUDGE

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