

RSA-1330 of 1993 (O&M)

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

RSA-1330 of 1993 (O&M)

Reserved on: 26.04.2024

Pronounced on: 02.05.2024

Mann Singh

.....Appellant

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: Mr. Sandeep Arora, Advocate, for the appellant.

Mr. Rajesh Sehgal, Addl. A.G., Punjab.

NAMIT KUMAR, J.

1. This Regular Second Appeal is directed against the judgment and decree dated 08.02.1991, passed by the Court of learned Sub-Judge, 3rd Class, Jalandhar, whereby suit filed by the plaintiff-appellant for declaration was dismissed as well as against the judgment and decree dated 01.02.1993, passed by the Court of learned Additional District Judge, Jalandhar, whereby appeal filed by the appellant against the judgment and decree dated 08.02.1991, was dismissed.

2. Parties to the *lis* are being referred as per their status before the trial Court. Brief facts of the case are that plaintiff filed a suit for declaration pleading therein that he joined the Punjab Police Department as a Constable on 28.03.1973 in the P.A.P at Jalandhar Cantt. He married with Raghvir Kaur daughter of Kehar Singh, r/o village Daudpur, Distt. Jalandhar, in 1978. From this wedlock a son was born but died. Thereafter, his relations with his wife became strained and she started living separately with her parents. Raghvir

RSA-1330 of 1993 (O&M)

Kaur refused to resume the society of the plaintiff. Raghvir Kaur started levelling allegations of bigamy against the plaintiff and she made complaints. On the basis of the complaints, departmental inquiry was ordered to be initiated against him. In the inquiry it was held that the plaintiff had contracted a second marriage with Sidho daughter of Sh. Rattan Singh resident of village Khanowal, Tehsil and Distt. Kapurthala without the consent of Raghvir Kaur. On the basis of inquiry report, the Commandant, 7th Battalion, dismissed the plaintiff from service vide order dated 31.08.1985. The plaintiff filed an appeal against the said order to Deputy Inspector General of Police, PAP, Jalandhar Cantt. The appeal was also dismissed vide orders dated 05.02.1986. The plaintiff alleged that the impugned orders were illegal and ultra-vires as the same were passed without following the proper procedure for conducting the departmental inquiry. There was no evidence that he contracted a second marriage rather there was enough evidence on the file that Sidho was the wife of his brother. The sanction of the District Magistrate as required under Rule 16.38 of the Punjab Police Rules was not taken for holding departmental inquiry against him. The inquiry was without jurisdiction and authority. The plaintiff was not heard by the punishing authority before passing the impugned order. The appellate Authority also did not apply its mind while dismissing his appeal. The impugned orders were illegal. He prayed that the orders be set aside.

3. The suit was contested by the defendants on the ground that the inquiry was conducted in accordance with Rules. The plaintiff

RSA-1330 of 1993 (O&M)

contravened the provisions of Government Employees Conduct Rules, 1966, and he married Sidho. He was guilty of bigamy. The inquiry was held in accordance with Rules and he was rightly dismissed from Service.

4. On the pleading of the parties, following issues were framed by the trial Court:-

1. Whether the impugned orders dated 5.2.1986 and 31.8.85 dismissing the plaintiff from service are illegal, void, unlawful etc.? OPP
2. Whether the plaintiff is entitled to the declaration prayed for ?OPP
3. Whether the plaintiff had served a valid notice before filing the present suit? OPD
4. Whether the suit is not maintainable in the present form? OPD
5. Relief.

5. The trial Court, after hearing learned counsel for the parties and appreciating the evidence on record, dismissed the suit of the plaintiff vide judgment and decree dated 08.02.1991.

6. Aggrieved against the judgment and decree of the trial Court, plaintiff preferred an appeal, which has also been dismissed by the lower Appellate Court vide judgment and decree dated 01.02.1993. Hence, this Regular Second Appeal by the plaintiff-appellant.

7. Learned counsel for the appellant contended that judgments and decrees of the Courts below are based on surmises and conjectures. He further contended that both the Courts below failed to appreciate the evidence properly inasmuch as there is nothing on record that appellant contracted second marriage. He further contended that

RSA-1330 of 1993 (O&M)

inquiry was conducted in contravention of the provisions of law and services rules. He further contended that inquiry conducted against the appellant was without jurisdiction and authority as no sanction of the District Magistrate as required under Rule 16.38 of the Punjab Police Rules was taken. He further contended that both the Courts failed to appreciate that length of service and claim to pension of the appellant was not considered before the order of his dismissal. He contended that judgments and decrees of the Courts below being perverse are liable to be set aside. Learned counsel for the appellant placed reliance on the judgments of this Court in *The Punjab State through the Secretary to Government of Punjab, Chandigarh and others v. Lachhman Singh, Ex-Constable, 2010(2) S.C.T. 62; CWP-2844 of 1993 – Ex-Const. Niranjana Singh v. State of Haryana and others – decided on 14.07.2004; Sh. Chuhar Singh v. Punjab State and others, 2012(3) S.C.T. 562 and Shanti Devi v. Ashok Kumar, 2020(1) R.C.R.(Civil) 975.*

8. On the other hand, learned counsel for the respondents-State submitted that the judgments and decrees of the Courts below are perfectly legal and valid, therefore, same do not call for any interference by this Court.

9. I have heard learned counsel for the parties and perused the record.

10. Perusal of the record shows that pursuant to complaint of Raghubir Kaur, wife of the appellant, departmental inquiry was initiated against the appellant in accordance with the rules. During enquiry

RSA-1330 of 1993 (O&M)

eight witnesses were examined. Appellant was given opportunity to cross-examine the witnesses. During enquiry it was found that appellant had contracted second marriage against the Government Employees Conduct Rules, 1966. Concurrence of the District Magistrate is only required if the charges framed against the enrolled police officer or the complaint alleges commission of a criminal offence in connection with the official relations with the public. If this situation does not exist, Rule 16.38(1) of the Rules would not apply. Both the Courts below have rightly observed that present is a case where the allegations against the appellant would not fall within the ambit of Rule 16.38 as the mis-conduct would not amount to commission of a criminal offence by him in connection with his official relations with the public. Thus, the Courts below have rightly held that Rule 16.38 of the Rules would not be attracted in the present case. Reliance is placed upon the judgments of a Co-ordinate Bench of this Court in ***CWP-10062 of 2011 – Balbir Singh s/o Ram Kishan v. State of Haryana and others decided on 03.11.2012*** and ***RSA No.1664 of 2017 – PHC Gursharan Singh v. The State of Punjab and others decided on 11.02.2019***. At the time of dismissal from service appellant had completed about 12½ years service only, therefore, he was not entitled for pension. Therefore, finding of the trial Court that merely because no specific order to this effect was passed does not mean that length of service and claim of the plaintiff-appellant to pension was not considered before the order of dismissal was passed, is correct.

RSA-1330 of 1993 (O&M)

- 11. The judgments relied upon by the learned counsel for the appellant are of no assistance to him as the same are not applicable to the facts and circumstances of the present case.
- 12. Concurrent findings have been recorded by both the Courts below, which do not call for any interference by this Court.
- 13. No question of law muchless substantial question of law arises for consideration in this appeal.
- 14. Dismissed.
- 15. Pending application(s), if any, stand disposed of in view of the aforesaid judgment.

02.05.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No