

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA-2002-1993

Reserved on : 13.03.2024
Pronounced on : 21.03.2024

The State of Punjab and anotherAppellants

Versus

Gian SinghRespondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. Rajesh Sehgal, Addl. A.G., Punjab for the appellant.

Ms. Ramneeq Kaur, Advocate for the respondent.

NAMIT KUMAR, J.

1. The instant appeal has been preferred by the State of Punjab impugning the judgment and decree dated 03.05.1993, whereby learned Additional District Judge, Gurdaspur, while dismissing the appeal filed by the appellants/State upheld the judgment and decree dated 29.04.1992 passed by learned Sub Judge II Class, Gurdaspur, whereby the suit filed by the respondent/plaintiff was decreed in his favour. Parties to the lis, hereinafter, shall be referred to by their original position in the suit.

2. The brief facts of the case are that the plaintiff-Gian Singh filed a suit for declaration to the effect that the impugned order dated 02.11.1987, passed by Senior Superintendent of Police, Gurdaspur (defendant No.2), whereby two years approved service of the plaintiff was forfeited along with forfeiture of pay and the impugned order passed by the Appellate Authority, whereby the appeal filed by the

plaintiff against order dated 02.11.1987 was rejected by the Deputy Inspector General of Police, Jalandhar Range, Jalandhar Cantt. It was pleaded in the suit that the plaintiff was appointed in Punjab Police on permanent basis and while he was serving as Sub-Inspector in District Gurdaspur, he was served with charge-sheet containing certain allegations to the effect that he was involved in some criminal case and gross negligence, carelessness and dereliction of duty. He denied the said allegations and stated that he had reported on duty on 21.08.1987 instead of 16.08.1987. Thereafter, an inquiry was conducted against him which culminated in passing of the order dated 02.11.1987, whereby his two years approved service was forfeited along with forfeiture of pay during the suspension period. He preferred an appeal against the impugned order dated 02.11.1987, which was also rejected by the Appellate Authority. He challenged impugned order as well as appellate order as illegal, unlawful and unconstitutional against the principles of natural justice and null and void on the grounds that the charge sheet and show cause notice issued to him were illegal and without jurisdiction, his reply was not considered, copies of documents were not supplied to him, he was not permitted to have assistance of a co-worker and was not allowed to cross examine the departmental witnesses, judicial mind to the facts of case was not applied, impugned orders are non-speaking, behaviour of enquiry officer was biased towards him, impugned orders are ultra vires the authority of defendant no.2 as well as appellate authority impugned orders were passed in breach of P.P.R., version of defence witnesses was not considered by enquiry officer, departmental evidence produced by him was not taken into

consideration and impugned orders are nonest and ex facie defective. After service of notice under section 80 CPC upon defendants, the plaintiff preferred this suit.

3. Notice of suit was issued to the defendants and they came forward to contest the suit by filing joint written statement, wherein they have taken preliminary objections of want of necessary parties and want of cause of action. On merits, defendants admitted the employment of plaintiff, infliction of punishment upon him vide impugned order as well as appellate order. Defendants also admitted the receipt of notice under section 80 CPC but disputed its legality and validity. Rest of allegations of plaint were denied in toto.

4. Plaintiff filed replication to the written statement of defendants wherein he denied the case of defendants and reiterated his case putforth in plaint. From the pleadings of the parties, on 11.08.1989 the following issues were framed :-

1. Whether the order passed by defendant no.2 on 02.11.1987 against the plaintiff is illegal void and liable to be set aside? OPP.
2. Whether appellate order of D.I.G. Police, Jalandhar is illegal void and liable to be set aside ? OPP.
3. Whether the suit is bad for non-joinder of necessary parties ?OPD.
4. Whether there arose no cause of action for the plaintiff to file the present suit ? OPD.
5. Whether the suit is bad for non service of valid notice under Section 80 CPC ? OPD.
6. Relief.

5. The said suit was decreed by the Court of learned Sub Judge II Class, Gurdaspur vide judgment and decree dated 19.04.1992

by recording finding on issue No.1 and 2 which is as under :-

“Issue No. 1 & 2

7. Both these issues are interlinked and can be conveniently decided together hence these are taken together.

8. Onus to prove both these issues was upon plaintiff Ld. counsel for plaintiff raised simple argument by taking me through enquiry file. Ex. P1 that period of absence of delinquent was condoned. Allegation of charge against the accused are available at page 9 in enquiry file Ex. P.1 which shows that plaintiff was charge sheeted for delinquency of absence from duty from 16.8.87 to 21.8.87 Ld. counsel for plaintiff has also taken me through impugned order available at pages 197 to 199 in the enquiry file. The last line of which is reproduced as under :-

"The whole of his absence is treated as leave without pay".

Ld. counsel for plaintiff argued that by treating absence of plaintiff as leave without pay the authority has condoned his absence. Ld counsel for plaintiff backed up his contention by placing reliance upon unreported judgment of our Hon'ble High Court passed in RSA No.872 of 1986 titled as State of Punjab and Ors. Vs. Sital Singh on 15.1.1988 by Hon'ble Mr. Justice M.S. Liberhan of our Hon' ble High Court where Hon' ble Judge observed as under :-

“The consensus of the decision in the precedents relied upon by the respondent is that once the period of absence is treated as leave of any kind whatsoever the fact that the delinquent remained absent no more survives. The charge of absence

from duty cannot be sustained after the person has been treated on leave of whatsoever kind it may be as admittedly in the case in hand the absence was treated on leave without pay and it amounted to as if there was no break in service. The counsel for the appellants only contends that the above precedents do not lay down the correct law as no reason has been pointed out for the same. In view of my above observation I find force in the contention raised by the counsel for the respondent and affirm the finding of the lower appellate court i.e. in view of the observation made by the punishing authority in the order of dismissal that the period of absence shall be counted as leave without pay amounts to regularizing the absence and as such the charge of absence no more survives.

There against ld. Govt. pleader has nothing convincing. The unreported judgment cited by ld. counsel for plaintiff is applicable to the fact and circumstances of suit. I am of the opinion fortified with the ruling of our Hon' ble High Court that punishing authority has condoned the absence of delinquent by treating his absence as leave without pay. Therefore impugned order dated 2.11.87 was not sustainable.

9. *When impugned original order dated 2.11.87 was not sustainable the subsequent appellate order whereby impugned order was confirmed was also not sustainable. Impugned appellate order is available at pages 205 to 208 in the enquiry file. Perusal of which shows that appellate authority has not afforded opportunity for hearing to delinquent thus impugned appellate order was also had on this score.*

10. In view of my above observation both these issues are decided in favour of plaintiff.”

6. Against the abovesaid judgment and decree, the State has filed an appeal which was dismissed by the learned Additional District Judge, Gurdaspur, vide judgment and decree dated 03.05.1993 by observing as under :-

“7. After careful consideration of the matter I find that the contention of ld. counsel for the respondent is well founded. In chapter 16. of Punjab Police Rules pertaining to punishment at column 3 of the table enumerating the punishment it is mentioned as under :-

"Stoppage of increment of forfeiture of approved service for increment".

Thus it is clear that forfeiture of approved service is for the purpose of inflicting punishment of stoppage of increment but it does not show that forfeiture of approved service can be done by way of inflicting punishment. In these premises the impugned order is found to be illegal. The findings of the ld Sub Judge on issues 1 and 2 are sustained.

8. Finding of the ld Sub Judge on remaining issues have not been challenged.

9. In view of the what is discussed above, I find no force in the appeal. The same is hereby dismissed. The impugned judgment and decree are upheld and the appeal is dismissed.”

7. Learned State counsel for the appellants submits that the findings recorded by the Courts below are totally erroneous and against the rules and based on conjectures and surmises. He submits that there is a specific Rule 16.5 of the Punjab Police Rules, 1934, which

empowers the forfeiture of approved service. The said rule reads as under :-

“16.5 Stoppage of approved service for increment increments or forfeiture

(1) The increment of a police officer on a time-scale may be withheld as a punishment. The order must state definitely the period for which the increment is withheld, and whether the postponement shall have the effect of postponing future increments. The detailed orders regarding the grant and stoppage of increments are contained in rule 13.2.

(2) Approved service for increment may be forfeited, either temporarily or permanently, and such forfeiture may entail either the deferment of an increment or increments or a reduction in pay. The order must state whether the forfeiture of approved service is to be permanent; or, if not, the period for which it has been forfeited.

(3) Reinstatement on the expiry of a period fixed under sub-rule (1) or (2) above shall be conditional upon good conduct in the interval, but, if it is desired under this rule not to reinstate an officer, a separate order shall be recorded, after the officer concerned has been given opportunity to show cause why his reinstatement should not be deferred, and the period for which such order shall have effect, shall be stated. Rules regarding the method of recording punishments under this rule in seniority rolls are contained in Chapter X”

8. On the other hand, learned counsel for the respondent has vehemently opposed the present appeal on the ground that there is no illegality or infirmity in the judgments passed by the Courts below and prays for dismissal of the present appeal.

9. I have heard learned counsel for the parties and gone through the relevant record with their able assistance.
10. Rule 16.5(2) of the Punjab Police Rules, 1934 provides that approved service for increment may be forfeited, either temporarily or permanently and such forfeiture may entail either the deferment of an increment or increments or a reduction in pay and the order must state whether the forfeiture of approved service is to be permanent or, if not, the period for which it has been forfeited.
11. The respondent/plaintiff was inflicted the punishment of forfeiture of approved service for two years which is in consonance with Rule 16.5 of the Punjab Police Rules, 1934. Since the findings recorded by the Courts below to this effect are contrary to Rule 16.5, therefore, the same are liable to be set aside. Vide order dated 12.05.1994, the appeal was admitted and operation of impugned judgment was stayed.
12. In view of the above, the present appeal is allowed and the judgments and decrees dated 29.04.1992, passed by learned Sub Judge II Class, Gurdaspur and dated 03.05.1993 passed by learned Additional District Judge, Gurdaspur, are hereby set aside and the suit of the respondent/plaintiff stands dismissed, with no order as to costs.

21.03.2024
Kothiyal

(NAMIT KUMAR)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No