IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

212 **RSA-776-1994**
Date of decision:-10.04.2024

PUNJAB STATE **...APPELLANT**

VERSUS

SURJAN DASS, CONSTABLE **...RESPONDENT**

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Amit Chaudhary, DAG, Punjab &

Mr. Anil Bansal, DAG, Punjab, for the appellant.

None for the respondent.

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SUVIR SEHGAL, J.(ORAL)

1. Defendant is in second appeal before this Court challenging the judgment and decree dated 21.08.1993 passed by learned Additional District Judge, Jalandhar.

2. Facts, in brief, are that Surjan Dass, plaintiff-respondent was working as a Constable. On 25.01.1984, on a surprise visit by Mukhtiar Singh, DSP, plaintiff was found to be under the influence of liquor. Disciplinary proceedings were initiated against him and on the basis of the report submitted by the Enquiry Officer, show cause notice was issued. Plaintiff submitted his reply and by order dated 22.10.1984, he was dismissed from service. Appeal filed by him was dismissed on 06.04.1985. In revision, Inspector General of Police modified the order and reduced the punishment to forfeiture of 05 years

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approved service with permanent effect and correspondingly his pay was reduced. Plaintiff filed a suit for declaration challenging the said orders as well as claiming consequential reliefs.

3. Upon notice, suit was contested by the defendants by taking various preliminary objections. It was submitted that there was a dereliction in duty by the plaintiff and the punishment orders are legal and valid. Plaintiff filed a replication controverting the stand taken by the defendant. On the basis of the pleadings of the parties, issues were framed and after they led evidence, Trial Court by judgment and decree dated 19.12.1991, dismissed the suit.

4. First appeal filed by the plaintiff was accepted, suit was decreed and all the three orders were set aside. Plaintiff was found entitled to all the emoluments. Defendants are in second appeal in the above backdrop.

5. I have heard the State counsel and considered his arguments besides examining the record with his able assistance.

6. On the basis of the exhibited enquiry file, First Appellate Court has come to the following conclusion:-

> *"In the enquiry file at page 17, it is clearly recorded that Constable Kewal Singh witness of the delinquent was cross-examined by the enquiry officer himself, similarly, at page 19 of the enquiry officer, it is recorded that Doctor Des Ram Sharna was cross-examined at length by the enquiry officer. These two witnesses were produced by the delinquent in his defence to show that as a matter of fact that at the time of raid by D.S.P Mukhtiar Singh, the delinquent had taken medicine which contained alcholic contents. The role of the Inquiry officer in cross-examining the witnesses of the delinquent is not justified and is not in accordance with the natural justice. The enquiry could not be said to have been conducted legally*

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and properly and consequently the enquiry report could not be acted upon. The efforts of the enquiry officer in cross-examining the witnesses of the delinquent were to show that witnesses of the delinquent were not reliable. The enquiry in those circumstances could not be said to be held with open mind."

7. First Appellate Court has further recorded a finding that the charge-sheet was incomplete inasmuch as it was not accompanied with the list of witnesses. This defect has been conceded by the Government Pleader before the learned Additional District Judge. In addition, First Appellate Court has come to further conclusion that the plaintiff was never afforded an opportunity of personal hearing before the passing of the impugned order. Still further, it has been found that neither the copy of the enquiry report nor of the order proposing punishment was supplied to the plaintiff-respondent. State counsel has not been able to refer to any material to the contrary. It is, therefore, evident from the above that the entire enquiry proceedings were held in breach of the established principles of natural justice and the punishment orders passed as a consequence thereof have been rightly set aside by the learned Additional District Judge while accepting and decreeing the suit. This Court is, therefore, of the view that no interference is called for in the judgment and decree passed by the First Appellate Court.

8. Finding no merit in the appeal, it is hereby dismissed with no order as to costs.

9. Pending application(s), if any, shall stand disposed of.

10.04.2024 **(SUVIR SEHGAL)**
sheetal **JUDGE**

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

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