

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA-2213-1995 (O&M)

Reserved on : 19.04.2024
Pronounced on : 26.04.2024

The Punjab State and othersAppellants

Versus

Amar ChandRespondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

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

None for the respondent.

NAMIT KUMAR, J. (ORAL)

1. The instant regular second appeal has been filed by the appellants/defendants impugning the judgment and decree dated 15.02.1993 passed by learned Sub Judge IIIrd Class, Jalandhar, whereby a suit for declaration filed by the respondent/plaintiff was decreed and the judgment and decree dated 25.04.1995, passed by learned Additional District Judge, Jalandhar, whereby an appeal preferred by the appellants/defendants against the judgment and decree dated 15.02.1993, was dismissed. Parties to the lis are hereinafter shall be referred to by their original position in the suit.

2. Brief facts of the case are that the plaintiff filed a suit for declaration alleging that he joined the Punjab Armed Police, Jalandhar Cantt as Constable on 12.12.1962 and promoted as Head Constable on 22.08.1978. In the month of January, 1988 he was posted as Incharge of

Security Guard in the Golf Ground in the P.A.P. Lines. On 29.01.1988, a departmental enquiry was ordered to be conducted against him on the allegations that on 27.01.1988, when Sh. Raj Kumar, Superintendent of Police, Commandant 80th Battalion P.A.P. and Sh. I.M. Mal, Superintendent of Police, Training, P.A.P. Jalandhar were still playing tennis, the plaintiff left his duty point with other security guards and he was accused of leaving his duty point and exposing the officers to security risk. The inquiry officer prepared his report and held the plaintiff guilty. Thereafter, on 19.12.1988, the Commandant 27th Battalion P.A.P. Jalandhar issued a show cause notice to the plaintiff proposing punishment of forfeiture of three years approved service with permanent effect. The plaintiff filed a detailed reply to the show cause notice, however, without considering the said reply, the Commandant 27th Battalion P.A.P. Jalandhar, vide order dated 25.01.1989 ordered the forfeiture of one year's approved service of the plaintiff with permanent effect. Aggrieved against the said order, the respondent/plaintiff filed an appeal which was rejected by the Deputy Inspector General of Police, P.A.P., Jalandhar, vide order dated 11.07.1989. The revision petition filed by the plaintiff was also dismissed by the Deputy Inspector General of Police, P.A.P., Jalandhar, vide order dated 20.11.1989. Since the orders dated 25.01.1989 and 11.07.1989 were merged in the order dated 20.11.1989, therefore, the plaintiff filed a suit challenging the order dated 20.11.1989.

3. Upon notice, defendants appeared and filed written statement by raising preliminary objection that present suit is not maintainable in the present form and the plaintiff has no cause of action.

On merits, it has been stated that the enquiry was conducted according to rules and no injustice has been caused to the plaintiff as the order passed is legal and valid. Replication was filed by the plaintiff in which the written statement was controverted. From the pleadings of the parties, following issues were framed :-

1. *Whether order dated 20.11.89, passed by the Inspector General of Police, PAP, is void, illegal on the grounds alleged in the plaint ? OPP*
2. *Whether order dated 25.01.1989 passed by the Commandant is void, illegal, on the grounds mentioned in the plaint ? OPP*
3. *Whether plaintiff is entitled to the declaration prayed for ? OPP*
4. *Whether suit in the present form is not maintainable ? OPD*
5. *Whether plaintiff has no cause of action to file the suit ? OPD*
6. *Whether notice served u/s 80 CPC on the defendants is invalid ? OPD*
7. *Relief.*

4. Both the parties were given due opportunities for leading their respective evidence and learned trial Court after appreciating the evidence, decreed the suit of the plaintiff, vide judgment and decree dated 15.02.1993. Aggrieved against the said judgment, the defendants filed an appeal which was dismissed vide judgment and decree dated 25.04.1995 passed by learned lower appellate Court. The concluding paras of the said judgment reads as under :-

“10. xx xx xx The close scrutiny of the above rule goes to show that approved service for increment purpose can be forfeited either permanently or temporarily but the above rule does not provide forfeiture of approved service with permanent effect. This forfeiture of approved service would definitely effect the gratuity, pension and seniority and other benefits which are accrued to the government

employee due to the length of services. It has been held by our own High Court that no such penalty can be imposed which does not exist in the Act. It has further been held that Section 7 of the Police Act and Rule 16.1(2) of Punjab Police Rules does not provide punishment of forfeiture of approved service. If any authority is need on the above point, reference be made to 1968 Service Law Reporter 519, Punjab State Versus Inder Sen Sharma and 1984(3) S.L.R. 336, Ram Pat Versus Union of India.

11. In view of my above detailed discussion, I do not see any merits in this appeal which is hereby dismissed, with costs. Decree sheet be prepared and the file be consigned to the record room. Lower Court's file be sent back at once."

5. Aggrieved against the judgments and decree dated 15.02.1993, passed by learned trial Court as well as judgment and decree dated 25.04.1995, passed by learned lower appellate Court, the appellants/defendants have filed the instant appeal.

6. Learned State counsel representing the appellants submits that judgments and decrees passed by the Courts below are against the law and facts on record. The Courts below have mis-interpreted Rule 16.5 of the Punjab Police Rules, 1934, which clearly provide forfeiture of approved service permanently. He further submits that the judgments and decrees passed by the Courts below are based on conjectures and surmises. Therefore, the same are liable to be set aside.

7. None has caused appearance on behalf of the respondent despite service.

8. I have heard learned State counsel representing the appellants and perused the record.

9. The present appeal was admitted on 18.10.1995. However, while admitting the appeal, no interim order was granted in favour of

the appellants-State of Punjab. The respondent has retired from service on 30.11.2001, on attaining the age of superannuation. Admittedly in the present case the punishment of forfeiture of one year's approved service with permanent effect has been imposed upon the respondent/plaintiff and the only point required to be considered is that as to whether forfeiture of approved service with permanent effect is permissible or not. Rules 16.5 of the Punjab Police Rules 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 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.”

10. Rule 16.5 of the Punjab Police Rules specified certain kinds of punishment to be inflicted upon but nowhere lays down that approved service of a police personnel with permanent effect can be forfeited. Forfeiture of approved service with permanent effect could

not be imposed as this punishment has not been provided under the Rules. Reliance in this regard is placed upon the judgment of this Court in ***Harminster Singh Vs. State of Punjab and others : 2014(1) S.C.T. 16***, wherein it has been held as under :-

“6. After hearing counsel for the parties, this Court is of the opinion that the matter is covered squarely against the State. This Court in CWP No.9146 of 1994 titled Constable Sarjinder Singh Vs. State of Punjab & others decided on 03.10.2012, has already decided the said issue and held that the forfeiture of approved service could not be imposed as the punishment was not provided under the Rules, while placing reliance upon Ram Pat Vs. Union of India & others 1984 (3) SLR 756 & State of Punjab Vs. Inder Sain Sharma 1968 SLR 519, relevant portion of the said judgment reads as under:

"7. After hearing counsel for the parties and perusing the record, this Court is of the view that the impugned order cannot be justified. The petitioner has placed on record judgment of the civil Court decided on 24.04.1989 whereby the suit for declaration of the petitioner was allowed. A perusal of the said judgment go on to show that the civil Court came to the conclusion that the penalty of forfeiture of the approved service could not be imposed as it is not provided under the Rules. Reliance was also placed upon Ram Pat Vs. Union of India & others 1984 (3) SLR 756 and State of Punjab Vs. Inder Sain Sharma 1968 SLR 519 by the Sub-Judge, 1st Class, Jalandhar.

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10. Counsel for the petitioner has also placed reliance upon Punjab State Vs. Joginder Singh

1993 (3) Service Cases Today 671 wherein also it had been held that where the Rules did not provide forfeiture of service, the same could not be done and reliance was placed upon the judgment passed in the case of Ram Pat (supra) to hold that the right to gratuity, pension and seniority cannot be effected in this manner."

11. Concurrent findings have been recorded by both the Courts below and learned State counsel representing the appellants has failed to show that the same are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record.
12. No question of law, muchless substantial question of law has been raised or arises for consideration in the present appeal. No other point has been urged.
13. In view of the above, the present appeal, being devoid of merit, is hereby dismissed.
14. Pending applications, if any, shall stand disposed of accordingly.

26.04.2024 <i>Kothiyal</i>	(NAMIT KUMAR) JUDGE
Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No