



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(202)

RSA No. 1403 of 1997 (O&M)
Date of Decision : 09.05.2024

State of Punjab and others

...Appellants

Versus

Surinder Kapoor

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rohit Ahuja, Deputy Advocate General, Punjab
for the appellants.

Mr. Gurcharan Dass, Advocate for the respondent.

Harsimran Singh Sethi J. (Oral)

1. In the present appeal, the challenge is to the judgment and decree of the trial court dated 01.02.1993 by which the suit filed by the respondent-plaintiff challenging the order dated 23.09.1983 by which, the respondent-plaintiff was dismissed from service, was allowed as well as the judgment and decree of the lower appellate court dated 03.12.1996 by which the appeal filed by the appellants-defendants was dismissed.

2. Certain facts needs to be mentioned for the correct appreciation of the issue in hand.

3. It may be noticed that the respondent-plaintiff was appointed as a Constable by the Commandant in the 18th Battalion in the year 1979.

As the respondent-plaintiff failed to comply with his transfer order and he



refused to join the new place of posting and remained absent, disciplinary proceedings were initiated against him and as the charge of absence was proved in the disciplinary proceedings, the respondent-plaintiff was dismissed by the Commandant 7th Battalion vide order dated 23.09.1983.

3. The respondent-plaintiff filed a civil suit challenging the said dismissal order dated 23.09.1983. Keeping in view the facts and evidence that came on record, the trial Court vide judgment dated 01.02.1993 allowed the suit filed by respondent and came to the conclusion that the respondent-plaintiff was not given the opportunity of personal hearing or Assistance of a Colleague during the departmental proceedings, hence, the rules of natural justice were violated and a finding was also recorded that as the respondent-plaintiff was appointed after the approval was given to his appointment by the Deputy Inspector General of Police concerned, only the said authority could have dismissed him from service and not the Commandant.

4. Against the said judgment and decree of the trial court dated 01.02.1993, the appeal was preferred by the State, which also came to be dismissed by the lower appellate Court on 03.12.1996, hence, the present regular second appeal.

5. It may be noticed that while issuing the notice, the execution of judgments and decrees of the Courts below was stayed, which interim order continues even as of now.

6. Learned counsel for the appellants-defendants submits that the findings recorded by the courts below are perverse to the evidence,



which has already come on record. Learned counsel further submits that the enquiry proceedings are already on record and a bare perusal of the daily proceedings recorded in the enquiry file shows that the respondent-plaintiff was given opportunity to bring any colleague for his help and it is the respondent-plaintiff, who did not avail the said opportunity, which finding has been wrongly recorded by the Courts below that the respondent-plaintiff was not given the help of the colleague. Learned counsel for the appellants-defendants submits that the colleague to help/assist respondent-plaintiff is not to be appointed by the Enquiry Officer but has to be brought by the respondent-plaintiff himself and nothing has come on record that any request was received from the respondent-plaintiff for the help of any colleague despite the fact that he was given due opportunity, which fact is clear from the facts recorded in the enquiry file, hence, the judgments and decrees of the courts below are perverse to the facts and evidence on record and are liable to be set aside.

7. Learned counsel for the appellants-defendants further submits that the findings recorded by the Courts below that the appointment was given to the respondent-plaintiff by the Deputy Inspector General of Police, hence, the respondent-plaintiff could not have been dismissed by the Commandant 7th Battalion, is also incorrect as the appointment order qua the respondent-plaintiff was issued by the Commandant 7th Battalion only. Learned counsel for the appellants submits that it has already come on record that the respondent-plaintiff did not fulfill the requisite to be appointed as a Constable and he had



sought relaxation, which relaxation was only accorded by the Deputy Inspector General of Police before his appointment order was issued by the Commandant 7th Battalion, hence, the order of dismissal has been passed by the competent authority, which fact has not been appreciated by the courts below in the correct perspective.

8. Learned counsel for the respondent-plaintiff submits that as per the evidence which has come on record in the shape of the statement of DW1 that the approval for appointment was given by the Deputy Inspector General of Police, has rightly been taken into account by the Courts below to hold that the dismissal order could have only been passed after the approval of Deputy Inspector General of Police, which is missing in the present case, hence, the findings recorded by the courts below in favour of the respondent-plaintiff are perfectly valid and legal and are liable to be upheld.

9. Learned counsel for the respondent-plaintiff submits that though the opportunity was given to the respondent-plaintiff to bring the Assistance but as the respondent-plaintiff did not get somebody to assist him in the disciplinary proceedings, it was the duty of the department to provide him an employee so as to assist him in the departmental proceedings, hence, the findings recorded by the courts below that the rules of natural justice have been violated while conducting the departmental enquiry is perfectly valid and legal.

10. I have heard learned counsel for the parties and have gone through the record with their able assistance.



11. The first question which arises for adjudication before this Court is whether the rules of natural justice have been violated or not.

12. From the record, it transpires that as per the enquiry proceedings brought on record, due opportunity was given to the respondent-plaintiff to bring Assistance in case, he needs so and daily orders in enquiry file to the said effect have also been signed by the respondent-plaintiff. That being the factual position, it was the duty of the respondent-plaintiff to engage or bring an Assistant to assist him. In case, the respondent-plaintiff failed to bring anyone to assist him, it cannot be said that the rules of natural justice have been violated by the department while conducting the departmental proceedings.

13. The argument of the learned counsel for the respondent-plaintiff that the appellants-defendants should have provided the Assistance, is not correct. It is the duty of employee, who is defending, to bring his own Assistance, which benefit was never availed by the respondent-plaintiff and rather, the respondent-plaintiff urged that in case, the respondent-plaintiff is having any difficulty, he can bring his own Assistance and the respondent-plaintiff was given due opportunity to bring his own Assistance.

14. Keeping in view these facts, the rules of natural justice cannot be stretched to an extent to hold that the State also has to provide the Legal Assistance to the delinquent. No such rule has been brought to the notice of this Court that the State is under obligation to provide an Assistance to a delinquent.



15. In the absence of any such Rule, giving liberty to the respondent-plaintiff to avail the Assistance of anyone he likes, was good enough so as to fulfill the requirement of the rules of natural justice, hence, the judgments and decrees of the courts below, which have not taken into account the relevant evidence and the rules governing the service, are perverse to the actual facts and evidence, which has come on record.

16. Qua the second argument of the learned counsel for respondent-plaintiff that the respondent-plaintiff was appointed after the approval from the Deputy Inspector General of Police, hence, only the Deputy Inspector General of Police could have dismissed him. It may be noticed that as certain relaxations were being claimed by the respondent-plaintiff at the time of recruitment, which could only be given under Rule 12.5 of the Punjab Police Rules, 1934, the same were extended by the Deputy Inspector General of Police and thereafter, the appointment order appointing the respondent-plaintiff as a Constable was passed by the Commandant 7th Battalion. Hence, once the appointment order of the respondent-plaintiff has been passed by the Commandant 7th Battalion, who is otherwise also, the appointing authority, the said authority was very much within jurisdiction to pass an order terminating the services being the punishing authority. No approval is needed from the higher authorities for terminating the service of an employee.

17. With regard to the argument raised by the learned counsel for the respondent-plaintiff that the Commandant of another Battalion had



passed the dismissal order, hence, the impugned dismissal order could not be sustained, it has already come on record that as the Commandant 7th Battalion was transferred, the charge of the Post of the Commandant 7th Battalion was given to one Sh. K.K. Sharma, Commandant 27th Battalion to perform the duties of the said post, who had actually passed the order terminating the services of the respondent-plaintiff.

18. Once, the charge of the post was given to a particular officer, the said officer holding the charge of the post of Commandant 7th Battalion was competent enough to pass the dismissal order.

19. No other argument was raised.

20. Keeping in view the above, the judgments and decrees of the courts below are perverse to the evidence and the facts, which have come on record, hence, cannot be sustained and those are accordingly set-aside. Consequently, the present regular second appeal is allowed and the suit filed by the respondent-plaintiff is dismissed.

Pending miscellaneous application, if any, also stands disposed of.

May 09, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

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