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

RSA-1799-2000 (O&M)
Date of decision: 23.09.2024

State of Punjab and others

...Appellants

Versus

Bua Masih

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. P.S. Bhandari, AAG, Punjab.

Mr. Sushil Saini, Advocate for the respondent.

VIKAS BAHL, J. (ORAL)

1. This is a Regular Second Appeal filed by the State of Punjab-defendant No.1 and defendant Nos.2 and 3 against the judgment dated 10.03.1998 passed by the trial Court vide which the suit for declaration filed by the plaintiff-respondent to the effect that order dated 21.09.1992 passed by defendant No.2 was illegal, had been decreed. Challenge has also been made to the judgment and decree dated 16.12.1999 vide which the First Appellate Court had dismissed the appeal filed by the present appellants.

2. Brief facts of the present case are that the respondent-plaintiff (hereinafter to be referred as “the plaintiff”) had filed a suit for declaration on the averments that he was appointed in the Punjab Police on permanent basis and at the time when he was posted at Gurdaspur, he was served with a



charge sheet and a departmental enquiry was conducted against him and the said enquiry was held against the plaintiff and thereafter the punishing authority while agreeing with the report of the Enquiry Officer had issued a show cause notice asking the plaintiff to show cause as to why “three years approved service of the plaintiff should not be forfeited”. It was further the case of the plaintiff that he had filed a reply to the said show cause notice and SSP, Gurdaspur vide order dated 01.09.1992 had ordered the forfeiture of one year approved service with permanent effect and the appeal filed against the same was also rejected. It was the said orders which have been challenged in the instant civil suit. The present appellants had filed reply in which apart from other objections, it was stated that while the plaintiff was posted at Police Station Sadar Gurdaspur, certain persons along with one Ajmer Singh had murdered one Ajit Singh and had buried his dead body in the ground and spread the news that Ajit Singh had gone to UP. It was further stated that the present plaintiff and Karamjit Singh ASI had let off Ajmer Singh, which was a negligent act on their part and accordingly, the plaintiff was charge sheeted and the enquiry was conducted against the plaintiff and after following the due procedure, the plaintiff was found guilty and the order was passed by the punishing authority after taking a lenient view and the said order was passed in accordance with the provisions of Punjab Police Rules.

3. The trial Court while relying upon the judgment passed in the case of **Punjab State Vs. Joginder Singh**, reported as **1992(3) SCT 671** had observed that punishment awarded in the case of the plaintiff to the effect that one year approved service of the plaintiff would be forfeited with



permanent effect was against the Punjab Police Rules and there was no such punishment incorporated in the said rules and thus, accordingly, decreed the suit of the plaintiff. An appeal filed by the present appellants against the said judgment was also dismissed by the First Appellate Court vide judgment and decree dated 16.12.1999 by relying upon the case of **Joginder Singh** (Supra). It is the said judgments which are under challenge in the present appeal.

4. Learned counsel for the appellants has submitted that reliance placed upon the case of **Joginder Singh** (Supra) by both the trial Court as well as the First Appellate Court is misplaced as the said case has been overruled by the Division Bench of this Court while passing the **judgment dated 14.09.2006 in CWP-19730-2004 titled as Ranjit Singh Vs. State of Punjab and others**, wherein after noticing Rule 16.5 of the Punjab Police Rules, 1934, a Division Bench of this Court had held that it is open to the punishing authority to forfeit approved service for the purpose of increments. It is further submitted that on the basis of the said judgment dated 14.09.2006, similar cases i.e. **RSA-3784-2008 along with other connected matters, titled as “the Punjab State and others Vs. Bhupinder Singh, Constable”**, have also been allowed **vide judgment dated 10.04.2024** and the judgment of the trial Courts and the First Appellate Courts in the said cases have also been set aside and the present case is squarely covered by the abovesaid judgment dated 10.04.2024 passed by the Coordinate Bench of this Court.

5. Learned counsel for the respondent-plaintiff has submitted that even as per the abovesaid judgment dated 10.04.2024 passed in RSA-3784-2008 and other connected matters, while considering Rule 16.5 of the Punjab



Police Rules, 1934 and while taking note of the judgment passed in ***Ranjit Singh's case*** (Supra), it has been observed that it is open to the punishing authority to forfeit approved service for the purpose of increments and that in case the impugned order vide which one year approved service of the plaintiff has been forfeited is only for the purpose of increments then the same would be in consonance with Rule 16.5 of the Punjab Police Rules and not otherwise.

6. Learned counsel for the appellants, in rebuttal, has submitted that as per the stand of the Punjab State in the written statement more so para 3 of the written statement, it had been specified that the said order of forfeiture of the approved service of plaintiff was for the purpose of increments and on instructions from ASI Rupinder Singh has further reiterated the fact that same is only for the purpose of increments. The said stand satisfies the counsel for the respondent-plaintiff.

7. This Court has heard learned counsel for the parties and has perused the paper book and finds that the present Regular Second Appeal deserves to be allowed for the reasons stated hereinafter.

8. It is not in dispute that the trial Court as well as the First Appellate Court had allowed the suit of the plaintiff-respondent by placing reliance upon ***Joginder Singh's case*** (Supra) and by observing that the punishment inflicted upon the respondent-plaintiff was not in accordance with the Punjab Police Rules, 1934 and it is also not in dispute that the case of ***Joginder Singh*** (Supra) has been overruled by the Division Bench of this Court in the case of ***Ranjit Singh*** (Supra) wherein it had been observed by the Division Bench of this Court that it is open to the punishing authority to



forfeit approved service of an employee for the purpose of increments. It is also not in dispute that on the basis of the said judgment passed by the Division Bench of this Court in the case of ***Ranjit Singh*** (Supra), **RSA-3784-2008 along with other connected matters, titled as “the Punjab State and others Vs. Bhupinder Singh, Constable”** have been allowed, relevant portion of which is reproduced hereinbelow:-

“4. I have heard counsel for the parties and considered their respective submissions as well as examined the record with their able assistance.

*5. The trial Court has placed reliance upon a judgment passed by a Co-ordinate Bench of this Court in **Punjab State Versus Joginder Singh, 1992 (3) SCT 671** while decreeing the suit. The judgment has been set aside by a Division Bench of this Court vide judgment passed in CWP-19730-2004 titled as **Ranjit Singh Versus State of Punjab and others** decided on 14.09.2006, wherein after noticing Rule 16.5 of Punjab Police Rules, 1934, a Division Bench has held that it is open to the punishing authority to forfeit approved service for the purpose of increments. While rejecting the argument of the petitioner, the Division Bench held as under:*

“In view of the above, it is not possible for us to accept, that the punishment imposed on the petitioner, does not flow from the provisions of the 1934 Rules. It is, therefore, not possible for us to accept the sole contention of the learned counsel for the petitioner.

While dismissing the instant writ petition, it will also be appropriate for us to set aside the order rendered by this Court in State of Punjab Vs. Joginder Singh, 1992(3) Service Cases Today, 671, wherein the relevant statutory provisions were not brought to the notice of this Court when the matter was adjudicated. Ordered accordingly.”



6. *From the above, it is clear that the punishment imposed upon the plaintiff – respondent meets the mandate of the rules and the judgments and decrees passed by both the Courts below are based on incorrect interpretation of the applicable rules.*

7. *As a result of the above discussion, the appeals are allowed. Judgments and decrees passed by the Courts below are set aside and the suit filed by the plaintiff - respondent is dismissed throughout with no order as to costs.*

8. *Miscellaneous application (s), if any, stand disposed of.*

9. *A photocopy of this order be placed on the connected appeals.”*

9. A perusal of the above judgment would show that by making specific reference to ***Ranjit Singh’s*** case (Supra) and Rule 16.5 of the Punjab Police Rules, 1934, the Coordinate Bench had observed that the punishment imposed upon the plaintiff-respondent therein meets the mandate of the Rules. The sole apprehension raised by learned counsel for the respondent-plaintiff to the effect that forfeiture of one year of approved service with permanent effect could only be for the purpose of increments has been met by learned State Counsel by making reference to para 3 of the reply of his written statement as well as on instructions from ASI Rupinder Singh and it has been clarified and reiterated that the said punishment of one year approved service of the plaintiff which was forfeited with permanent effect, is only for the purpose of increments.

10. It would be relevant to note that the present Regular Second Appeal has been filed under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 of CPC and that in paragraph 27 of the judgment of the Constitutional Bench (Five Judges Bench) of the Hon’ble Supreme Court



in the case of **Pankajakshi (dead) through legal representatives and others Vs. Chandrika and others and other connected matters reported as (2016) 6 Supreme Court Cases 157**, it was observed that Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976, has no application to Section 41 of the Punjab Courts Act, which provision would necessarily continue as a law in force. Section 41 of the Punjab Courts Act provides that an appeal would lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court on any of the grounds mentioned therein and one such ground i.e. ground No.(a) is the decision being contrary to law or to some custom or usage having the force of law. In the present case, as has been observed hereinabove, the judgment of the trial Court as well as First Appellate Court are contrary to law laid down by the Division Bench of this Court in **Ranjit Singh’s case** (Supra) as well as in the case of **Bhupinder Singh** (Supra) and accordingly, deserve to be set aside.

11. Keeping in view the abovesaid facts and circumstances, the present Regular Second Appeal is allowed and the judgment of the trial Court as well as First Appellate Court are set aside and the suit filed by the respondent-plaintiff is dismissed with the clarification that the order passed by the authority against the plaintiff vide which the approved service of the plaintiff has been forfeited for one year with permanent effect would only be for the purpose of increments.

12. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid judgment.

23.09.2024

Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No