

RSA-1536-1998

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1536-1998
Date of decision:-20.04.2024

The State of Punjab and others

...Appellants

Versus

Lal Mani, Head Constable

...Respondent

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL

Present : Mr.Arjun Sheoran, DAG, Punjab and
Ms.Amrita Garg, AAG, Punjab.

None for the respondent.

SUVIR SEHGAL, J.(ORAL)

1. Defendants - appellants are in second appeal challenging the judgment and decree passed by the First Appellate Court, whereby suit of the plaintiff – respondent has been accepted.

2. Pleaded case of the plaintiff – respondent is that he was working as a Head Constable with the Punjab Armed Police. On 08.01.1992, he proceeded on sanctioned leave for two days but could not join back on time as his wife was unwell. On 14.02.1992, on the

suspicion that he was discharging duty under the influence of liquor, he was medically examined and placed under suspension. He went back to his native village. Departmental proceedings were initiated against him on the allegation of the absence from duty. A departmental inquiry was conducted, and show-cause notice proposing punishment was issued, which he challenged by filing a suit for declaration. Upon notice, suit was contested by the defendants, *inter alia*, on the ground that it was pre-mature. It was submitted that plaintiff had remained absent from duty on two occasions, and on account of grave misconduct and indiscipline, penal action was taken against him. Plaintiff filed replication reasserting the stand taken in the plaint. Issues were framed and after the parties led evidence, trial Court by judgment and decree dated 24.07.1995 dismissed the suit. Appeal preferred by the plaintiff – respondent was accepted by learned Additional District Judge, Patiala and the punishment order dated 20.10.1992, Ex.P1, was set aside with liberty to the defendants to pass a fresh order by taking into consideration his absence period from 11.01.1992 to 19.01.1992. It is in this background that the defendants are in appeal before this Court.

3. I have heard the State counsel and examined the record with his able assistance.

4. The suit filed by the respondent was dismissed by the Trial Court as it was found to be pre-mature. However, taking notice of the fact that the punishment order has been passed during the pendency of the suit, the First Appellate Court has held it to be maintainable. The Court came to the conclusion that as the respondent had not only challenged the show-cause notice but also had questioned the

subsequent order of punishment, if any, likely to be passed. This Court does not find any reason to disturb the finding recorded by the First Appellate Court, as the impugned show-cause notice, Ex.P3, had merged with the punishment order Ex.P1.

5. Charge levelled against the plaintiff – respondent was that he had proceeded on unauthorized absence from 11.01.1992 to 19.01.1992 for a period of eight days and from 14.02.1992 to 15.03.1992 for a period of twenty days. The First Appellate Court was of the view that as he was placed under suspension w.e.f. 14.02.1992, he was not required to attend the office and it cannot be treated as an absence from duty. Reliance has been placed by the First Appellate Court upon a Division Bench judgment of this Court in *Ex.Head Constable Munshi Ram Versus State of Haryana and others, 1991 (6) SLR 296*. This finding of the First Appellate Court, however, deserves to be set aside.

6. Rule 16.21 of the Punjab Police Rules, 1934 (for short “the Rules”) contains a provision regarding the status and treatment of officer under suspension. It provides that a police officer, who is under suspension is required to attend the roll-call and be available to the authorities. Interpreting this Rule, Supreme Court in *State of Punjab Versus Dharam Singh, 1997 (2) SCC 550* has held that even if a delinquent official is not being paid subsistence allowance, that does not mean that he should absent himself from duty. A Division Bench of this Court in *State of Punjab Versus Constable Daljit Singh, 1998 (2) S.C.T. 29* has held that this rule requires a Constable to remain present in the police lines during suspension and to perform duties as may be

assigned to him as well as attend parades. In *Ex. Constable Jagan Singh Versus Director General of Police, Haryana etc., 2009 (1) S.C.T. 458*, another Division Bench of this Court has held that the judgment in *Ex.Head Constable Munshi Ram's case* (supra) cannot hold the field in view of the judgment of the Supreme Court in *Dharam Singh's case* (supra). As the judgment upon which reliance has been placed by the First Appellate Court is no longer good law, the findings recorded by the First Appellate Court are liable to be reversed.

7. Still further, that finding of the First Appellate Court that the punishment of forfeiture of two years approved service on permanent basis is not provided for in the Rules and therefore it could not have been imposed, does not call for any interference. After noticing Rule 16.5 of the Rules, Supreme Court in *Chamba Singh Versus State of Punjab, (1997) 11 SCC 452* has held that there is no reference in the rules to forfeiture of service with permanent effect.

8. While accepting the appeal of the plaintiff – respondent, the First Appellate Court had set aside the punishment imposed upon him and had directed the authorities to pass a fresh order taking into consideration his absence from 11.01.1992 to 19.01.1992. This direction deserves to be modified in view of the above discussion.

9. For the reasons given hereinabove, appellants are directed to pass a fresh order, after hearing the parties by considering the period of absence not only from 11.01.1992 to 19.01.1992, but also from 14.02.1992 to 05.03.1992. This exercise be carried out by the authorities within a period of four months from the date of receipt of communication of a copy of this order.

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- 10. With the above modification, appeal is disposed of.
- 11. Pending application, if any, stands disposed of.

(SUVIR SEHGAL)
JUDGE

20.04.2024
Brij
Whether reasoned/speaking :
Whether reportable :

Yes/No
Yes/No