

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

(201)

RSA-2020-1998 (O&M)

Date of Decision : April 16, 2024

Union of India

.. Appellant

Versus

Kuldip Singh

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Shiv Kumar Sharma, Sr. Panel Counsel, for
appellant-Union of India.

Mr. Vijay Lath, Advocate, and
Mr. Naveen Sharma Moudgil, Advocate, for the respondent.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present appeal, the challenge is to the judgment and decree of the lower Appellate Court dated 06.02.1998 by which, the judgment and decree of the trial Court dated 01.02.1997 has been set aside and the suit filed by the respondent-plaintiff has been allowed.

2. Certain facts may be noticed for the correct appreciation of the issue in hand.

3. The respondent-plaintiff namely Kuldip Singh was appointed as a Constable with the Border Security Force on 05.01.1970. On 03.01.1991, the respondent-plaintiff deserted the Unit Line at Jalandhar Cantt, where he was posted. Thereafter, disciplinary proceedings were initiated against him and as the allegations alleged were proved against the

respondent-plaintiff, vide order dated 16.04.1991, his services were terminated. The said order of termination was challenged by the respondent-plaintiff by filing civil suit.

4. Keeping in view the evidence and facts which had come before the Court, the civil suit was dismissed by the trial Court vide order dated 01.02.1997. Feeling aggrieved against the said judgment and decree of the trial Court, the respondent-plaintiff filed an appeal, which appeal came to be decided by the lower Appellate Court vide order dated 06.02.1998. The lower Appellate Court held that as the respondent-plaintiff had 20 years service to his credit at the time when he deserted the Unit and he has given a due reason that his wife was not well hence, he applied even for resignation from service, the appellant should have taken into account 20 years service which the respondent-plaintiff had rendered before deciding whether, the services are to be terminated or any lesser punishment was required to be imposed upon him. The lower Appellate Court vide order dated 06.02.1998 modified the punishment of dismissal to premature retirement and directed that the benefit be extended to the respondent-plaintiff for the period he had served in service. The said judgment and decree of the lower Appellate Court vide order dated 06.02.1998 is under challenge in the present appeal.

5. It may be noticed that while issuing notice of motion, the operation of the judgment and decree of the lower Appellate Court was stayed.

6. Learned counsel for the appellant argues that in the present case, the respondent-plaintiff had deserted the Unit and action had already been taken against him under Section 62 of the B.S.F. Act, 1962 and he was dismissed from service vide order dated 16.04.1991 hence, the lower Appellate Court could not have acted as an Appellate Authority so as to

modify the order passed by the competent authority dismissing him from service.

7. Learned counsel for the appellant submits that once it is found that the respondent-plaintiff had deserted his Unit, which is a grave misconduct, which misconduct has been proved in the disciplinary proceedings initiated against him, the lower Appellate Court could not have interfered with the said unless and until there is any deficiency in the process in holding the said disciplinary proceedings.

8. Learned counsel for the appellant further submits that once the respondent-plaintiff had already given in writing that he does not want to continue in service which is an admitted fact and had submitted that he will not attend the duties due to his personal reason, his desertion had already been proved hence, merely on the ground that the respondent-plaintiff had 20 years of service to his credit at the time when he deserted the Unit, cannot be a ground to grant him the premature retirement so as to grant him the pensionary benefits.

9. Learned counsel for the respondent-plaintiff, on the other hand, submits that the wife of the respondent-plaintiff was not well due to which, he had left the Unit on 03.01.1991 but submits that he had already expressed his inability to continue in the force so as to perform the duties hence, keeping in view the service already rendered by the respondent-plaintiff, the lower Appellate Court has rightly modified the punishment of dismissal into premature retirement.

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

11. It is a settled principle of law that the jurisdiction of the Court to interfere with the departmental proceedings is limited. The Court is not

to act as an Appellate Authority while adjudicating the conduct of the disciplinary proceedings and the punishment imposed. The Court can only interfere in case the process envisaged under the law for conducting the disciplinary proceedings is not undertaken or the punishment has been imposed without there being any evidence or the punishment imposed is shockingly disproportionate to the charges alleged and proved.

12. In the present case, the lower Appellate Court despite holding that the respondent-plaintiff was not interested in performing the duties and had deserted his Unit and thereafter, appropriate proceeding under 1962 Act was initiated and completed before passing the order of dismissal, no interference should have been done by the lower Appellate Court. The lower Appellate Court acted as an Appellate Authority, which is beyond the jurisdiction. Once, a grave misconduct of deserting the Unit was established and which fact has also been proved before the Court especially when it is not a case that the punishment imposed is shockingly disproportionate to the charges alleged and proved, the modification of the punishment by the lower Appellate Court, is not at all warranted and is beyond the jurisdiction.

13. Even otherwise, as per the settled principle of law, even if the punishment is shockingly disproportionate to the charges alleged and proved, then also the case can only be remanded back and the Court cannot assume the role of punishing authority/appellate authority so as to modify the punishment imposed. That being the settled principle of law on the subject, the order passed by the lower Appellate Court is beyond its jurisdiction.

14. Once the order passed by the lower Appellate Court is perverse to the 1968 Act as well as the settled principle of law same cannot be

sustained in the eyes of law and is set aside. The judgment and decree of the lower Appellate Court is revived and the suit filed by the respondent-plaintiff is dismissed.

15. The present regular second appeal is disposed of in above terms.

16. Any civil miscellaneous application pending if any, also stands disposed of.

April 16, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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