

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(203)

RSA-1583-1999 (O&M)
Date of Decision : 18.04.2024

The Punjab State and others

...Appellants

Versus

Sh. Kirpal Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

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

Mr. Sachin Kalia, Advocate for
Mr. R.S. Bajaj, Advocate for the respondent.

Harsimran Singh Sethi J. (Oral)

1. In the present appeal, the challenge is to the judgments and decrees of the courts below dated 06.09.1996 and 27.10.1998 by which the claim of the respondent-plaintiff for promotion to the post of Head Constable with effect from the date defendants No. 5 to 7 were promoted, has been allowed.
2. Certain facts needs to be mentioned for the correct appreciation of the issue in hand.
3. The respondent-plaintiff was serving as a Constable with the appellants-Punjab Police since 07.08.1974. While working as such, a charge-sheet was served upon the respondent-plaintiff alleging certain

allegations and after concluding the departmental proceeding, a major punishment was imposed forfeiting eight years of service of the respondent-plaintiff. The said punishment order was passed in the year 1985. The respondent-plaintiff raised a challenge to the said punishment order in the civil suit and ultimately, in the regular second appeal, the punishment of forfeiture of eight years of service was converted into punishment of stoppage of one increment with cumulative effect vide judgment and decree dated 20.08.1991 by this Court.

4. In the meanwhile, the private defendants No. 5 to 7 were further promoted to the post of Head Constable on 15.12.1989 ignoring the claim of promotion of the respondent-plaintiff. After the punishment of forfeiture of eight years of service was converted into the punishment of stoppage of one increment with cumulative effect in the year 1991, the respondent-plaintiff was also promoted to the post of Head Constable on 01.07.1992 but the respondent-plaintiff claimed the benefit of promotion with effect from the date his juniors i.e. defendants No. 5 to 7 were promoted with all consequential benefits. The respondent-plaintiff filed a civil suit claiming the said benefit of promotion, which was allowed by the trial court vide judgment and decree dated 06.09.1996 keeping in view the evidence on record that once, only punishment of stoppage of one increment with cumulative effect has been imposed, the same amounts to imposition of minor punishment, hence, the promotion of the

respondent-plaintiff cannot be stopped on the basis of the minor punishment.

5. The said judgment and decree of the trial court dated 06.09.1996 was appealed by the State and the said appeal was also dismissed by the lower appellate court on 27.10.1996, hence the present regular second appeal.

6. Learned counsel for the appellants-defendants argues that the benefit of promotion with effect from the date defendants No. 5 to 7 have been promoted, has been allowed by the courts below in favour of the respondent-plaintiff on the ground that punishment of stoppage of one increment with cumulative effect is a minor punishment and hence, cannot affect the seniority of the respondent-plaintiff, whereas keeping in view the judgment of the Hon'ble Supreme Court of India passed in Civil Appeal No. 2960 of 1987 titled as ***Kulwant Singh Gill Vs. The State of Punjab***, decided on 13.09.1990, stoppage of increment with cumulative effect is a major punishment, hence, once the punishment of forfeiture of eight years of service was converted to stoppage of one increment with cumulative effect, the same remains as a major punishment so as to debar respondent-plaintiff the benefit of promotion to the next higher cadre with effect from the date private defendants were promoted, which fact/law has been totally ignored by the courts below.

7. Learned counsel for the appellants-defendants further submits that as per the judgment of the Division Bench of this Court in

CWP No. 18857 of 1997 titled as *Amar Singh Vs. State of Haryana*, decided on 19.12.1997, imposition of any major punishment result in automatic removal of a person's name from the promotion list and hence, the grant of relief by the courts below of promotion with effect from the date defendants No. 5 to 7 were promoted, is contrary to the settled principle of law in *Amar Singh (supra)*.

8. Learned counsel for the respondent-plaintiff submits that once, the punishment imposed upon the respondent-plaintiff has been reduced from forfeiture of eight years of service to stoppage of one increment with cumulative effect, there was no impediment in the promotion of the respondent-plaintiff with effect from the date defendants No. 5 to 7 were promoted, hence, the judgments and decrees of the courts below are perfectly valid and are liable to be upheld.

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

10. From the facts stated herein above, it is clear that on the date when the promotions of defendants No. 5 to 7 were effected, the respondent-plaintiff was initially serving the punishment of forfeiture of eight years of service though, in the year 1991, the said punishment was modified by this Court to that of stoppage of one increment with cumulative effect.

11. As per the judgment of the Hon'ble Supreme Court of India in *Kulwant Singh Gill's case (supra)*, stoppage of increment with

cumulative effect amounts to a major punishment. Further, the Division Bench of this Court in CWP No. 11338 of 2001 titled as ***Vinod Kumar Vs. Punjab Backward Classes Land Development and Finance Corporation & Others***, decided on 13.01.2003 has also held that punishment of stoppage of one increment with cumulative effect is a major punishment and hence, should have only been imposed after holding the due enquiry and not by issuing of a show cause notice. The judgment of ***Kulwant Singh Gill (supra)***, was relied upon while passing the said order, hence, as per the judgment in ***Vinod Kumar (supra)***, stoppage of one increment with cumulative effect is a major punishment.

12. Once, a major punishment was imposed upon the respondent-plaintiff and was operative at the time when defendants No. 5 to 7 were promoted in the year 1989, the respondent-plaintiff cannot claim that there was no impediment in promotion of the respondent-plaintiff from the date when defendants No. 5 to 7 were promoted. Once, a major punishment was suffered by the respondent-plaintiff at the time when defendants No. 5 to 7 were promoted, the judgments and decrees of the courts below, which have been passed granting the benefit of promotion to the respondent-plaintiff is contrary to the settled principle of law noticed here-in-before.

13. Keeping in view the fact that the respondent-plaintiff suffered a major punishment, which has been described as a minor punishment by the courts below so as to grant the relief, the judgments

and decrees of the courts below are perverse and cannot be sustained, especially in view of the settled principle of law noticed here-in-before. Hence, the present regular second appeal is allowed. The judgments and decrees of the courts below are set-aside and the suit filed by the respondent-plaintiff is dismissed.

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

April 18th, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

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