

RSA-4494 of 2000

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

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Reserved on: 23.01.2024

Pronounced on: 07.02.2024

The State of Punjab and others

.....Appellants

Versus

Inderjit Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: Mr. Arun Gupta, AAG, Punjab.

Mr. Harkirat Singh Sandhu, Advocate,
for the respondent.

NAMIT KUMAR, J.

1. Instant Regular Second Appeal has been filed by the State of Punjab against the judgment and decree dated 12.02.1998 passed by the Court of learned Civil Judge (Junior Division), Gurdaspur, whereby suit filed by the respondent-plaintiff for declaration was decreed as well as against the judgment and decree dated 17.05.2000 passed by the Court of learned District Judge, Gurdaspur, whereby appeal filed by the State against the judgment and decree dated 12.02.1998, has been dismissed.

2. In nutshell, the facts of the case emanating from the record are that plaintiff-Inderjit Singh filed a suit for declaration to the effect that impugned order dated 18.02.1993 passed by defendant No.3-Senior Superintendent of Police, Amritsar, by virtue of which plaintiff was

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dismissed from service, is illegal, unlawful, unjustified and against the principles of natural justice. It was pleaded that the plaintiff was appointed as Constable on 05.08.1986 on permanent basis and he performed the duties efficiently, honestly and to the satisfaction of his superiors. He was posted on guard duty at PWD Rest House, Amritsar, but he was suddenly fell ill on 08.12.1991. His father came to see him and took with him when he was lying in unconscious condition and his father being illiterate had not made any written representation but he simply informed the other guards on duty and thus he was treated as absent from duty from 08.12.1991 to 02.04.1992. He produced the medical certificate but the same was not considered and thereafter he was dismissed from service vide order dated 18.02.1993. It was further pleaded he filed an appeal against the said order but the same was rejected by defendant no.2 vide order dated 08.08.1995 and thus the plaintiff has also challenged the said order of rejection of appeal. It is also alleged by plaintiff that show-cause proceedings are null and void because the show cause notice was not served to him nor he was given reasonable opportunity to defend his case. No personal hearing was given to him. The said order is violative of the procedure laid down under Rule 16.24 of the Punjab Police Rules. There is no specific finding of his mis-conduct. The punishment awarded is disproportionate to the gravity of mis-conduct and it is violative of Article 14 of the Constitution of India.

3. Defendants contested the suit and alleged that the suit is not maintainable; the Civil Court at Gurdaspur has no territorial jurisdiction to entertain the case; the suit of the plaintiff is pre-mature as revision petition has not been preferred and finally no legal and valid notice under Section 80 CPC has been served. On merits, it was submitted that plaintiff was enrolled as Constable on 08.05.1986 and not on 05.08.1986 as mentioned in the plaint. The defendant is habitual absentee. He has absented from the duty from 08.12.1991 to 04.04.1992. The enquiry was conducted against him and he was proceeded against *ex parte*.

4. In the replication, plaintiff reiterated his assertions and denied the contentions of the defendants contained in the written statement.

5. From the pleadings of the parties, the following issues were framed:-

1. Whether the impugned orders passed by the defendants No.2 and 3 are illegal, null and void? OPP
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD
3. Whether this court has no jurisdiction to try the present suit? OPD
4. Whether the suit of the plaintiff is pre-mature as alleged? OPD
5. Whether the notice served under section 80CPC is legal and valid? OPP
6. Whether the plaintiff is entitled to the relief declaration prayed for? OPP
7. Relief.

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6. Both the parties led their oral as well as documentary evidence.

7. The trial Court, vide judgment and decree dated 12.02.1998 decreed the suit of the plaintiff. Aggrieved against the judgment and decree dated 12.02.1998, appellants-State preferred an appeal before the lower Appellate Court. The lower Appellate Court vide judgment and decree dated 17.05.2000 modified the judgment and decree of the trial Court to the extent that department can pass any fresh order against the alleged mis-conduct except the dismissal from service. However, the period of suspension is to be treated on leave of kind due and for the period for which he remained out of job, respondent-plaintiff is not to be given any backwages on the principle of 'No Work No Pay'.

8. Learned counsel for the appellants contended that the Courts below failed to appreciate that absence from duty of a member of the disciplined force is a gravest act of misconduct and for long absence from service i.e. 03.12.1991 to 04.04.1992 (3 months and 23 days), respondent was rightly dismissed from service. Therefore, the judgments and decrees of the Courts below are liable to be set aside. To support his case, learned State counsel placed reliance upon the judgment of this Court in ***RSA-2732 of 1997 – State of Punjab and others v. Chamkaur Singh – decided on 11.02.2015.***

9. Learned counsel for the respondent supported the judgments and decrees passed by the Courts below by contending that order dated 18.02.1993 dismissing the respondent from service was

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harsh and against the principles of natural justice as the absence of the respondent-plaintiff was not willful rather was due to unavoidable circumstances. He further submitted that the impugned order is violative of Rule 16.24 of the Punjab Police Rules as well as Article 14 of the Constitution of India. He also submitted that punishment awarded to him is disproportionate to the gravity of mis-conduct.

10. I have heard learned counsel for the parties and perused the record.

11. From the arguments raised by learned counsel for the parties, following substantial question of law arises for consideration in this appeal: -

“Whether the order of dismissal passed by the competent authority after following due procedure can be interfered with, when the plaintiff has abstained from duty for more than 3 months having 5 years and 7 months of service?”

12. Both the Courts below have not found any infirmity in the conduct of the enquiry proceedings or the conclusion thereof. The only infirmity pointed out is that the mandate of Rule 16.2 has not been examined. The length of service of the plaintiff-respondent was apparent on record, the date of joining having been mentioned by the plaintiff as 08.05.1986. The order of dismissal was passed on 18.02.1993 though the plaintiff abstained from duty from 08.12.1991 to 04.04.1992. Therefore, the plaintiff had worked for almost 5 years and 7 months before he abstained from duty. With the length of service of about 5½ years, the plaintiff does not get any right of pension. The absence from duty for more than 3 months without any leave or

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information even with 5 years of services shows the lack of discipline, which is the first requirement of a disciplined force. Therefore, the plaintiff is not entitled to pension nor has such length of service, which affects his right of pension. Therefore, the length of service having unblemished record could not be a ground for interfering in the order of dismissal.

13. Hon'ble Supreme Court in ***State of U.P. and others v. Ashok Kumar Singh and another, (1996) 1 Supreme Court Cases 302*** has held as under: -

“8. We are clearly of the opinion that the High Court has exceeded its jurisdiction in modifying the punishment while concurring with the findings of the Tribunal on facts. The High Court failed to bear in mind that the first respondent was a police constable and was serving in a disciplined force demanding strict adherence to the rules and procedures more than any other department. Having noticed the fact that the first respondent has absented himself from duty without leave on several occasions, we are unable to appreciate the High Court's observation that “his absence from duty would not amount to such a grave charge”. Even otherwise on the facts of this case, there was no justification for the High Court to interfere with the punishment holding that “the punishment does not commensurate with the gravity of the charge” especially when the High Court concurred with the findings of the Tribunal on facts. No case for interference with the punishment is made out.”

14. This Court in ***Chamkaur Singh's case (supra)*** has held that act of absence from duty by a member of disciplined force without information shows the lack of discipline.

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15. In view of the above, I find that both the Courts below have erred in law in interfering in the order of punishment only for the reason that the length of service has not been examined or the absence from duty is not a gravest act of misconduct. The plaintiff had worked for less than 6 years and was, thus, not eligible for pension. The act of absence from duty for more than 3 months by a member of a disciplined force is nothing but gravest act of misconduct. The term “misconduct” has to be given a wider meaning and any wrongful act or any act of delinquency would be “misconduct”, and certainly so, if it is subversive of discipline.

16. Consequently, while answering the substantial question of law, the present appeal is allowed. The judgment and decree passed by the Courts below are set aside and the suit filed by the respondent-plaintiff is dismissed.

17. Pending applications, if any, stand disposed of accordingly.

07.02.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No