

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

(208)

RSA-2128-1999 (O&M)

Date of Decision : April 09, 2024

Balwant Singh**.. Appellant****Versus****State of Punjab and another****.. Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Aayush Gupta, Advocate, for the appellant.

Mr. Rohit Ahuja, Deputy Advocate General, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present appeal, the challenge is to the judgment and decree of the lower Appellate Court by which, the judgment and decree of the trial Court vide order dated 30.03.1996 has been set aside and the suit filed by the appellant-plaintiff has been dismissed.

2. Learned counsel for the appellant-plaintiff argues that the respondents had passed an order on 14.03.1993 discharging the appellant-plaintiff from service under Rule 12.21 of the Punjab Police Rules.

3. Learned counsel for the appellant-plaintiff submits that the trial Court keeping in view the evidence, which had come on record, rightly held that as no enquiry was conducted against the appellant-plaintiff in respect of the allegations of absence from duty and no opportunity of hearing was given to the appellant-plaintiff before passing of the order dated 14.03.1993,

the order of discharging under Rule 12.21 of the Punjab Police Rules was bad. Learned counsel for the appellant-plaintiff further submits that the said finding has been set aside by the lower Appellate Court vide order dated 22.02.1999 only on the ground that the appellant-plaintiff had remained absent from service for which, the State was within its jurisdiction to pass an appropriate order against the appellant-plaintiff. Learned counsel for the appellant-plaintiff further submits that once the allegation on the basis of which the appellant-plaintiff has been discharged from service, is absence from duty, which is a misconduct, the respondents were under an obligation to hold the disciplinary proceedings to prove the said allegations alleged against the appellant-plaintiff before discharging the appellant-plaintiff from service.

4. Learned counsel for the respondents submits that keeping in view the work and conduct of the appellant-plaintiff from the date of appointment, the authorities came to the conclusion that the appellant-plaintiff is not likely to become efficient police officer hence, an appropriate order simplicitor has been passed, which is required under Rule 12.21 of the Punjab Police Rules hence, the order passed by the lower Appellate Court dated 22.02.1999 is perfectly valid and legal and liable to be maintained.

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

6. The only argument which has been raised by the learned counsel for the appellant-plaintiff is that once the respondents had started disciplinary proceedings against the appellant-plaintiff, the order simplicitor under Rule 12.21 of the Punjab Police Rules could not have been passed.

7. The said argument cannot be accepted for the reason that once an employer has two fold options, the employer can take action under either

of the said options. Even if, the employer started the disciplinary proceedings against the appellant-plaintiff but thereafter thought they did not want to punish the appellant-plaintiff and an order simplicitor under Rule 12.21 has been passed, no grievance can be raised by the appellant-plaintiff.

8. The Courts are not to be an Appellate Authority over and above the decision of the Government where the Government chooses to exercise a particular option available within its jurisdiction. It is a conceded position that within a period of three years of appointment, the respondents had a right to form an opinion as to whether the appellant will become an efficient police officer or not and pass appropriate order under Rule 12.21 of the Punjab Police Rules.

9. In the present case, the order simplicitor has been passed without punishing the appellant-plaintiff for any act done during the course of his employment or even mentioning any misconduct in the impugned order. That being so, the judgment and decree of the lower Appellate Court needs no interference at the hands of this Court in the present regular second appeal.

10. Even otherwise, in the present regular second appeal, the appellant-plaintiff is not entitled to argue the case again and has to point out the perversity in the judgment of the lower Appellate Court and learned counsel for the appellant-plaintiff has not been able to point out any perversity in the judgment of the lower Appellate Court hence, even otherwise, no ground is made out for any interference by this Court in the present appeal.

11. Dismissed.

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

April 09, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No