

RSA-2772 of 1998 (O&M)

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

RSA-2772 of 1998 (O&M)
Reserved on: 06.03.2024
Pronounced on: 15.03.2024

Rajinder Prashad

.....Appellant

Versus

Haryana State

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Vijay Pal, Advocate,
for the appellant.

Mr. Ravi Dutt Sharma, DAG, Haryana.

NAMIT KUMAR, J.

1. This Regular Second Appeal is directed against the judgment and decree dated 26.05.1998 passed by the Court of learned Additional District Judge, Hisar, whereby appeal filed by the respondent-State against the judgment and decree dated 04.12.1997 passed by the Court of learned Additional Civil Judge, Hisar, has been accepted and suit of the plaintiff-appellant has been dismissed.

2. For convenience sake, reference to parties is being made as per their status in the civil suit. Brief facts of the case are that plaintiff filed a suit against the defendant-State seeking a decree for declaration to the effect that orders dated 01.12.1993, 21.11.1994 and 05.09.1995 passed by Superintendent of Police, Hisar; DIG, Hisar Range, Hisar and Director General of Police, Haryana, respectively are wholly illegal,

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wanton, capricious, mala fide, arbitrary, discriminatory and against the provisions of Article 311 (2) of the Constitution of India and against service conditions by which the plaintiff is governed and against the Punishment and Appeal Rules, against principles of natural justice and the same are not binding on the rights of the plaintiff and are liable to be set aside. It was pleaded by the plaintiff that he is in police department, Haryana since long and serving against a permanent post on regular basis and he has been discharging his duties quite honestly, diligently and to the entire satisfaction of the superiors. The plaintiff was dealt with departmentally under the Punjab Police Rules, 1934 on the allegations that he got his maternal uncle's son-Vinod Kumar recruited in Police force by giving fictitious address of V. Karnoli, District Hisar. After the plaintiff was dealt with departmentally under Punjab Police Rules, a punishment of stoppage of five annual increments with cumulative effect was awarded by the Superintendent of Police, Hisar vide order dated 01.12.1993. Feeling aggrieved from the aforesaid order dated 01.12.1993, the plaintiff preferred an appeal before DIG, Hisar range, which was dismissed vide order dated 21.11.1994, without passing a speaking order as well as without affording an opportunity of personal hearing to the plaintiff. Then a revision petition was preferred which was also dismissed vide order dated 05.09.1995. The aforesaid orders dated 01.12.1993, 21.11.1994 and 05.09.1995 passed by Superintendent of Police, D.I.G. Hisar Range and Director General of Police, Haryana, respectively are alleged as illegal, arbitrary, mala fide, discriminatory and against the provisions of Punishment and Appeal Rules and the same

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are not binding on the grounds that no sanction from the District Magistrate as envisaged under Section 16.38 Punjab Police Rules was taken before initiation of departmental enquiry against the plaintiff. The alleged misconduct amounted to attempt of cheating and other allied offence of criminal conspiracy etc. The Superintendent of Police could not circumvent this mandatory provisions of law. It is also alleged that report of enquiry officer and order of Superintendent of Police were based on mere conjectures and surmises. The plaintiff was held guilty and punished with a view to shield the real delinquents who are seniors. The Enquiry Officer as well as Superintendent of Police have shifted the blame on the plaintiff. The Superintendent of Police has ignored the procedure followed in recruitment of persons in the Police force as Constable. The Superintendent of Police, Hisar has not properly taken into consideration the letters written by DIG Hisar range to Director General of Police, Haryana, Chandigarh. The Enquiry Officer has placed reliance on the report dated 07.02.1992 alleged to have been executed by Vinod Kumar which as per plaintiff was manipulated after obtaining signatures on blank papers by Sh. Manjit Singh D.S.P. after giving him 4 or 5 slaps and also after giving threat to his life. Vinod Kumar was not cited as witness in the list of witnesses from the prosecution side and he was produced as defence witness by the plaintiff. From the statement of Vinod Kumar and other defence witnesses, it was proved beyond doubt that the plaintiff was at Hisar on 11.01.1991 and he was present in the office of D.I.G., Hisar and the plaintiff was thus not at all involved in any manner in the recruitment of Sh. Vinod Kumar. It is further alleged

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that no copy of complaint or report of preliminary enquiry was supplied to the plaintiff. Neither copy of the enquiry report was given to the plaintiff alongwith show-cause notice and thus, reasonable opportunity of hearing was denied to the plaintiff. The Enquiry Officer has also conducted inquiry proceedings against rules. No personal hearing was given to the plaintiff. Notice u/s 80 CPC was also given and thereafter the suit was instituted.

3. Defendant contested the suit on the ground of maintainability, locus standi, estoppel, cause of action and it is pleaded that the impugned orders are valid, correct and according to law and the same are binding upon the plaintiff. It is also submitted that no concurrence from District Magistrate under rule 16.38 of Punjab Police Rules was required because the plaintiff has not committed any criminal offence in connection with his official relation with the public. The punishment awarded to the plaintiff was according to the facts. The plaintiff wanted to take shield under letters dated 11.01.1993, and 29.05.1992. These letters are only opinion and are not based on any inquiry. The plaintiff cannot take the benefit of these letters. Written and signed statement of Vinod Kumar before DSP is containing real version. The allegations of threat and beating and obtaining signatures on the blank papers are denied. The charge-sheet was duly served to the plaintiff and inquiry was correctly conducted and the punishing authority after giving an opportunity of personal hearing to the plaintiff has passed the impugned orders. The appellate authority and revisional authority

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have correctly passed the impugned orders and thus, the suit of the plaintiff as such merits dismissal.

4. Replication controverting averments made in the written statement was filed by the plaintiff.

5. From the pleadings of the parties, following issues were framed by learned trial Court:-

1. Whether the orders dated 1.12.93, 21.11.94 and 5.9.95 passed by Superintendent of Police, Hisar, DIG, Hisar and Director General of Police, Haryana, respectively, are wholly illegal, wanton, capricious, mala fide, arbitrary and discriminatory? OPP
2. Whether the plaintiff has no cause of action to file the present suit? OPD
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the plaintiff has no locus standi to file the present suit? OPD
5. Whether the plaintiff is estopped from filing the present suit due to his own act and conduct? OPD
6. Relief.

6. The parties led their respective evidence. The Court of first instance, after appreciating evidence on record decreed the suit filed by the plaintiff vide judgment and decree dated 04.12.1997.

7. Feeling aggrieved against the said judgment and decree of the trial Court, defendant-State preferred an appeal before the lower appellate Court, which has been allowed vide judgment and decree dated 26.05.1998.

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8. Learned counsel for the appellant contended that the lower appellate Court has wrongly reversed the well-reasoned findings of the trial Court. He further contended that lower appellate Court failed to notice that list of witnesses, list of documents, charge-sheet and inquiry report were not supplied to the appellant, which amounts to denial of reasonable opportunity of defence to the appellant. He further contended that he has been denied the opportunity of filing reply to the show-cause notice. He further contended that the judgment/decreed of the lower appellate Court is based on surmises and conjectures, therefore, same is liable to be reversed.

9. *Per contra*, learned State counsel supported the judgment and decree of the lower appellate Court and contended that the same is perfectly valid and, therefore, present appeal is liable to be dismissed.

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

11. Perusal of the record shows that plaintiff was served with charge-sheet (ExD2) and statement of allegations (ExD3). Enquiry Officer submitted his report, which was placed on record as Ex.D4 and thereafter show-cause notice was issued to the plaintiff-appellant, to which he submitted his reply (Ex.D6). It is also crystal clear from the record that opportunity of personal hearing was given to the appellant. Raghuraj Singh CRC, who appeared as DW1, categorically stated that copy of report of Sh. Manjit Singh, D.S.P. 4th Battalion was given to the appellant and appellant was also given the opportunity of personal hearing. Perusal of record further shows that list of witnesses and

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documents along with charge-sheet were also supplied to the appellant. The appellate Court has rightly observed that on the one hand appellant alleged that Vinod Kumar was not cited as witness, but on the other hand, it had been argued that list of witnesses was not supplied, thus, both the statements are self-contradictory. It is not discernible from the record whether the charge-sheet was issued on the basis of any complaint. As and when the respondent came to know about the cheating, they immediately brought to the notice of the authorities and thereupon fact finding enquiry was conducted and charge-sheet was issued. Raghuraj Singh DW-1 has categorically stated in his cross-examination that there is no complaint on the record of the file on the basis of which charge-sheet was issued and, therefore, copy of complaint was not supplied to the appellant. Proper procedure was followed by the department to hold the appellant guilty. There are serious allegations against the appellant that he in conspiracy with his relative, namely, Vinod Kumar made another person to appear for examination for selection of said Vinod Kumar.

12. Learned counsel for the appellant has failed to show that the findings recorded by lower appellate Court are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record.

13. No question of law, muchless substantial question of law has been raised or arises for consideration in the present appeal. No other point has been urged.

14. Dismissed.

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15. Pending application(s), if any, stand disposed of accordingly.

15.03.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether Reportable

:

Yes/No