

RSA-3345 of 1999 (O&M)

2024:PHHC:078245



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

RSA-3345 of 1999 (O&M)

Reserved on: 14.05.2024

Pronounced on: 30.05.2024

Dr. Dharampal Sharma

.....Appellant

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Prateek Mahajan, Advocate, and
Mr. Daanish Mahajan, Advocate,
for the appellant.

Mr. Surya Kumar, AAG, Punjab.

NAMIT KUMAR, J.

1. This Regular Second Appeal is directed against the judgment and decree dated 12.10.1990, passed by the Court of learned Sub Judge Ist Class, Amritsar, whereby suit for declaration filed by the appellant-plaintiff was dismissed as well as against the judgment and decree dated 24.04.1999, passed by the Court of learned Additional District Judge, Amritsar, whereby appeal preferred by the appellant also met the same fate.

2. Parties to the *lis* are being referred to as per their status before the trial Court. Plaintiff filed a suit for declaration pleading therein that he was working as Veterinary Assistant Surgeon in the Animal Husbandry Department, Punjab. On 22.07.1977, he was apprehended under the Prevention of Corruption Act. He was convicted and sentenced to undergo rigorous imprisonment for one year

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and to pay a fine of Rs.500/- under Section 5(1)(a) read with Section 5(2) of the Prevention of Corruption Act, 1988 by the Additional District and Sessions Judge, Amritsar, vide judgment/order dated 21.04.1981. In appeal, plaintiff was acquitted of the charges by this Court vide order dated 09.02.1983. It was further pleaded that after acquittal, plaintiff was entitled to be reinstated in service, however, no such order was passed by the department in spite of repeated requests by the plaintiff. It was further pleaded that when father of the plaintiff approached the department, he received notification dated 02.03.1984 on 24.04.1987 vide which he was dismissed from service. Plaintiff claimed that the said order was illegal, null and void as no charge-sheet or show-cause notice was issued to him and no departmental enquiry was conducted and the order was passed in utter violation of the terms of the service of the plaintiff.

3. Upon notice, defendant filed written statement taking preliminary objections that the suit of the plaintiff was time-barred and was not maintainable; no cause of action accrued to the plaintiff and no valid legal notice under Section 80 CPC was issued. It was stated that father of the plaintiff had no *locus standi* to file the suit. It was further stated that plaintiff never made any representation to the Secretary, Animal Husbandry and Fisheries Department for restoration in service. Suit of the plaintiff was bad for mis-joinder and non-joinder of the parties. It was further stated that after the plaintiff was convicted and sentenced, defendant took disciplinary action against the plaintiff who was dismissed from service in accordance with Punjab Civil Services

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(Punishment and Appeal) Rules, 1970 (hereinafter referred to as the “1970 Rules”). Plaintiff never approached the defendant after he was acquitted by the High Court vide judgment dated 09.02.1983.

4. Plaintiff filed replication reiterating the averments in the plaint and controverting those in the written statement.

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

- “1. Whether the order dated 02.03.1984 passed by the Secretary of the defendant is illegal, ultravires, unconstitutional and capricious? OPP
2. Whether the plaintiff is entitled to declaration prayed for? OPP
3. Whether the suit is within time? OPP
4. Whether the suit is not maintainable and justiciable? OPD
5. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD.
6. Whether the father of the plaintiff has no locus standi to file the suit? OPP
7. Whether notice u/s 80 CPC is legal and valid? OPP
8. Relief.”

6. The trial Court after hearing learned counsel for the parties and appreciating the evidence on record, dismissed the suit of the plaintiff vide judgment and decree dated 12.10.1990 on merits as well as on the ground of limitation. Aggrieved against the judgment and decree of the trial Court, plaintiff filed an appeal. The learned lower appellate Court accepted the claim of the plaintiff on merits by holding that the dismissal after acquittal was wrong, however, dismissed the

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appeal by holding that the same was barred by limitation, vide judgment and decree dated 24.04.1999. Hence, this Regular Second Appeal by the plaintiff.

7. Learned counsel for the appellant contended that both the Courts below have wrongly dismissed the suit of the appellant-plaintiff. He further contended that both the Courts below failed to appreciate that order of dismissal was never conveyed or served upon the appellant. He further contended that despite acquittal in criminal case, appellant was dismissed from service. He further contended that suit of the plaintiff has wrongly been dismissed being time-barred, whereas it was well-within limitation.

8. *Per contra*, learned counsel for the respondent contended that suit of the appellant was rightly dismissed and judgments and decrees of both the Courts below are perfectly legal and valid. He contended that it cannot be believed that order of dismissal was not communicated to the appellant or that he was not aware of the said order. He contended that judgments and decrees of the Courts below do not call for any interference and present appeal is liable to be dismissed.

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

10. The present appeal was admitted on 20.09.2000. Perusal of the record shows that order of dismissal of the appellant-plaintiff dated 02.03.1984 was never conveyed to him. Defendant-respondent has not produced any document showing that order of dismissal was

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ever conveyed to the plaintiff. The dismissal order contains only the name of the plaintiff in the endorsement without any address. The dismissal of the appellant from service after his acquittal is illegal. Both the Courts below have wrongly dismissed the suit of the plaintiff ignoring the provisions of Rule 22 of the 1970 Rules that requires that every order shall be served in person or communicated by registered post. Rule 22 of the 1970 Rules reads as under: -

***“22. Service of orders, notices etc.** – Every order, notice and other process made or issued under these rules shall be served in person on the Government employee concerned or communicated to him by registered post. Provided that if there is reason to believe that the Government employee is keeping out of the way for the purpose of avoiding service, or that for any other reason, the order, notice and other process cannot be served upon him in the manner aforesaid, the same shall be got published in any of the leading newspapers of the region giving last known address of the employee concerned and thereupon the same shall be deemed to have been served upon him.”*

11. It is, therefore, apparent that an order of punishment has to be communicated in accordance with the mandate of Rule 22 of the 1970 Rules, which was never communicated to the appellant. The said rule has been interpreted by this Court in ***Makhan Singh v. The State of Punjab and others, 2009(3) S.C.T. 123***, wherein it has been held as under: -

“10. The learned trial Court held that the suit was within time as the impugned orders of punishment were never conveyed to the appellant. The first appellate court

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affirmed this finding and held that though the respondents had failed to produce any evidence to establish that the orders of punishment were conveyed to the appellant, a presumption would have to be drawn that the impugned orders were duly communicated as there is a note beneath each of the impugned orders endorsing a copy to the appellant. A relevant extract from the first appellate court's judgment reads as follows :- "It is true that the defendant-appellants has not produced the despatch entries to show the despatch of these orders to the delinquent official, but is equally true that there is a note on each of the impugned orders that the copy thereof was endorsed to the concerned official/Traffic Assistant/ECC/D.1/File and there is a presumption regarding the due performance of official Acts. Why should not it be presumed that the impugned orders were despatched to the delinquent official when there is note on them that the impugned orders were conveyed to them. I, therefore, have every reason to presume that the impugned orders were duly communicated to the delinquent official." As is apparent from the above extract, the first appellate court relied upon a presumption to nonsuit the appellant. While doing so the first appellate court disregarded Rule 22 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970.....

$$x \qquad x \qquad x \qquad x \qquad x$$

It is, therefore, apparent that an order of punishment has to be communicated in accordance with the mandate of Rule 22. A presumption that the orders were conveyed could have arisen, if the respondents had produced the despatch register or the registered AD receipts to establish that the orders of punishment were despatched to the appellant. The respondents, as held by the trial Court

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and the first appellate court failed to produce any evidence, in support of their plea that the orders stopping annual increment with cumulative effect were ever conveyed. The first appellate court, therefore, committed an error by disregarding the provisions of Rule 22 and proceeding to raise a presumption that the orders of punishment were communicated to the appellant. The questions of law framed by counsel for the appellant are ,therefore, answered by holding that the first appellate court committed an error in raising a presumption that the orders of punishment were communicated to the appellant and as a result that the suit was barred by time.”

Thus, the Courts below have committed an error in dismissing the suit of the plaintiff that the same was barred by time. The respondent has failed to produce any cogent evidence in support of its plea that the order of dismissal was ever conveyed to the appellant.

12. Once the plaintiff was acquitted vide judgment/order of this Court dated 09.02.1983, his dismissal vide order dated 02.03.1984 is totally illegal as there was no basis to dismiss him from service vide aforesaid order dated 02.03.1984.

13. In view of the above, present appeal is allowed. Judgments and decrees of the Courts below are set aside and suit of the plaintiff is decreed. Decree-sheet be prepared accordingly.

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

(NAMIT KUMAR)
JUDGE

30.05.2024
R.S.

Whether speaking/reasoned : Yes/No

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Whether Reportable : Yes/No