



RSA-392-2022(O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-392-2022(O&M)
Date of decision:-29.07.2024

State of Haryana and another

...Appellants

Versus

Baljeet Singh

...Respondent

CORAM : HON’BLE MR. JUSTICE SUVIR SEHGAL

Present : Mr.Sharad Aggarwal, DAG, Haryana
for the appellants.

Mr.Sandeep Goel, Advocate
for the respondent.

SUVIR SEHGAL, J.(ORAL)

1. Defendant – appellants are in second appeal before this Court challenging the judgment and decree passed by the first appellate Court.

2. Pleaded case of the plaintiff – respondent is that he was working as a Constable with the police department when disciplinary proceedings were initiated against him for imposition of a major penalty. He was served with a charge-sheet on the allegation of acts of



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omission and commission. He submitted a reply but it was found unsatisfactory. An inquiry officer was appointed, who submitted his report on 02.12.2015. A show cause notice was issued to him to which he submitted his explanation and punishment of stoppage of three annual increments with cumulative effect was imposed upon him vide order dated 05.02.2016, which was challenged by filing a suit for declaration.

3. Upon being served, defendants contested the suit by filing a written statement taking various objections. On merits, it was submitted that the plaintiff was posted at Kaimari Road, Hisar and upon checking he was found to be under the influence of liquor. He was medically examined and as he had displayed gravest act of indiscipline, a regular departmental inquiry was conducted. Plaintiff was served with a charge sheet on 07.11.2015 and on receipt of inquiry report, he was served with a show cause notice dated 03.12.2015 to which he submitted a reply and after considering it and hearing the plaintiff, in person, the punishment was imposed. Appeal preferred by the plaintiff was dismissed by the Appellate Authority on 09.06.2016 and the plaintiff remained unsuccessful in revision, which was rejected on 05.09.2016. A stand was taken that the proceedings were conducted against him under Rule 16.24 of Punjab Police Rules, Volume-II. Plaintiff filed a replication to the written statement controverting the stand taken by the defendants. Issues were framed on the basis of the pleadings of the parties, who led evidence in support of their respective version. After the counsel for the parties were heard, Trial Court by judgment and decree dated



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08.09.2017 dismissed the suit. Plaintiff filed an appeal before the First Appellate Court, which was accepted by the learned Additional District Judge, Hisar vide judgment dated 05.02.2020, which is under challenge herein.

4. I have heard the counsel for the parties and considered their respective submissions besides examining the available record with their able assistance.

5. Inquiry report dated 02.12.2015 was submitted whereby it was held that the plaintiff was intoxicated while on duty. Inquiry officer proceeded on the basis of the report Ex.D6 of the Medical Officer Dr. Mahender Singh, who stated that plaintiff was reeking of liquor. The doctor claims to have detected breath odor, which in the absence of any other assessment, is not a reliable indicator of intoxication. No test was conducted to ascertain the allegation. Merely on the basis of the medical officer's report, the inquiry officer could not proceed to hold the plaintiff guilty of the charges levelled against him in the departmental inquiry. In **Bachubhai Hassanalli Karyani Versus State of Maharashtra (1971) 3 SCC 930**, Supreme Court has held that it cannot be established that a person has consumed alcohol until urine or blood test is carried out. Mere smelling of alcohol unsteady gait dilation of pupils and incoherence in speech are not enough to come to any such conclusion. This judgment has been followed in **Varghese Versus State of Kerala 1990 (2) RCR (Criminal) 608**.

6. In the present case, the inquiry officer has arrived at a conclusion against the plaintiff merely because he failed to lead any



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evidence in defence. Even though the plaintiff never sought to cross-examine the witnesses produced by the department, that cannot be taken to be an inference adverse to him. It was for the department to establish the allegations before the inquiry officer, which they have failed to do. Mere olfactory sense of the medical professional to the effect that the delinquent was under the influence of liquor without any conclusive test cannot lead to the conclusion that he was intoxicated. This Court, therefore has no hesitation in coming to the conclusion that the finding returned by the inquiry officer were based on no evidence. There is no illegality or perversity in the finding recorded by the First Appellate Court, which is hereby affirmed.

7. Appeal being devoid of merit is dismissed with no order as to costs.

8. Pending application, if any, is disposed of.

(SUVIR SEHGAL)
JUDGE

29.07.2024

Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No