



RSA-4334-2004 (O&M)

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

**RSA-4334-2004 (O&M)
Date of Decision: 21.10.2024**

State of Punjab and others

.....Appellants

Vs.

Harkirat Kaur

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. S.S.Hira, Deputy Advocate General, Punjab,
for the appellant.

Mr. Jaspal Singh Maanipur, Advocate,
for the respondent.

SUDEEPTI SHARMA J.

1. The present appeal has been preferred by the State of Punjab against the judgment and decree dated 01.06.2004 passed by learned Additional District Judge, Patiala (hereinafter referred to as 'First Appellate Court'), whereby the judgment and decree dated 24.12.2002 passed by learned Additional Civil Judge (Senior Division), Patiala (hereinafter referred to as 'trial Court'), were set aside.

2. The facts in brief are that respondent/plaintiff, being the widow of deceased Manjit Singh, had filed a suit for declaration alleging that on 08.10.1986, her husband i.e. Manjit Singh was appointed as a Constable in the Police Department, Punjab by the then Senior Superintendent of Police, Patiala, but lateron, he was dismissed from service by respondent No.3, vide order No.44717-21/B dated 18.12.1996, on account of his absence from duty. After the death of her

father-in-law, there was no other male member to look-after her family. Her

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deceased husband, while posted in Police Lines, Patiala, received a telephonic call from his home that his wife i.e. the respondent/plaintiff had been got admitted in a private hospital at Morinda, due to an electric shock. Under the circumstances, he hurriedly left for his home and could not seek permission from his seniors. Thereafter, due to critical condition of the respondent/plaintiff, her deceased husband became nervous and lost his mental balance and during the period of her treatment, he went into depression and could not report on duty. Her deceased husband was taking treatment from Dr. Piara Singh of Morinda in this regard. Further alleged that Inspector Arjan Singh, S.H.O, Police Station Kotwali, Patiala, was appointed as Enquiry Office in the matter, who had submitted his enquiry report to Rohit Chaudhary, the then Senior Superintendent of Police, Patiala. On the basis of enquiry report, the said SSP, Patiala, issued show cause notice to her deceased husband with regard to dismissal from service, to which, he had submitted his reply on 13.05.1996. Due to transfer of the said SSP, Patiala, final order dated 18.12.1996 with regard to dismissal of her deceased husband was passed by Sh. Paramjit Singh Gill, the then SSP, Patiala. Aggrieved against the said order dated 18.12.1996, respondent/plaintiff filed an appeal before the Deputy Inspector General, Patiala Range, Patiala, but the same was rejected vide order dated 08.12.1999, which was communicated to her vide letter No.46471-75/B dated 18.12.1999. Further alleged that husband of the respondent/plaintiff had expired on 27.01.1997 leaving behind his wife (respondent herein), two daughters and one son and all of them were dependent upon him. Further alleged that while passing the order of dismissal, service of the deceased Manjit Singh was not taken into consideration, therefore, the said order is illegal being in contravention to Rule 16.2(1) of the Punjab Police Rules. Further alleged that without rejection of leave,

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deceased Manjit Singh cannot be declared absent from duty. Therefore, the order of dismissal from service and the order regarding rejection of appeal are discriminatory and are hit by Articles 14, 16 and 31 of the Constitution of India. Further submitted that a notice under Section 80 CPC was served upon the appellants/defendants, but that failed to yield any result.

3. Upon summoning, the appellants/defendants appeared and contested the suit and filed their written statement, in which apart from taking preliminary objections of limitation, cause of action and maintainability of suit, it is admitted that deceased husband of the appellant was employed as a Constable in the Police Department; Inspector Arjan Singh was appointed as an Enquiry Officer, who after inquired into the allegations of absence from duty, submitted his enquiry report; that Sh. Rohit Chaudhary, the then SSP, Patiala, issued Show Cause Notice regarding dismissal to husband of the respondent/plaintiff, but on finding unsatisfactory reply dated 13.05.1996 filed on behalf of husband of the respondent/plaintiff, order of dismissal from service was passed by Sh. Paramjit Singh Gill, SSP, Patiala, who was the successor of the then SSP, Patiala, on 18.12.1996 and even the appeal filed against the said order dated 18.12.1996 before the Deputy Inspector General, Patiala Range, Patiala, was rejected, vide order dated 08.12.1999, but other facts were specifically controverted and denied. In the written statement, it was also submitted that husband of the respondent/plaintiff got absented himself willfully from duty from 06.11.1993 to 07.05.1995 without taking any leave/permission from any competent authority, which was recorded in the Roznamcha of Police Lines, Patiala vide DDR No.31 dated 06.11.1993. Thereafter, on remaining absent from duty for a period of 546 days 19 hours and 10 minutes, a departmental inquiry was initiated against him,

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which was entrusted to Inspector Arjan Singh. The said Enquiry Officer conducted the departmental enquiry as per rules and submitted his enquiry report and held him guilty of the charge of willful absence from duty. The then SSP, Patiala, after satisfying with the findings of Enquiry Officer as well as after going through the relevant record, issued a Show Cause Notice to the deceased husband of the respondent/plaintiff, to which he submitted his reply on 13.05.1996. The punishing authority after considering his reply to the Show Cause Notice, granted him ample opportunities of personal hearing, but despite these opportunity, he did not come forward personally. Thereafter, taking all the relevant record/service record into consideration, he was dismissed from service, vide order dated 18.12.1996 for his gravest act of misconduct of willful absence from duty for such a long period. It is also submitted that as per office record, deceased Manjit Singh had one brother namely Harinder Singh, therefore, the plea taken by him that no male person was there in the family cannot be accepted. Further submitted that deceased Manjit Singh had not informed the department by any means about his problem during the aforesaid period of absence from duty, which was a gravest act of misconduct on his part being a member of disciplinary force. It is further submitted that neither deceased Manjit Singh ever produced any medical certificate about his or his wife's illness during enquiry, nor submitted any medical certificate with his reply dated 13.05.1996 and so far as the report of Dr. Piara Singh dated 22.06.1996 was concerned, the same was a general prescription and could not be considered as a medical certificate. Further submitted that although wife and children of deceased Manjit Singh were his legal heirs, but they were not entitled to get any consequential benefits because as per rules, no family member is entitled to get any

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benefit on account of dismissal from service. Rest of the averments contained in the plaint were controverted and prayed for dismissal of the suit.

4. In the replication, contents taken in the written statement filed by appellants/respondents were denied and the facts taken in the plaint were reiterated.

5. After hearing both the parties and perusal of the whole record, learned trial Court had dismissed the suit filed by the respondent/plaintiff, vide its judgment and decree dated 24.12.2002.

6. Aggrieved against the judgment and decree dated 24.12.2002 passed by learned trial Court, respondent/plaintiff filed an appeal, which was allowed by the learned First Appellate Court vide its judgment and decree dated 01.06.2004 and the judgment and decree dated 24.12.2002 passed by the learned trial Court was set aside .

7. Learned counsel for the appellants contends that judgment and decree dated 01.06.2004 passed by the learned First Appellate Court reversing a well reasoned judgment and decree dated 24.12.2002 passed by learned trial Court is against the law and facts, therefore, the same is liable to be set aside.

8. *Per contra*, learned counsel for the respondent submits that the judgment and decree dated 01.06.2004 passed by learned First Appellate Court is well reasoned, therefore, the present appeal be dismissed.

9. I have heard the learned counsel for the parties and perused the whole record of the case in hand.

10. Learned First Appellate Court vide its judgment and decree dated 01.06.2004 held that charge-sheet was not personally served upon the deceased/delinquent official (husband of the respondent), therefore, the entire enquiry proceedings stand vitiated and held to be illegal and nullity. By holding

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the same, judgment and decree dated 24.12.2002 passed by the learned trial Court was set aside. This reasoning given by the learned First Appellate Court is not acceptable to this Court.

11. Relevant portion of the findings recorded by the learned trial Court in its judgment dated 24.12.2002 is reproduced as under:-

“7. After considering the various arguments and evidence on record and taking assistance from various authorities as relied upon by ld. counsel for the plaintiff and learned Government Pleader for the defendants. I am of the considered view that factual position is not disputed. It is an admitted fact that constable Manjit Singh, now deceased, husband of the plaintiff was appointed as constable by SSP, Patiala in 1986. It is also an admitted fact that he was dismissed from service vide order dated 18.12.96 for absence from duty for a long period. It is also an admitted fact that enquiry was marked by S.S.P. Patiala and Sh.Arjan Singh, Inspector of Police was appointed as Enquiry Officer, who conducted his enquiry and submitted his findings to the punishing authority. It is also an admitted fact that the punishing authority issued show cause notice, which was received by constable Manjit Singh, who submitted his reply and punishing authority, after considering same and after giving opportunities to constable Manjit Singh for appearance, passed the order of dismissal. It is also an admitted fact that appeal was preferred by the plaintiff being legal heir of deceased Manjit Singh and same was rejected by DIG, Patiala Range, Patiala, vide order dated 8.12.99, with regard to the documentary evidence on record. Ex.P1 to Ex.P2, Ex.P2/A are postal receipts for sending notices under section 80 CPC, which is Ex-P3, Ex.P2/B is Index of enquiry file along with show cause notice etc. These documents have been produced on record by the plaintiff herself for notice Ex.PW3/A, show cause notice is Ex.P4 containing receipt by Manjit Singh, Show cause



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notice is again exhibited as Ex.P5. Notices are Ex.P6 and Ex. P7. Reply to show cause notice is Ex.P8. Verification is Ex.P9. Statement of Piara Singh recorded by ASI Harwinder Singh is Ex.P10 and notice to show cause notice is again exhibited is Ex. P11. Other notice are Ex.P12 to Ex.P28. Report for services are Ex.P22, Ex. P26 and Ex.P29 and reply by Manjit Singh in the enquiry proceedings is Ex.P30. Order of dismissal is Ex.P31. Order of rejecting the appeal passed by DIG of Police, Patiala Range, Patiala is Ex.P32. Notice for conveying the order of DIG, Patiala Range, Patiala to the plaintiff is Ex.P33 and order for appointment of Manjit Singh as constable is Ex. P34.

Ex.D1 is order for staying the pay of Manjit Singh Ex.D2 is report by MHC Police Lines, Patiala Ex.3 is DDR for marking absence of Manjit Singh, Ex.D4 is DDR dated 7.5.95 for marking the presence of Manjit Singh, after a long period of absence. Ex.5 is order for initiating the enquiry. Ex.D6 is notice sent by Enquiry Officer to Manjit Singh, which was received by him under his signature. Ex.D7 is another such notice received by Manjit Singh. Ex.D8 is again as notice received by Manjit Singh under his signatures. Ex.D9 is report submitted by enquiry officer for passing order for exparte proceedings and order of S.S.P is on the same Ex.D9 for exparte proceedings against Manjit Singh. Ex.D10 is summery of allegations and Ex.D11 is charge sheet. Ex.12 is proceedings in the enquiry. Ex.13 is order by S.S.P. Patiala. The documents produced by both sides are not disputed The oral evidence is regarding admitted facts. The pleadings of plaintiff have been falsified by plaintiff herself when in the cross examination she has admitted that she suffered an electric shock in the year 1996. In the pleading, she has taken the ground that she suffered electric shock the year 1996, when her husband constable Manjit singh got absented. Again she has stated in her cross-examination that she was got admitted in the hospital by her husband. In the



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pleadings, she has taken the ground that some other person has got her admitted in the hospital after she received the electric shock and her husband reached there in the hospital. Her testimony is further shaken when she answered the question that she does not know whether any enquiry was conducted against her husband and in the next sentence she has named the enquiry officer as Arjan Singh showing that she is concealing the material facts deliberately. She has admitted that the order of dismissal was conveyed to her husband. The case of plaintiff is that her husband was dismissed on 18.12.96 and her husband had died in the year 1997, meaning thereby, that order of dismissal has been conveyed to her husband within his life span. From the very fact of the case in hand, it is established that husband of the plaintiff remained absent from duty for 546 days 19 hours and 10 minutes without getting any permission or sanction of leave. The ground taken; in the plaint by the plaintiff is that he got absented due to fact that the plaintiff was admitted in private hospital due to electric shock, is also falsified by plaintiff herself when she answered in the cross examination that she got admitted in hospital by her husband in 1996. The absence of constable Manjit Singh had started in the year 1993. No medical certificate has been proved by the plaintiff on record showing that she was ever remained admitted in hospital in 1993 or Ex. Constable Manjit Singh ever remained under depression in the year 1993 to 1995 showing that the absence of constable Manjit Singh was without any reason or cause and his absence was intentional. There is no illegality in conducting of enquiry proceedings. The notices have been served upon the husband of the plaintiff time and again by Enquiry Officer and punishing Authority but said Manjit Singh did not join enquiry proceedings despite this fact that he was on duty at the time of such enquiry proceedings and he has noted down and received the notices under his signatures. In such circumstances, ex parte proceedings in the



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enquiry proceedings was rightly passed by the punishing authority and enquiry was rightly conducted by Enquiry Officer. There is no hitch in the law or rules that an Inspector of Police can not be appointed as Enquiry Officer for conducting enquiry against constable. On the basis of enquiry report, show cause notice was issued to Manjit Singh by the then, S.S.P.Patiala, which was received by him under his signatures. Said Ex.Constable Manjit Singh also replied to the show cause notice and thereafter notices for appearance before Punishing Authority were issued and were received by Ex.Constable Manjit Singh but he did not turn up for personal hearing and as such order of dismissal is passed.”

12. A perusal of the record shows that the husband of the respondent was appointed as a Constable in the Police Department on 08.10.1986. He remained absent from duty for a long period of 546 days 19 hours and 10 minutes. In the reply to show cause notice issued to him, he stated that the long absence was due to the reason that his wife suffered an electric shock and she was admitted in the hospital. A perusal of the record also shows that no leave application was ever filed by him, no medical certificate regarding his condition and that the respondent remained admitted in the hospital due to an electric shock was placed on record. There is no medical certificate on record to show that husband of the respondent was under depression in the year 1993 to 1995. A perusal of the record further shows that on the basis of inquiry report, show cause notice was issued to husband of the respondent by the then SSP, Patiala, which was received by him under his signatures; husband of the respondent also replied to the show cause notice and thereafter, notices for appearance before the Punishing Authority were issued and were received by him, but he did not turn up for personal hearing. Therefore, he was dismissed from service on 18.12.1996 for absence from duty for a long period.

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Order of dismissal dated 18.12.1996 was conveyed to the husband of the respondent, but he never challenged the said order during his life span. Husband of the respondent died in the year 1997. Appeal preferred by the respondent being legal heir was rejected vide order dated 08.12.1999 by the DIG, Patiala Range, Patiala.

13. Since, the husband of the respondent was in the Police Department, which is a disciplinary force, therefore, the conduct of the husband of the respondent in absenting himself from duty for a period of 546 days, 19 hours and 10 minutes without getting any permission and sanctioning of leave is against the law and therefore, there is no infirmity in the order of dismissal from service dated 18.12.1996 passed by the then SSP, Patiala, for absence from duty for such a long period. Learned trial Court vide its judgment and decree dated 24.12.2002 has categorically explained each and every document and evidence on record and a well reasoned speaking judgment was passed.

14. In view of the above, the present appeal is allowed. Judgment and decree dated 01.06.2004 passed by the learned First Appellate Court is set aside and judgment and decree dated 24.12.2002 passed by the learned trial Court, whereby suit for declaration filed by the respondent was dismissed, is upheld.

15. Decree sheet be drawn.

16. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

21.10.2024
adhikari

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No