



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1646-2006 (O&M)
Reserved on: 05.12.2024
Pronounced on: 18.12.2024

State of Punjab and others

....Appellants

Versus

HC Kirpal Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Nitesh Kumar, DAG, Punjab
for the appellants

Mr. Shailendra Sharma, Advocate
for the respondent.

HARPREET SINGH BRAR, J.

1. The appellants through instant second appeal are seeking setting aside of judgement and decree dated 16.03.2005 passed by learned Civil Judge, Sr. Div., Jalandhar, whereby, the suit for declaration filed by the respondent was decreed in his favour as well as the judgment and decree dated 31.01.2006 passed by learned Additional District Judge, Jalandhar, whereby, the first appeal of the present appellants was dismissed.

2. Succinctly, the facts as per the plaint are that a departmental inquiry was initiated against the present respondent while he was posted as a Moharir Head Constable at police Station- Division 8, Jalandhar on allegations that he had made false entries in his report dated 12.04.1997 regarding arrest of certain persons under Section 107/151 Cr.P.C. and also regarding false entry in report dated 13.04.1997 regarding arrest of an accused in FIR under Section 7 of Essential Commodities Act. It was also alleged against the respondent that he had torn certain official papers of *Roznamcha* and replaced them with some



other papers. Initially, a preliminary inquiry was made and thereafter the Senior Superintendent of Police had deputed the then SP (D) to hold a regular departmental enquiry against the present respondent. On the basis of these allegations, regular enquiry was conducted and the findings were submitted to the SSP. Later on the present respondent was awarded punishment whereby three years of his service were forfeited with permanent effect. The respondent – plaintiff preferred an appeal before the DIG, but the same was rejected. Thereafter, the respondent filed a suit before the learned trial court challenging the order of punishment dated 02.06.1999 passed by SSP Jalandhar as well as order dated 22.09.1999 passed by DIG Jalandhar Range on the grounds that the aforesaid impugned orders were in contravention to Punjab Police Rule 16.38.

3. Upon notice issued to the appellants-defendants in the civil suit filed by the respondent, they appeared before the Court and filed their written statement. Therein, it was pleaded that a departmental enquiry was initiated against the respondent as per Punjab Police Rules and Service Rules, and he was found guilty of the charges levelled against him. It was further pleaded that since there was no public complaint against the respondent, the appellants – defendants were not required to initiate a departmental inquiry as per rule 16.38 of the Punjab Police Rules. The misconduct of the plaintiff was in relation to official records of the police station and no part of his misconduct was in relation to general public and as such the department was not required to get any sanction from the District Magistrate under Punjab Police Rule 16.24. Rest of the averments made in the plaint were denied. In the replication, the averments of the plaint were reiterated, and those in the written statement were controverted. From the pleadings of the parties, as many as four issues were framed including the issue of relief. Thereafter, the evidence of the parties was



considered and ultimately, the suit of the respondent-plaintiff was allowed on the ground that it was obligatory on the part of the SSP to bring the case of the respondent – plaintiff to the notice of the District Magistrate and it was for the District Magistrate to decide whether a departmental inquiry was needed or not.

4. Aggrieved by the decision of the learned trial Court, the appellants-defendants preferred an appeal before the learned Additional District Judge, Jalandhar, however the same dismissed and the decision of the trial Court was upheld. Now, the appellants-defendants have approached this Court for a second bout.

5. Learned State counsel vociferously contended that no part of misconduct committed by the respondent – plaintiff formed part of any dealing with the public, nor there was any complaint from a private person and therefore, departmental enquiry under rule 16.38 of Punjab Police Rules and prior sanction of the District Magistrate was not required. It was further contended that the principles of natural justice were fully complied with by the department.

6. Learned counsel for the respondent – plaintiff argued that obtaining prior sanction of the District Magistrate was necessary in his case and therefore the observations made by the learned courts below are in accordance with the law, and therefore require no interference.

7. In view of the judgments passed by the Hon'ble Supreme Court in ***Pankajakshi (Dead) through Legal Representatives and others Vs. Chandrika and others (2016) 6 SCC 157, Randhir Kaur Vs. Prithvi Pal Singh and others (2019) 17 SCC 71 and Gurbachan Singh (dead) through LRs Vs. Gurcharan Singh (dead) through LRs and others, 2023 SCC Online SC 875*** questions of law are not required to be framed in second appeal before the Punjab and



Haryana High Court whose jurisdiction is circumscribed by provisions of Section 41 of the Punjab Act, however, since this Court vide order dated 08.05.2006 has already framed the substantial question of law as mentioned below, the same is being taken up for consideration herein: -

2. Whether the departmental enquiry becomes unlawful merely because of non-compliance of the provision of Punjab Police Rule 16.38?

8. I have heard the learned counsel for the parties and perused the paper-book with their able assistance. It is undisputed that a departmental inquiry was conducted against the respondent-plaintiff wherein he was found guilty and was punished vide order dated 02.06.1999 passed by SSP, Jalandhar. Three years of approved service of the respondent – plaintiff was forfeited with permanent effect. Furthermore, the appeal filed before then DIG Jalandhar Range was also dismissed vide order dated 22.09.1999. However, no prior sanction was sought from then District Magistrate before proceeding against the respondent-plaintiff. As per the settled law, whenever a police official is required to be proceeded against departmentally for having committed some offence or misconduct in connection with his official relations with the public concurrence prior sanction of the District Magistrate is mandatory and cannot be dispensed the way with. The same view point has been affirmed by Co-ordinate Bench of this Court in the case of **State of Haryana and Another v. Surjan Singh, 1990(2) SLR 88**. The relevant observations are produced herein below: -

“6. Before me only two contentions have been raised; (i) that neither remaining absent from duty nor tearing off the Rapat Rojnamcha, amounts to commission of a criminal offence, in connection with his official relations with the public. Thus rule 16.38 is not violated (ii) that the finding returned by the lower Appellate Court regarding denial of



opportunity of hearing before passing the impugned order of dismissal is against the pleading as there is no such plea in the plaint that no opportunity of being heard was granted nor there is any evidence to that effect. It is contended that rule 16.24(9) stood complied with and in the absence of the pleadings and evidence to prove its non-compliance, no finding can be returned.

7. The counsel for the respondent controverts the said contentions and contends that undisputedly criminal offence as envisaged by section 379/201 and 204 of Indian Penal Code were reported to have been "committed by the plaintiff by tearing off the Rapat Rojnamcha and remaining absent from today. Rule 16.38(1) of Punjab Police Rules, 1934 reads as under:-

"Where a preliminary enquiry or investigation into a complaint alleging the commission by an enrolled police officer of a criminal offence in connection with his official relations with the public, establishes a prima facie case a judicial prosecution shall normally follow. Where; however, the Superintendent of Police proposes to proceed in the case departmentally, the concurrence of the District Magistrate shall be obtained."

8. Undisputedly, a criminal offence was committed by the plaintiff in connection with his official relations with the public inasmuch as he owed a duty to discharge his official functions which are in relation with the public. His tearing off the Rapat Rojnamcha is another offence in connection with his official relations with the public inasmuch as Rapat Rojnamcha is a public record maintained in accordance with law and a police official is not expected to tear it off. No substantial argument has been addressed to substantiate that the act committed by the plaintiff does not fall within the purview of Rule 16.38(1). All the ingredients for the applicability of the said rule stood satisfied. It has not been stated at the bar that any of the ingredients was missing.

9. It is not disputed that concurrence of the District Magistrate had not been obtained. In view "of this, the order of removal passed against the plaintiff for a criminal offence committed by him in connection with his official relation with the public was passed in violation of the said



mandatory rule. The order shall thus be deemed to be a void order. I find support in the above observation of mine from **Ajit Singh v. Delhi Administration and others, 1973(1) S.L.R. 1100 and Daulat Ram v. Union of India, 1971(2) S.L.R. 502.**”

9. Since *Rapat Roznamcha* is a public record maintained in accordance with law and the respondent-plaintiff was punished by the appellants department for tearing the same, it is the considered opinion of this Court that the offence committed was in ‘connection with his official relations with the public’. Therefore, Rule 16.38 of the Punjab Police Rules, 1934 was fully applicable. In the case at hand, no concurrence was sought from the District Magistrate by the appellants department before proceeding against the respondent-employee as enshrined under Rule 16.38 of the Punjab Police Rules, 1934 which makes the order of punishment dated 02.06.1999 passed by SSP, Jalandhar as well as the order dated 22.09.1999 passed by DIG, Jalandhar Range, Jalandhar in appeal, as *non-est* and *void ab initio*.

10. As a sequel to the above discussion, no reason is made out to interfere with the judgment and decree dated 16.03.2005 passed by learned Civil Judge, (Senior Division), Jalandhar and the judgment and decree dated 31.01.2006 passed by learned Additional District Judge, Jalandhar.

11. Resultantly, the instant second appeal is hereby dismissed.

(HARPREET SINGH BRAR)
JUDGE

18.12.2024

Neha

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No