



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

RSA-426-2006 (O&M)
Reserved on: 21.10.2024
Pronounce on: 29.10.2024

Bhajan Lal

....Appellant

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sahibjeet Singh Sandhu, Advocate (Amicus Curiae)
for the appellant

Mr. Rishabh Singla, AAG, Punjab

HARPREET SINGH BRAR, J.

1. The appellant through instant second appeal is seeking setting aside of judgment and decree dated 02.08.2003 passed by learned Civil Judge (Sr. Div.), Jalandhar in Civil Suit No. 1 of 1999 vide which the suit filed by the appellant for declaration to the effect that order No.106812-19 dated 30.11.1992 passed by Senior Superintendent of Police, Jalandhar whereby the appellant-plaintiff was dismissed from service under Rule 16.1 of the Punjab Police Rules read with Article 311(2)(b) of the Constitution of India as well as order dated 26.06.1998 passed by Deputy Inspector General of Police, Jalandhar Range, whereby his representation was rejected, are illegal and void and that he continues to serve as a constable and reserves all rights and privileges. At the same time, prayer is also made in the instant second appeal for setting aside the judgement and decree dated 27.09.2004 passed by learned District Judge, Jalandhar vide which the first appeal filed by the appellant was dismissed.

2. Succinctly, the facts as per the plaint are that the appellant-plaintiff



joined the police department as a Constable in December, 1990 at Jalandhar. On 23.10.1992, the appellant was posted at Nurmehal as a Sentry. One Balbir Kumar alias Bhupinder Singh was in police lockup therein. During his duty, the appellant found that Balbir Kumar was missing from his lock up. Subsequently, a case was registered against the appellant vide FIR No.163 dated 23.10.1992 under Sections 221, 223 and 224 of IPC. During the pendency of the aforesaid case against the appellant, he was dismissed from service vide order No.106812-19 dated 30.11.1992 passed by Senior Superintendent of Police, Jalandhar (SSP) under Rule 16.1 of the Punjab Police Rules read with Article 311(2)(b) of the Constitution of India. It was also held by SSP that it was not practicable to hold an inquiry in the manner provided under Rule 16.24 of the Punjab Police Rules. However, the appellant was acquitted in the aforementioned criminal case instituted against him. Thereafter, he made a representation to the Deputy Inspector General of Police, Jalandhar Range, Jalandhar Cantt but the same was rejected vide order dated 26.06.1998. Aggrieved, the appellant filed a suit challenging the aforesaid orders on the ground that he was not given any show-cause notice or opportunity of hearing before passing the said orders. No reasons were recorded by the punishing authority as to why it was not practicable to hold an inquiry.

3. Upon notice, the respondents appeared before the learned trial Court and contested the suit. In their written statement, the respondents took preliminary objection on technical grounds of limitation and maintainability. On merits, it was pleaded by the respondents that the appellant did not perform his duties satisfactorily as he had developed relations with anti-social and anti-national elements. Also, the appellant helped a dreaded terrorist namely Balbir Kumar in escaping from police lockup. It was also stated that regular inquiry



was dispensed away as it was impracticable to hold an inquiry under Rule 16.24 of the Punjab Police Rules. Thereafter, replication to the aforesaid written statement was filed by the appellant-plaintiff. As many as 6 issues were framed including the issue of relief. Thereafter, the evidence of the parties was considered and ultimately, the suit of the appellant-plaintiff was dismissed with cost. Affronted, the appellant-plaintiff preferred an appeal before the learned lower Appellate Court which also met with the same fate. Now, the appellant has approached this Court for a second bout.

4. Learned (Amicus Curiae) for the appellant vociferously contended that the suit of the appellant has been wrongly held to be barred by limitation. The appellant was acquitted by Chief Judicial Magistrate on 19.12.1996 in the case instituted against him by the respondents, wherein, the same charges were adjudicated upon which led to his dismissal from service. Whereas, the suit was filed by the appellant on 06.01.1999 meaning that it was filed well within the limitation period of 3 years. It was also contended that even the dismissal itself was illegal and in contravention to the principles of natural justice since no regular inquiry was held.

5. Learned state counsel submitted that impugned judgements and decrees have been passed after correct appreciation of the evidence on record in accordance with the law and therefore, did not deserve any interference by this Court.

6. 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***, 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 30.10.2006 has already framed the substantial questions of law as mentioned below, the same is being taken up for consideration herein: -

2. *Whether the suit of the appellant could have been dismissed as being barred by limitation?*

7. I have heard the learned counsel for the parties and perused the paper-book with their able assistance. It transpires that the appellant was not dismissed from his service on account of the criminal case registered against him by the respondents. Rather, it was the unsatisfactory conduct of the appellant as well his close relations with anti-social elements that led to his discharge from the service on 30.11.1992. In the order of dismissal (Ex.P-1), it has been nowhere mentioned that the appellant was dismissed because of the criminal case against him whereas it has been mentioned that given the tense law and order situation existing at the time, it was not practicable to give show-cause notice to the appellant and hold a regular inquiry as per Rule 16.24 of the Punjab Police Rules. The reasons for dispensing away with an inquiry were mentioned in detail in the order dated 30.11.1992 proved as Ex. D-3.

8. As far as the contention of the appellant-plaintiff qua limitation period is concerned, it has to be considered in light of the date on which cause of action arose. As per the record, the appellant was dismissed from his service by the respondents vide order dated 30.11.1992 whereas the suit challenging the dismissal was instituted on 06.01.1999, i.e., after 6 years from when cause of action arose. Although, it was argued by the appellant that cause of action



actually came into being on 19.12.1996, when he was acquitted by the jurisdictional Court in criminal case emanating from FIR No.163 (Ex. P-2) dated 23.06.1992 lodged against him by the respondents in the same matter which led his dismissal. If 19.12.1996 is taken as the date on which cause of action accrued, then the present suit is found to be well within the limitation period of 3 years. However, as discussed above, it is quite clear that registration of a criminal case against the appellant did not form the basis of impugned order of dismissal but it was the result of a civil action taken against him due to his questionable conduct at the time of social unrest in the State of Punjab. It is a considered opinion of this Court that the order of acquittal dated 19.12.1996 is of no consequence to the question of limitation in the present case. The cause of action accrued on 30.11.1992, when the order of dismissal was passed by the respondents, and the same should have been challenged within a period of 3 years. Therefore, the issue of limitation is decided against the appellant-plaintiff rendering the suit instituted by him as barred by limitation.

9. In view of the above discussion, no reason has been found to be made out to warrant any interference in the judgement and decree dated 02.08.2003 passed by learned Civil Judge (Sr. Div.), Jalandhar and the judgement and decree dated 27.09.2004 passed by learned District Judge, Jalandhar.

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

11. Pending miscellaneous application(s), if any, shall also stand disposed of accordingly.

12. Legal Services Committee is directed to pay remuneration to Amicus Curiae as per rules.

(HARPREET SINGH BRAR)
JUDGE

29.10.2024

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