

**RSA-3004-2008 (O & M)****-1-****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****209-1.****RSA-3004-2008 (O & M)****Date of decision:14.08.2024****STATE OF PUNJAB & ORS.****...APPELLANTS****VERSUS****BALWINDER SINGH****...RESPONDENT****CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present: Mr. Malkiat Singh, DAG, Punjab.

Mr. Nitin Verma, Advocate for the respondent.

**********SUVIR SEHGAL, J.**

1. Defendants-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 Punjab Police, when he was served with a charge-sheet on the allegation of remaining absent for a period of 35 days. He contested the charge-sheet to be defective and invalid. During enquiry proceedings, he was not permitted to cross examine the witnesses nor was he provided with the incriminating material relied upon by the Department. Vide order dated 27.05.2000, punishment of forfeiture of one years' approved service was imposed. Departmental appeal and revision filed by him, were rejected. He filed a suit for declaration challenging the said orders and claimed consequential relief.

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3. Upon notice, suit was contested by the defendants by filing a written statement by taking various objections. It was submitted that when plaintiff was posted in Anti Gundas Staff, Kotkapura, a FIR No.21 dated 05.03.1999 was lodged against him and some other officials under Section 13(2) of the Prevention of Corruption Act, 1988. He proceeded on a casual leave for three days on 03.03.1999, but remained absent for 38 days. He was charge-sheeted, an Inquiry Officer was appointed and on the basis of the finding recorded during the inquiry, punishment was imposed. Plaintiff did not file any replication and issues were framed on the basis of the pleadings of the parties, who led evidence in support of their respective case. After hearing them, Trial Court by judgment and decree dated 08.01.2008, dismissed the suit. First appeal preferred by the plaintiff was accepted by the learned District Judge, Faridkot, vide judgment dated 21.04.2008, impugned orders were set aside and the plaintiff was held entitled to all the benefits admissible to him as a consequence. Defendants are before this Court in the above background.

4. I have heard counsel for the parties and considered their respective submissions.

5. During the pendency of the instant appeal, an affidavit dated 29.08.2011 of Sh. M.S. Chinna, Assistant Inspector General of Police, Welfare & Litigation, Punjab, was filed, relevant extract of which is reproduced hereunder:-

“2) RSA No. 3004 of 2008 -State Vs Const. Balwinder Singh (Present RSA)

In this case the plaintiff was dealt departmentally on the charges that during the year 1999, while he was



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posted at Anti Gunda Staff, Kotkapura, a case FIR No. 21 dated 5.3.1999 u/S 13(2) 88, P. C. Act was registered against him and other officials. During this the plaintiff was preceded (sic proceeded) on 3 days casual leave but he did not reported (sic report) back and he willfully absented him (sic) for 38 days. A D.E. was conducted and the charges were proved. For which punishment of forfeiture of one year approved service was awarded to him. The plaintiff filed Civil suit in the Court of CJ (JD) Faridkot against the punishment order of forfeiture of one year service. The civil suit of the plaintiff was dismissed on 8.1.2008. The plaintiff filed Civil Appeal against the judgment dated 8.1.2008 and his appeal was accepted vide judgment dated 21.4.2008. No liberty of passing fresh punishment order was granted to the State.

That State filed RSA No.3004/2008 on the opinion of Advocate General Punjab dated 17.7.2008 whereby it was opined that case is fit for filing RSA against the judgment dated 21.4.2008.”

6. A perusal of the punitive order passed by the appellants shows that the punishing authority has forfeited one years' approved service with permanent effect, which will have an impact on the future increments to be earned by the plaintiff-respondent. Punishment of forfeiture of approved service on permanent basis is not provided for in the Punjab Police Rules, 1934 (for short “the Rules”). Rule 16.5 of the Rules came up for interpretation before the Supreme Court in **Chamba Singh Versus State of Punjab** (1997) 11 SCC 452 and it was held that there is no reference in the Rules to the forfeiture of service with permanent effect. It is, therefore, evident that the punishment imposed upon the plaintiff-respondent does not

flow from the Rules. This Court, therefore, does not find any infirmity in the judgment passed by the First Appellate Court. However, after having recorded a finding that the rule does not provide for the punishment imposed, the First Appellate Court should have remanded the matter back to the authorities for passing a fresh order, which has not been done. Accordingly, the impugned judgment and decree deserves to be modified.

7. Ergo, while disposing of this appeal, the judgment and decree under appeal is modified. Matter is remitted to the disciplinary authority to pass a fresh order after hearing the parties. The necessary exercise be carried out within a period of 04 months from the date of communication of a copy of this order.
8. Appeal is disposed of.
9. Pending application, if any, stands disposed of.

14.08.2024

(SUVIR SEHGAL)

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JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No