

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA-3959-2019 (O&M)
Date of Decision :09.04.2024

State of Haryana and others

...Appellants

Versus

Dharam Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Vibha Tewari, AAG, Haryana.

Mr. Vijay Kumar Jindal, Senior Advocate with
Mr. Vrishank Suri, Advocate for the respondent.

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Harsimran Singh Sethi, J. (Oral)

1. In the present regular second appeal, challenge is to judgment and decree of the Courts below by which, the suit filed by the respondent-plaintiff challenging the punishment orders dated 07.06.2008 as well as dated 04.02.1010 passed by the respondents, has been allowed.

2. Certain facts need to be noticed for the correct appreciation of the issue in hand.

3. Respondent-plaintiff was recruited as Constable in the Haryana Police on 29.09.1976 and, thereafter, he was promoted as Head Constable in the year 2001 and thereafter as EASI on 31.06.2007. While respondent-plaintiff was working as EASI, an FIR No.42 dated 03.03.2007 was registered against him under the Immoral Traffic Prevention Act, 1956. In the meantime, even the disciplinary proceedings were initiated against the

respondent-plaintiff. After the respondent-plaintiff was held guilty of the allegations alleged in the departmental proceedings, an order dated 07.06.2007 was passed by the competent authority dismissing the respondent-plaintiff from service. Against the said order of dismissal, respondent-plaintiff preferred an appeal, which appeal was also dismissed and ultimately in revision petition filed by the respondent-plaintiff, vide order dated 07.06.2008, punishment of dismissal from service was modified to that of stoppage of five increments with permanent effect.

4. Thereafter, keeping in view the service record of the respondent-plaintiff, vide show cause dated 04.12.2009, respondent-department decided to prematurely retire the petitioner from service after giving him three months notice. On completion of period of three months of notice, respondent-plaintiff stood compulsorily retired from service vide order dated 04.02.2010.

5. After the compulsory retirement of the respondent-plaintiff, an FIR No.42 dated 03.03.2007 came to be decided and respondent-plaintiff was acquitted of the allegations alleged against him by the competent Court of law and, thereafter, the respondent-plaintiff claimed the benefit of reinstatement in service on the ground that once, he has been acquitted of the allegations by the competent Court, the findings recorded on the same allegations in the departmental proceedings loses its significance hence, he is entitled to be reinstated in service so as to continue in service upto the age of 58 years.

6. As the said benefit of reinstatement in service has not been given to the respondent-plaintiff, he filed a civil suit challenging the order dated 07.06.2008 by which, punishment of stoppage of five increments with

permanent effect was imposed as well as order dated 04.02.2010 by which respondent-plaintiff was prematurely retired from service.

7. Keeping in view the evidence which had come on record, learned trial Court vide judgment and decree dated 06.02.2015 allowed the suit filed by the respondent-plaintiff and held that the punishment orders under challenge as bad and directed the respondent-department to allow the petitioner to continue in service till he attained the age of superannuation.

8. Feeling aggrieved against the said judgment and decree of the trial Court, appellant-State had filed an appeal which was also dismissed by the lower appellate Court vide judgment and decree dated 29.04.2019 hence, the present regular second appeal.

9. Learned counsel for the appellant-State argues that judgment and decree of the Courts below are perverse to the facts and evidence which had come on record and, hence, are liable to be set aside.

10. Learned counsel for the appellant-State submits that civil suit was filed by the respondent-plaintiff on 24.11.2011 challenging the order dated 07.06.2008 passed by the respondent-department, which was beyond limitation hence, even without considering the said aspect, benefit has been granted to the respondent-plaintiff, which amounts to perverse findings by the trial Court and even the learned Appellate Court had failed to appreciate the said fact while dismissing the appeal filed by the appellant-State.

11. Learned counsel for the appellant-State further argues that once, in the departmental proceeding the allegations were proved and punishment has been imposed, which punishment attained finality, subsequent acquittal of the respondent-plaintiff in the criminal proceedings cannot render the said departmental proceedings bad as both departmental and criminal

proceedings stand on different footing and different nature of evidence is required to prove the allegations in both the proceedings hence, merely that respondent-plaintiff was acquitted in the criminal proceedings of the allegations alleged against him will not render the departmental proceedings as well as subsequent opinion of the department to retire the respondent-plaintiff from service as bad especially, when while acquitting the respondent-plaintiff, benefit of doubt was extended to him by the criminal Court. Hence, the judgment and decree passed by the Courts below, wherein the Courts below have failed to consider the said aspect are liable to be set aside.

12. Learned Senior counsel appearing for the respondent-plaintiff submits that once, the allegations in the departmental proceedings as well as in criminal proceedings were same, on being discharged by the competent Court of law in a criminal proceedings, the findings recorded in the departmental proceedings so as to prove the allegations alleged against the respondent-plaintiff loses its significance hence, the said aspect has rightly been interpreted by the Courts below so as to grant the relief to the respondent-plaintiff.

13. Learned senior counsel for the respondent-plaintiff further submits that qua the argument that order dated 07.06.2008 which has been set aside by the trial Court, has been set aside without considering the issue of limitation, the said issue was never raised before the trial Court hence, the same cannot be raised by the appellant-State in the present regular second appeal.

14. I have heard learned counsel for the parties and have gone through the record with their able assistance.

15. Last argument raised is being dealt first as to whether the suit was within limitation qua the challenge to the order dated 07.06.2008 or not.

16. It is a conceded fact that the civil suit was filed by the respondent-plaintiff on 24.11.2011 when the limitation to challenge the punishment order dated 07.06.2008 had already been expired. The Courts are to apply its mind, even if, the objection qua the limitation had not been raised. Section 3 of the Limitation Act, 1963 is very clear that the Courts have power to decide the issue of limitation keeping in view the evidence and facts which have come on record.

17. Learned senior counsel for the respondent-plaintiff has not been able to show that the order dated 07.06.2008 could have been challenged while filing of suit on 24.11.2011, which was beyond the period of limitation of three years.

18. As per the judgment of the Hon'ble Supreme Court of India in *Civil Appeal No.1852-1989 with Civil Appeal No.4772-1989, titled as, State of Punjab and others vs. Gurdev Singh and Ashok Kumar, decided on 21.08.1991,* even void orders are to be challenged within a period of three years hence, the Courts below have allowed the claim qua order dated 07.06.2008 without examining the permissibility of the said order being challenged in the suit filed hence, grant of relief in respect of the order dated 07.06.2008 is without noticing the issue of limitation and concededly the challenge to the order dated 07.06.2008 was beyond limitation provided under law hence, the judgment and decree of the Courts below are perverse and cannot sustain qua the grant of relief qua order dated 07.06.2008 by which, five increments of the respondent-plaintiff were stopped with permanent effect.

19. Next question which arises is as to whether even after acquittal of the respondent-plaintiff in the criminal proceedings, punishment orders which have been passed in the departmental proceedings prior to the said acquittal during the course of service period of respondent-plaintiff as well as the order of premature retirement will lose its significance merely on the ground that the respondent-plaintiff got acquitted by giving him benefit of doubt in the criminal proceedings in respect of FIR No.42 dated 03.03.2007.

20. It is a settled principle of law that departmental proceedings and criminal proceedings stand on different footing and even the evidence required to prove the allegations alleged in departmental proceedings is entirely different as compared to proving of allegation in criminal proceedings, which is beyond reasonable doubt. It is a settled principle of law settled by the Hon'ble Supreme Court of India that even after acquittal in criminal case, the department has right to initiate departmental proceedings on same allegations. Reliance is being placed on the judgment of the Hon'ble Supreme Court of India in **Civil Appeal Nos.1763-1764-2022, titled as State of Karnataka and another vs. Umesh, decided on 22.03.2022.** Relevant paragraph of the judgment is as under:-

“13 The principles which govern a disciplinary enquiry are distinct from those which apply to a criminal trial. In a prosecution for an offence punishable under the criminal law, the burden lies on the prosecution to establish the ingredients of the offence beyond reasonable doubt. The accused is entitled to a presumption of innocence. The purpose of a disciplinary proceeding by an employer is to enquire into an allegation of misconduct by an employee which results in a violation of the service rules governing the relationship of employment. Unlike a criminal

prosecution where the charge has to be established beyond reasonable doubt, in a disciplinary proceeding, a charge of misconduct has to be established on a preponderance of probabilities. The rules of evidence which apply to a criminal trial are distinct from those which govern a disciplinary enquiry. The acquittal of the accused in a criminal case does not debar the employer from proceeding in the exercise of disciplinary jurisdiction.

21. In case, even after the acquittal in the criminal proceedings, department has power to initiate the departmental proceedings, then argument of the learned senior counsel for the respondent-plaintiff that after the acquittal in the criminal proceedings, the departmental proceedings already held loses its significance, is contrary to the settled principle of law cited hereinbefore.

22. Further, order of compulsorily retirement of the respondent-plaintiff dated 04.12.2009 was by giving three months notice and further the said order has never been challenged by the respondent-plaintiff and only the relieving order dated 04.02.2010 in pursuance to the said order dated 04.12.2009 has been challenged. Even otherwise, the domain to retire the employee keeping in view his/her service record is of the department. Once, the allegations which were alleged against the respondent-plaintiff reflected upon his morale and the same were proved in the departmental proceedings and punishment of compulsory retirement was imposed by the punishing authority of the department as department was of the view that respondent-plaintiff should not have been retained in service beyond the age of 55 years, the Court cannot sit as an appellate authority over the decision of the department. It is only in the rarest of rare case where the action taken by the department to retire the employee is totally perverse to the service record

that the Court can interference with the decision of the punishing authority.

23. In the present case, respondent-plaintiff has been punished qua the allegations which reflected upon his morale hence, interference by the Courts below qua the order of compulsorily retiring the respondent-plaintiff from service was beyond their jurisdiction in the facts and circumstances of the present case.

24. Keeping in view the facts and circumstances recorded hereinbefore, coupled with the settled principle of law cited hereinbefore, Judgment and decree of the Courts below are perverse to the evidence and facts, which had already come on record hence, present regular second appeal is allowed, Judgment and decree of the Courts below are set aside and the suit filed by the respondent-plaintiff is dismissed.

25. Civil miscellaneous application pending if any, is also disposed of.

April 09, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

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