



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

RSA-4774-2009 (O&M)
Date of decision: 11.12.2024

Baljinder Singh

....Appellant

Versus

The Collector, Patiala and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. A.K. Walia, Advocate
for the appellant.

Mr. Sandeep Kumar, DAG Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. The instant regular second appeal is preferred by the appellant-plaintiff against the judgment and decree dated 24.04.2009 passed by the learned Additional District Judge (Fast Track Court), Patiala whereby the appeal preferred by the respondents-defendants against the judgment and decree dated 14.09.2007 passed by the learned trial Court was allowed. Against the aforesaid judgment of the learned lower Appellate Court, the instant regular second appeal has been preferred by the appellant-plaintiff.

2. Succinctly, the facts are that the appellant-plaintiff filed a suit for declaration to the effect that the order dated 21.01.1999 passed by Commandant, 1st Indian Reserve Battalions, Patiala, whereby service of one year of the appellant-plaintiff was forfeited with permanent effect; order dated 16.11.2000 rendered in the appeal before the Deputy Inspector General of Police Administration, Indian Reserve Battalions, Patiala; order dated 12.12.2001 rendered in the revision petition before the Inspector General of Police, Indian Reserve Battalions, Patiala and order dated 06.11.2003 rendered



in the mercy petition before the Director General of Police, Punjab, upholding the order of the Commandant, are illegal, null and void along with consequential benefits arising out of this declaration with interest @ 18 % per annum. It was alleged that the appellant-plaintiff was wrongly proceeded against on the false allegations that he was not present at 'Santri' post on 08.08.1998 at 6:45 p.m. and an SLR gun along with magazine was found placed along a wall of the 'Santri' post. Upon the completion of the departmental inquiry by Teja Singh, DSP, Camp Commander, 1st Indian Reserve Battalions, the appellant-plaintiff was found guilty and vide order dated 21.01.1999 his service of one year was forfeited with permanent effect.

3. Upon notice, the respondents-defendants appeared before the learned trial Court and contested the suit. In their written statement, the respondents-defendants took preliminary objection on technical grounds of the suit being time-barred and not being maintainable. On merits, it was pleaded by the respondents-defendants that all the facts and circumstances on record were kept in view while passing the order dated 21.01.1999. It was denied that the departmental inquiry was initiated on wrong and false allegations and that the reply to the show cause notice was not considered. All other averments were denied in *toto*. Consequently, as many as seven issues were framed by the learned trial Court including the issue of relief.

4. Ultimately, the suit filed by the appellant-plaintiff was decreed in his favour and the orders dated 21.01.1999, 16.11.2000, 12.12.2001, 06.11.2003 being illegal, null and void, and against the service rules, were set aside. Affronted by the observations of the learned trial Court, the respondents-defendants approached the learned lower Appellate Court, which disagreed with the findings of the learned trial Court and allowed the appeal. Aggrieved



by the same, the appellant-plaintiff has come before this Court by way of the instant regular second appeal.

5. 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 Courts Act. This Court has proceeded to adjudicate the present matter on the basis of rival contentions of the parties on merits.

6. Learned counsel for the appellant vociferously contends that the learned trial court after going through the provisions of the Punjab Police Rules, 1934 (for short 'the Rules'), specifically Rule 16.1 as well as the various judicial decisions had rightly held that the punishment of forfeiture of one year of approved service with permanent effect was not an authorized punishment. However, the learned lower Appellate Court has wrongly set aside this finding of the learned trial court. The only valid punishment with respect to forfeiture of service as prescribed under the Rules is forfeiture for the purpose of increment. The reliance placed by the lower Appellate Court on Rule 16.5 is totally misplaced since it is merely an elaboration of the punishment of stoppage of increment provided under Rule 16.1. Therefore, the mention of the word "forfeiture of service" in Rule 16.5 is to be interpreted to the limited extent of stoppage of increment. Therefore, the finding of the learned lower Appellate Court in this regard is totally wrong and perverse and suffers from patent error of law. To buttress his argument, learned counsel for appellant



placed reliance upon the judgments of the Hon'ble Apex Court rendered in ***Chamba Singh vs. State of Punjab (1997) 11 SCC 452*** and this Court in ***State of Punjab and others vs. Balwinder Singh RSA-3003-2008*** decided on ***14.08.2024***.

7. *Per contra*, learned State counsel submits that the impugned judgement and decree have been passed after correct appreciation of the evidence on record in accordance with the law and therefore, no interference is warranted by this Court.

8. Having heard the learned counsel for the parties and perused the paper-book with their able assistance, it transpires that the one year of service of the appellant-plaintiff was forfeited, with permanent effect, vide order dated 21.01.1999 passed by Commandant, 1st Indian Reserve Battalions, Patiala, as he was not found at the *santri* post. Rule 16.1(1) of the Rules categorically state that no police officer shall be departmentally punished, except in accordance with the Rules. Further, proper adjudication of the case would require Rule 16.5 of the Rules to be scrutinized, which is reproduced as follows:

“(1) The increment of a police officer on a time-scale may be withheld as a punishment. The order must state definitely the period for which the increment is withheld, and whether the postponement shall have the effect of postponing future increments. The detailed orders regarding the grant and stoppage of increments are contained in Rule 13.2.

(2) Approved service for increment may be forfeited, either temporarily or permanently, and such forfeiture may entail either the deferment of an increment or increments or a reduction in pay. The order must state whether the forfeiture of approved service is to be permanent; or, if not, the period for which it has been forfeited.

(3) Reinstatement on the expiry of a period fixed under sub-rule (1) or (2) above, shall be conditional upon good conduct in the interval, but, if it is desired under this rule not to reinstate an officer, a separate order shall be recorded, after the officer concerned has been given opportunity to show cause why his reinstatement should not be deferred, and the period for which such order shall have effect, shall be stated. Rules regarding the method of recording punishments under this rule in seniority rolls are contained in Chapter X.”



9. A perusal of the above-mentioned rule indicates that service of the appellant-plaintiff, with permanent effect, could not have been forfeited under any circumstances. Rule 16.5 of the Rules only deals with the forfeiture of service for the purpose of grant of increments, which has no bearing on the tenure of the appellant-plaintiff. A two Judge bench of the Hon'ble Supreme Court in ***Chamba Singh vs. State of Punjab (supra)***, speaking through Justice Sujata V. Manohar, opined as follows:

*"2. ...The effect, therefore, of the punishment of forfeiture of two years for the purpose of increments is that there is deferment of increment or increments over the forfeited period or there is reduction in pay. It does not have any impact on the length of service qualifying for pension which is the qualifying service to be taken into account for the purpose of compulsory retirement. It is contended by the appellant that since sub-rule (3) of Rule 16.5 provides that on the expiry of the period fixed under sub-rule (1) or (2) of Rule 16.5, reinstatement is subject to good conduct and it is open to the department to pass a separate order not to reinstate an officer, there is a break in the service of the officer when an order is passed under sub-rule (1) or (2). **However, reinstatement in the context of Rule 16.5 can refer only to the resumption of service for the grant of increments. Forfeiture of service for the purpose of grant of increments does not result in termination of employment. Thus, sub-rule (1) provides for withholding of increments of a police officer on a time-scale as a punishment. There is no reference in this sub-rule to forfeiture of service. Yet sub-rule (3) applies to an order under sub-rule (1) as much as to an order under sub-rule (2). Under sub-rule (2) the forfeiture is expressly of approved service for the purpose of increments. Such forfeiture may be temporary or permanent. This rule has no bearing on qualifying service for compulsory/premature retirement.***

*3. The appellant continued in service throughout this period. His right to receive increments alone was affected. **If the period of "forfeited" service under Rule 16.5(2) is to be deducted from qualifying service for compulsory retirement, it would have the paradoxical result of granting longer service to such an employee for compulsory retirement. He would have to be allowed to work for additional years to make up the 'forfeited' years, before he can be compulsorily retired. This is not the intention of Rule 16.5.** The appellant placed reliance upon a decision of the Himachal Pradesh High Court in the case of Shri Bhagat Ram v. Inspector General of Police, Himachal Pradesh and others, 1979(3) SLR 256. The judgment has proceeded on the assumption that forfeiture of service for the purpose of increment is equivalent to a reduction in the period of qualifying service. For reasons which we have already set out, this is not a correct*



interpretation of the punishment of forfeiture of service for the purpose of increments.”(emphasis added)

10. In view of the discussion above, it is explicit that the punishment imposed upon the appellant-plaintiff is not one prescribed under the Rules. Accordingly, the present appeal stands allowed and judgment and decree dated 24.04.2009 passed by the learned Additional District Judge (Fast Track Court), Patiala is hereby set aside and the impugned orders dated 21.01.1999, 16.11.2000, 12.12.2001 and 06.11.2003 passed by the concerned authorities are set aside as being against the Rules. Decree sheet be prepared reflecting the same. It is also clarified that the appellant-plaintiff is entitled to all the benefits arising out of this decree.

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

(HARPREET SINGH BRAR)
JUDGE

11.12.2024
Neha

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