

Neutral Citation No. 2024:PHHC:053186

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH
105

RSA-1434-2014 (O&M)
Date of Decision:20.04.2024

RAMESH KUMAR
.... Appellant

Vs

STATE OF PUNJAB & ORS
..... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. R.D. Bawa, Advocate with
Mr. Randhir Bawa, Advocate and
Mr. Samuel Gill, Advocate for the appellant.

Mr. Arjun Sheoran, DAG, Punjab and
Mr. Amrita Garg, AAG, Punjab.

SUVIR SEHGAL, J. (ORAL)

1. Plaintiff-appellant is in second appeal before this Court challenging the concurrent findings recorded by both the courts below.
2. Plead case of the plaintiff is that he was serving as a Constable in the year 2003 and was posted for security duty at PRTC, Jahankhelan. He remained admitted in a hospital as he suffered injuries in an accident and could not report on duty. A show cause notice was issued to him to which he replied and disciplinary proceedings were initiated against him. On the basis of the inquiry report, punishment was imposed upon him vide order dated 06.11.2003, which he assailed by filing a civil suit for declaration.

3. Upon notice, suit was contested by the defendants-respondents by filing a written statement, wherein various preliminary objections were taken. On merits, it was submitted that plaintiff remained absent for a period of 46 days, 2 hours and 30 minutes without getting leave sanctioned. A departmental inquiry was conducted and after the charges were proved, penal action was taken. It was further submitted that an appeal challenging punishment order was rejected by the Deputy Inspector General of Police, Border Range, Amritsar, vide order dated 26.12.2003. Plaintiff filed replication reiterating the averments of the plaint. On the basis of the pleadings of the parties, issues were framed and after they led evidence, trial Court by judgment and decree dated 10.04.2012, dismissed the suit on merits as well as on limitation. In appeal filed by the plaintiff, first appellate Court reversed the findings on the issue of limitation and held that the suit was within time. However, the judgment of the trial Court was upheld on merits by judgment dated 11.11.2013. Plaintiff is before this Court in the above background.

4. By making a reference to punishment order, counsel for the appellant has contended that the plaintiff has been imposed punishment of stoppage of two increments with permanent effect, which is not provided in the Punjab Police Rules, 1934. State counsel has supported the judgments of the courts below.

5. I have heard counsel for the parties and considered their respective submissions as well as examined the record with their able assistance.

6. Before proceeding further, it is imperative to examine the orders passed by the disciplinary authorities. By order dated 06.11.2003, disciplinary authority has forfeited three years approved service with permanent effect for purpose of grant of increment. Departmental appeal filed by the plaintiff-appellant has been dismissed by order dated 26.12.2003 and its relevant extract is reproduced hereunder:-

“5. I have carefully gone through the appeal of the appellant as well as other relevant record placed before me to decide the appeal and found that the appellant remained absent from duty without any reasons or excuse. If he had met with an accident, he could have got his leave sanctioned from the appropriate authority through some of his family member/relative but he did not do so. I have also carefully perused his service record and found that he is a habitual absentee. The appellant was also heard by the undersigned.

6. From the circumstances enumerated above, the only inference that can easily be drawn is that the appellant absented himself from duty intentionally. He has rightly been awarded the punishment of forfeiture of his two years approved service on permanent basis passed by the punishing authority and the order is legal and valid. Therefore, the appeal of the appellant is rejected being devoid of force.”

7. Interpreting Rule 16.5 of the Punjab Police Rules, Supreme Court in ***Chamba Singh Versus State of Punjab***, (1997) 11 SCC 452, has held that the punishment of forfeiture of service with permanent

effect does not flow from the said rule and can have no bearing on the qualifying service for the purpose of pension. The orders passed by the authorities do not meet the mandate of the rules. Both the courts below have dismissed the suit without advertng to the Punjab Police Rules, 1934. Therefore, judgments and decrees under challenge cannot be sustained.

8. As the punishment and appellate orders have been passed in contravention to the Punjab Police Rules, they are accordingly, set aside. This court is of the view that the matter deserves to be re-determined keeping in view the interpretation of the rule by the Supreme Court in ***Chamba Singh's*** case (supra). Accordingly, while setting aside both the orders, the matter is remitted to the punishing authority to pass a fresh order after hearing the parties and examining the record. This exercise maybe carried out within a period of 4 months from the date of communication of copy of this order.

9. Impugned judgments and decrees are accordingly set aside and appeal is disposed of.

20.04.2024
pooja saini

(SUVIR SEHGAL)
JUDGE

<i>Whether Speaking/Reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>