

2024.PHHC:172203



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

204

**RSA-4658-2015 (O&M)
DECIDED ON:02.12.2024**

PARDEEP SINGH

.....APPELLANT

VERSUS

STATE OF PUNJAB AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. GPS Randhawa, Advocate
for the appellant.

Mr. Jaspal Singh Guru, AAG, Punjab.

SANDEEP MOUDGIL, J

CM-11235-C-2015

This application has been filed for condonation of delay of 126 days in filing the appeal

Learned counsel for the applicant has argued that the brief of this case was lying with the counsel who conducted the proceedings before the Trial Court and since he left his practice, the reasonable time lapsed in collecting the record and thereafter, he applied for certified copy of the judgment and decree dated 12.12.2014 passed by the District and Session Judge, Amritsar and the record pertaining to the trial Court as well which resulted into delay of 126 days in filing the present appeal. He asserts that such delay cannot be termed as intentional or deliberate.

Learned counsel for the State opposes the prayer for condonation of delay referring to the paragraph No. 1 of the reply as well as the submissions made in the written statement dated 19.05.2017 filed through Deputy Commissioner of Police, Commissionerate of Police, Amritsar City taking a specific stand that the decision was pronounced in the open Court on 12.12.2014 passed by lower Appellate Court and therefore, the reasons put forth by counsel for the applicant are not tenable for acceptance.

Be that as it may, the pronouncement of the judgment in the open Court would not provide any material for filing of the instant application. The reasons pointed out before this Court on behalf of the counsel for the applicant seems to be justified and reasonable cause as the counsel who was presenting lower Appellate Court has left the practice and thereafter, the record which was in his office consumed time for the applicant for collecting the same. It is on that account alone delay of 126 days occurred in filing the present appeal.

Accordingly, the application is allowed and delay of 126 days in filing the appeal is condoned.

RSA-4658-2015

The present Regular Second Appeal has been preferred by Pardeep Singh-appellant against the impugned judgment and decree dated 12.12.2014 passed by learned District Judge, Amritsar thereby, dismissing the appeal filed by the appellant against the judgment and decree dated 25.03.2014 passed by learned Civil Judge, Junior Division, Amritsar vide which the suit for declaration praying for a decree with costs in favour of the plaintiff-Pardeep Singh and against the defendants that the order of defendant No.2-Senior Superintendent of Police, Amritsar now known as Commissioner of Police,

Amritsar dismissing him from service and those of defendants No.3 and 4 (Deputy Inspector General of Police, Border Range, Amritsar and Director General of Police, Punjab) on appeal/revision petition of plaintiff-Pardeep Singh confirming the same.

2. The factual matrix of the present case is that on 18.6.1994, the appellant/plaintiff was assigned a Constabulary No. 940/Asr and enrolled as a Special Police Officer (SPO) in Amritsar District during the terrorist attacks in Punjab. He has been working honestly since enrolling, and no complaints have ever been made against him. He had to take a three-day sanctioned leave of absence on November 30, 1996, due to his father's illness. However, because his father was still critically ill, he was unable to return to work after the sanctioned leave ended and was unable to report to Police Station Gharinda for approximately a month. Upon his return, the appellant was requested to leave and was not permitted to join. The appellant did not receive a formal order of discharge or dismissal. Since the appellant was not even given a chance to be heard, on July 15, 2001, the appellant filed an appeal against the aforementioned SSP, Amritsar act with the DIG, Border Range, Amritsar. The appellant was not informed of the order. On April 28, 2008, the appellant filed a revision before the D.G.P. Punjab in Chandigarh because no action had been done on the appeal. However, the appellant was compelled to bring a civil claim when no order was communicated to him, even during the revision. The defendants showed in and entered the plea that the plaintiff/appellant was a chronic offender who wagered every day and had been away for approximately one month, 17 days and 22 hours and 30 minutes, without any permission.

3. Learned counsel for the appellant/plaintiff submits that both the Courts below have overlooked the fact that, even if the appellant/plaintiff was a daily wager, the respondent-department had to at least follow the fundamentals of natural justice before denying him his right to support. It was incorrect for the courts below to held that the suit was time barred, ignoring the fact that the plaintiff/appellant had exhausted all departmental remedies before coming to the court and that the time used to calculate limitation had been spent pursuing the other remedies. As a result, there was no delay in filing the civil suit.

4. Learned State counsel has submitted that there is no perversity or illegality in the impugned judgments passed by the Courts below. It is contended that the appellant was not working faithfully and delingently and, therefore, he was not found suitable to continue to work as SPO. According to the respondents, he was discharged from service and had been informed of the grounds of discharge. He was a habitual absentee and remained absent from duty for about one month, 17 days and 22 hours and 30 minutes without any leave or permission of the competent authority. Moreover, he did not produce any medical certificate either of his own or of his father's ailment at the time of joining his service.

5. Heard learned counsel for the respective parties at length.

6. The case revolves around the status and rights of a Special Police Officer (SPO) appointed under Section 17 of the Police Act, 1861. It is an undisputed fact that the appellant/plaintiff was appointed as an SPO on 18.06.1994, in Amritsar District. He cannot claim the status of a Constable since he was never formally absorbed into that role. Consequently, the Punjab Police rules do not apply to him. The argument presented by the counsel for the

appellant that all special police officers possess the same powers and responsibilities as regular police officers was deemed without merit. The court emphasized that while public servants cannot be dismissed without a proper inquiry, the appellant's situation is distinct because he does not qualify as a Constable. During cross-examination, the appellant/plaintiff acknowledged his appointment as an SPO on daily wages and admitted to being absent from duty for a significant period without proper notification. This absence justified his discharge from service by the Senior Superintendent of Police. It is a well settled law that SPOs are considered daily wagers and therefore not entitled to the same disciplinary protections as regular officers. Regarding the limitation period for filing his suit, the appellant/plaintiff claimed that he could not return to duty due to a family emergency. However, he did not file his suit until 19.05.2010, which was beyond the three-year limitation period from when he was refused work. Thus, it is held that the suit is barred by limitation. It is held that the appellant/plaintiff discharge was lawful due to his long absence from duty and that he could not claim protections reserved for regular police officers under Punjab Police rules. Since the appellant/plaintiff was a daily wagers only as such no enquiry was required to be initiated and he was rightly discharged.

7. In view of the discussions made hereinabove, this Court held that there is no perversity or illegality in the impugned judgments, hence, the same are upheld and the present appeal is dismissed without any costs being devoid of any merits.

(SANDEEP MOUDGIL)
JUDGE

02.12.2024

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Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No

