

RSA-5645 of 2015 (O&M)

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

RSA-5645 of 2015 (O&M)
Reserved on: 25.04.2024
Pronounced on: 02.05.2024

Constable Pawan Kumar

.....Appellant

Versus

The State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -None for the appellant.

Mr. Saurabh Mohunta, DAG, Haryana.

NAMIT KUMAR, J.

1. This Regular Second Appeal is directed against the judgment and decree dated 23.12.2013, passed by the Court of learned Civil Judge (Junior Division), Bhiwani, whereby suit for declaration filed by the plaintiff-appellant was dismissed, as well as against the judgment and decree dated 17.04.2015, passed by the Court of learned District Judge, Bhiwani, whereby appeal preferred by the appellant against the judgment and decree dated 23.12.2013, was dismissed.

2. Parties to the *lis* are being referred to as per their status before the trial Court. Brief facts of the case are that plaintiff filed a suit for declaration against the defendants on the grounds that plaintiff was a regular employee of Haryana Police Department. He was arrested in a false case bearing FIR No.96 dated 15.2.2001, under Sections 406,

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420 of IPC registered at Police Station City Hisar. However, he was acquitted of all the charges by the Court of learned Judicial Magistrate 1st Class, Hisar, vide order dated 17.11.2008. It was averred that after registration of the above said false case, plaintiff remained under suspension for 255 days. Senior Superintendent of Police, Bhiwani, had treated the plaintiff as absent from duty and ordered for departmental enquiry against him. The Enquiry Officer had held that the plaintiff had acted in contravention of rules. It was further averred that enquiry was false and fabricated. SSP, Bhiwani on the basis of enquiry report, issued a show cause notice dated 17.04.2009 to the plaintiff. The plaintiff replied to the show cause notice but the SSP did not consider it and awarded the punishment of stoppage of two annual increments with permanent effect and treated the suspension period as leave without pay vide order dated 12.12.2002. It was further averred that against the order dated 12.12.2002, the plaintiff preferred an appeal before Inspector General of Police, Hisar Range, Hisar but the same was rejected on 29.07.2003 mechanically without going through the merits of the case. It was further averred that against order dated 29.07.2003, plaintiff further preferred appeal before the Director General of Police, Haryana, Panchkula, but vide order dated 27.02.2004, the same was also dismissed. It was further averred that the above said orders of SSP, Bhiwani, IG, Hisar Range, Hisar and DGP, Haryana, were wrong, illegal, against law and facts and same were not binding upon the rights of the plaintiff and the plaintiff was entitled to get the annual increment restricted and full pay and allowances for the suspension period

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alongwith interest @12% per annum. The plaintiff served a legal notice under Section 80 CPC upon the defendants through his counsel on dated 11.03.2011 but to no effect, which necessitated the filing of the present suit.

3. Upon notice, defendants filed their joint written statement controverting the averments made in the plaint. Several preliminary objections regarding limitation and *res-judicata* were taken. It was pleaded that departmental enquiry was initiated against the plaintiff on the allegations that on 26.04.2000, he had disappeared with the answer sheet while appearing in B.A. IInd year examination held at D.N. College, Hisar. On merits, it was averred that the plaintiff had been suspended for the misconduct committed by him. The acquittal in the criminal case had no effect on the departmental enquiry. The Enquiry Officer had conducted the enquiry as per Punjab Police Rules and principles of natural justice. The plaintiff was given chance to cross-examine the PWs. Defendants No.2 to 4 passed orders dated 27.2.2004, 29.7.2003 and 12.12.2002, respectively as per law and facts. All other averments made in the plaint were also controverted and dismissal of the suit was prayed for.

4. Replication was not filed by the plaintiff. On pleadings of the parties following issues were framed by the trial Court: -

1. Whether order no.46723-24 dated 12.12.2002 passed by S.P. Bhiwani and order no.16819/A dated 29.7.2003 passed by IG. Hisar Range, Hisar and order dated 27.02.2004 passed by D.G.P Haryana are wrong, against law and facts and liable to be set aside as alleged? OPP

2. If issue no.1 is proved then whether plaintiff is entitled to get annual increment and full pay and allowances for the suspension period i.e. 255 days alongwith interest @12% per annum as alleged? OPP
 3. Whether plaintiff has no locus standi and no cause of action to file the present suit? OPD
 4. Whether the suit of the plaintiff is not maintainable in the present form? OPD
 5. Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD
 6. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD
 7. Whether the plaintiff has not come to the court with clean hands and has concealed the true and material facts from the court? OPD
 8. Whether the civil court has no jurisdiction to try and entertain the present suit? OPD
 9. Relief.
5. After hearing arguments and after appreciating evidence on record, trial Court dismissed the suit of plaintiff vide judgment and decree dated 23.12.2013.
6. Aggrieved against the judgment and decree of the trial Court, plaintiff preferred an appeal before the lower appellate Court, which has been dismissed vide judgment and decree dated 17.04.2015.
7. No one has put in appearance on behalf of the appellant.
8. Learned counsel for the respondents-State supported the judgments and decrees of the Courts below. He contended that in the case of the plaintiff no prior permission of District Magistrate was required, therefore, there is no violation of Rule 16.38(1) of the Rules.

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He further contended that acquittal in the criminal case does not entitle the plaintiff to claim all the benefits.

9. I have heard learned counsel for the respondents and perused the record.

10. While appearing in B.A.-II examination, on 26.04.2002, the appellant disappeared with answer sheet. For the mis-conduct of the appellant, regular departmental enquiry was initiated against him as per rules and proper opportunity of hearing was given to him. After conclusion of departmental inquiry, on 19.11.2000, show-cause notice was issued to the appellant vide which proposed punishment was communicated to the plaintiff-appellant. Senior Superintendent of Police, Bhiwani, vide order dated 12.12.2002, awarded the punishment of stoppage of two annual increments of the plaintiff with permanent effect and treated the suspension period as leave without pay. The appeals preferred by the appellant against the said orders were also dismissed. This Court finds no fault with the enquiry conducted by the department against the appellant as the same was conducted as per rules and following the principles of natural justice and the punishment awarded to him is proportionate to the mis-conduct committed by him.

11. Concurrence of the District Magistrate is only required if the charges framed against the enrolled police officer or the complaint alleges commission of a criminal offence in connection with the official relations with the public. If this situation does not exist, Rule 16.38(1) of the Rules would not apply. Present is a case where the allegations against the appellant would not fall within the ambit of Rule 16.38 as

the mis-conduct would not amount to commission of a criminal offence by him in connection with his official relations with the public. Thus, the Courts below have rightly held that Rule 16.38 of the Rules would not be attracted in the present case. Appellant had involved himself in a crime, though he was later acquitted, and disabled himself from rendering service. Reliance is placed upon the judgments of a Co-ordinate Bench of this Court in *CWP-10062 of 2011 – Balbir Singh s/o Ram Kishan v. State of Haryana and others decided on 03.11.2012* and *RSA No.1664 of 2017 – PHC Gursharan Singh v. The State of Punjab and others decided on 11.02.2019*.

12. There are concurrent findings recorded by both the Courts below that punishment awarded to the appellant is proportionate to the mis-conduct committed by him; Rule 16.38 is not attracted in the present case.

13. No question of law muchless substantial question of law arises for consideration in this appeal.

14. Dismissed.

15. Pending application(s), if any, stand disposed of accordingly.

02.05.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No