

201. 2024:PHHC:042343
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.8151 of 2019
Date of decision: 06.02.2024

Joginder Singh Petitioner

Versus

State of Haryana and others ... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Shvetanshu Goel, Advocate, for the petitioner.

Mr. Krishan Kumar Chahal, Additional Advocate General,
Haryana.

GURBIR SINGH, J.

1. Challenge in this revision petition filed under Article 227 of the Constitution of India is to the order dated 25.11.2019 (Annexure P-8) passed by learned District Judge, Karnal, whereby the application moved by the petitioner-appellant under Order 6 Rule 17 read with Section 151 CPC for amendment in the plaint, has been dismissed.

2. Brief facts of the case are that the petitioner-plaintiff filed a civil suit No.243/18 on 04.08.2018 with the following prayer:-

“It is, therefore, prayer that a decree for declaration to the effect that the adverse remarks so recorded in the ACR of the plaintiff for the period 1.10.2010 to 13.02.2011 conveyed vide letter dated 27.06.2011 are illegal and are liable to be quashed and further the order dated 24.03.2017 to the extent of imposing the penalty of stoppage of two increments with permanent effect and further treating the

period of absence w.e.f. 1.10.2010 to 13.02.2011 as leave of the kind due is illegal, void, arbitrary and contrary to the statutory provisions of law and deserves to be modified along with consequential relief of mandatory injunction directing the defendants to expunge the adverse remarks so recorded in his ACR for the above said period in column no. 1 to 5 and further to modify the order of penalty dated 24.03.2017 and to pay the arrears on account of modification of the impugned order, along with interest at the rate of 18% p.a. from the date of order till the date of realization of the amount, may kindly be passed in favour of the plaintiff and against the defendants with costs, in the interest of justice and equity.”

2.1 The petitioner had earlier filed a civil suit No.95/18 on 10.04.2018 with the following prayer:-

“It is, therefore, prayed that suit of the plaintiff may kindly be decreed and a decree for declaration to the effect that the impugned order dated 24.03.2017 passed by the Director General of Police Haryana Panchkula vide which the period of absence has been treated as leave of the kind due and denial of financial benefits for the period he remained out of service due to suspension and dismissal from service and imposed the penalty of stoppage of two increments, with cumulative effective, is illegal, contrary to service rules, Punishment & Appeal Rules and Punjab Police Rules as applicable to Haryana and principles of natural justice and the order deserves to be modify holding that the plaintiff is entitled to all consequential benefits, for the entire period i.e. salary and other applicable allowances

for the period he remained out of service on account of dismissal from the service and under suspension, along with interest at the rate of 18% p.a. from the date of its accrual till its realisation.

As a consequential relief, a decree for Mandatory Injunction directing the defendants to modify the order dated 24.03.2017 and to treat the absence period as leave of the kind due and to treat the plaintiff on continuous services with all consequential benefits for the entire period and to disburse him all the financial benefits i.e. salary and other applicable allowances for the period he remained out of service on account of dismissal from the service and under suspension along with 18% p.a. interest from the date of accrual till the realisation of the amount, may kindly also be passed in favour of the plaintiff and against the defendants. The costs of the suit may also be allowed, may kindly be passed in favour of the plaintiff and against the defendants, with costs throughout.”

2.2 The suit filed on 10.04.2018 was partly decreed vide judgment dated 02.03.2019 passed by learned Civil Judge (Junior Division), Karnal. Since the present suit was filed only with regard to expunging of adverse remarks recorded in the ACR but during arguments, learned counsel appearing on behalf of State placed on record certified copy of the judgment dated 02.03.2019 passed in civil suit No.95 of 2018, the Court taking judicial notice of the same, dismissed the suit being barred by *res judicata*. The petitioner filed appeal and in appeal, he moved an application for amendment by substituting prayer

clause on the ground that error had occurred due to sheer inadvertence. Said mistake could not be noticed till the final arguments. The petitioner wants to substitute the prayer clause, which reads as under:-

“It is, therefore, prayed that a decree for declaration to the effect that the adverse remarks so recorded in the ACR of the plaintiff for the period 1.10.2010 to 13.02.2011 conveyed vide. letter dated 27.06.2011 are illegal and are liable to be quashed along with consequential relief of mandatory injunction directing the defendants to expunge the adverse remarks so recorded in his ACR for the above said period in column no. 1 to 5, may kindly be passed in favour of the plaintiff and against the defendants with costs, in the interest of justice and equity.

4. *That the aforesaid amendment would not require any fresh evidence and the case may be decided on merits on the basis of evidence already adduced by the parties.*

5. *That the amendment is highly essential for the just and proper adjudication of the matter in controversy.*

It is, therefore, prayed that the application in question may kindly be allowed and the plaintiff may kindly be permitted to amend plaint as stated in preceding paras, in the manner stated above, in the interest of justice.

An affidavit in support of this application is attached.”

3. Keeping in view that earlier judgment was never exhibited, the court took judicial notice of the same at the time of passing judgment which means the petitioner was caught unaware and did not get opportunity to amend the pleadings. It is also submitted by learned

counsel for the petitioner at bar that no evidence is to be led if proposed amendment is allowed. The courts are required to do complete justice to the parties. The parties cannot be non-suited merely on technicalities. Since cause of action would not change, no evidence is to be led by the petitioner-appellant-plaintiff by amendment of the pleadings and no prejudice would be caused to the State, so, in the interest of justice, the order dated 25.11.2019 (Annexure P-8) is set aside and the application moved by the petitioner for amendment of plaint is allowed. The court, after giving opportunity to respondent to file written statement to the amended plaint, shall proceed further in accordance with law.

4. Present petition stands disposed of accordingly.

(GURBIR SINGH)
JUDGE

February 06, 2024

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No