(2011) 162 PLR 351

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 3638 of 2005 (O and M)

Saroop Singh		APPELLANT
	Vs	
State of Punjab and Others		RESPONDENT

Date of Decision: Jan. 6, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 22, 80
- Constitution of India, 1950 - Article 311, 311(2), 341
- Punjab Police Rules, 1934 - Rule 16.1 , 16.24

Citation: (2011) 162 PLR 351

Hon'ble Judges: Sabina, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Sabina, J.
Plaintiff had filed a suit for declaration, which was dismissed by the Sub Judge-Ist Class, Jalandhar vide judgment and decree dated 18.8.1994. In appeal, the said judgment and decree were upheld by the Additional District Judge, Jalandhar vide judgment and decree dated 25.1.2002. Hence, the present appeal by the Plaintiff.

2. Brief facts of the case, as noticed by the Sub Judge, 1st Class Jalandhar, in para Nos. 2 and 3 of impugned judgment, are as under:

2. Plaintiff was working as a Constable in the Jalandhar District and his work and conduct was satisfactory. As the Plaintiff was a permanent employee of the Defendants as such he was entitled to the protection of Punjab Police Rules 1934 and Article 311 of the Constitution of India. Services of the Plaintiff were terminated by the order of Senior Superintendent of Police, Jalandhar which is illegal (not legible) charge sheet was served upon the Plaintiff and neither any inquiry was conducted nor any show cause notice was

given to the Plaintiff. Enquiry was dispensed without relying upon any material on record neither any attempt to summon witness was made by Defendant nor any reason for dispensing with the Enquiry was given by the Defendants and the impugned order was passed without complying with the provisions of 16.24 and 16.38 of Police Rules. The Punishing Authority also violated the provision of Section 16.19 of Police Rules and before passing the impugned order no opportunity of being heard was afforded to the Plaintiff and that the Plaintiff was acquitted by the court of Shri S.K. Chopra Additional Judge, designated Court Nabha and in pursuance of judgment of Shri S K Chopra Plaintiff served the Defendants with a legal notice u/s 80 CPC but the Defendants did not bother about the notice and ultimately aggrieved against the act of the Defendants the Plaintiff filed a writ petition in the Hon''ble High Court of Punjab and Haryana as their lordships directed the Defendants that appeal of the Plaintiff pending before the Deputy Inspector General of Police should be disposed of within 6 months and in pursuance of the orders of the Hon''ble High Court Defendant No. 3 passed an order dated 25.7.91 but the same is illegal because it had been passed in contravention of directions of Hon''ble High Court. The impugned order is non speaking and was passed with mala fide intention and no personal hearing was given to the Plaintiff before passing the impugned order. The Plaintiff preferred the writ petition in Hon''ble High Court against the impugned order but the same was dismissed because it involved a disputed question of facts and the present suit was filed with permission of the High Court and prayed that order dated 17.8.87 and 25.7.91 be set aside and the Plaintiff shall be reinstated.

3. The Defendants appeared and filed w/s taking preliminary objections that suit of the Plaintiff is barred by law of limitation, the same is not maintainable as it is against the rules of res judicata and that no legal and valid notice u/s 80 CPC was served upon the Defendants. On merits the Defendants replied that the Plaintiff was associating with anti social and anti national elements and that he was dismissed by Defendant No. 3 by virtue of powers under Rule 16.1 of Pb. Police Rules read with Article 311(2)(b) of Constitution of India. It was admitted by Defendants that no charge sheet was issued to the Plaintiff nor any enquiry was conducted against the Plaintiff with a further assertion that it was not reasonably practical to give the Plaintiff an opportunity of showing cause before his removal from the service. It was also not reasonable practical to hold a Enquiry in the manner provided under Rule 16.24 of Pb. Police Rules for the reasons recorded in order dated 17.8.87. It was admitted by the Defendants that no witness was summoned before passing the impugned order or before dispensing with the enquiry and that as the punishing authority was satisfied that circumstances were such that it was not reasonably practical to hold an Enquiry in the manner provided under Rule 16.24 of Punjab Police Rules. Hence the impugned order is lawful and that the Plaintiff was acquitted on the basis of benefit of doubt because some Pws failed to appear in the Court and that on receiving direction from Hon''ble High Court, Defendant No. 2 checked its office record and it was found that no representation of the Plaintiff was pending and accordingly order dated 25.7.94 was passed by the DIG and that order of DIG is legal and valid because representation of Plaintiff was decided according to rules and a speaking order was

passed and the order of Hon''ble High Court nowhere specified that the delay occurred on the part of Plaintiff has been considered and that the writ petition filed by the Plaintiff before the Hon''ble High Court was withdrawn as the Plaintiff (not legible) the same fate as that of C Ashwani Kumar who was dismissed from service on similar grounds and whose writ petition was dismissed by the Hon''ble High Court on 27.7.94 and that suit of the Plaintiff having on merits (not legible).

3. On the pleadings of the parties, following issues were framed by the trial Court:

(1) Whether the impugned order dated 17.8.87 and (not legible) passed by the Defendant No. 2 and Defendant No. respectively are illegal and void?OPP

(2) Whether the Plaintiff is entitled to the relief as prayed for?OPP

(3) Whether the suit of the Plaintiff is barred by law of limitation?OPD

(4) Whether the suit of the Plaintiff is not within the present form?OPD

(5) Whether the legal and valid notice u/s 80 CPC was served by the Plaintiff on the Defendants?

(6) Relief.

4. Learned Counsel for the Appellant has submitted that the suit filed by the Plaintiff-Appellant was held to be within limitation by the Courts below. However, the Courts below had erred in dismissing the suit of the Plaintiff. The Plaintiff could not be removed from service without following due process of law.

5. Learned State counsel, on the other hand, has submitted that the suit filed by the Plaintiff had been rightly dismissed by the Courts below. In fact, the suit of the Plaintiff was barred by limitation/The Courts below had erred in holding that the suit was within limitation.

6. After hearing learned Counsel for the parties, I am of the opinion that the present appeal is devoid of any merit and deserves dismissal.

7. Order 41 Rule 22 CPC reads as under:

22. Upon hearing Respondent may object to decree as if he had preferred separate appeal- (1) Any Respondent, though he may not have appealed from any part of the decree, may not only support the decree on any of the grounds decided against him in the Court below, but take any cross-objection to the decree which he could have taken by way of appeal, provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

Form of objection and provisions applicable there to. -

(2) Such cross-objection shall be in the form of a memorandum and the provisions of Rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

(4) Where, in any case in which any Respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filled may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.

(5) The provisions relating to pauper appeals shall, so far as they can be made applicable, apply to an objection under this rule.

8. In the present case, Plaintiff was removed from service vide order dated 17.8.1987 (Ex.P-1), A perusal of the order reveals that the punishing authority was satisfied that the Plaintiff was associating with desperate anti social and anti national elements in their unlawful activities and hence, it was not practical to afford an Opportunity to show cause to the Plaintiff as required by Clause 2 of Article 341 of the Constitution of India. The said order Ex.P-1 was passed on 17.8.1987. However, the suit was filed by the Plaintiff on 20.4.1992. Issue No. 3 was framed qua limitation. Trial Court erred in holding that the suit was within limitation by taking the period of limitation to commence from the day when the Plaintiff was acquitted in the criminal case. In fact, the limitation in filing the suit begun to run on the day the impugned order was passed and the same did not stop. The impugned order Ex.P-1 was passed because it was found that the Plaintiff was indulging in anti social activities The acquittal of the Plaintiff in the criminal proceedings is a separate issue. The findings of the criminal Courts are not binding on the civil Court. In case the Plaintiff was aggrieved by his termination order, he should have filed a suit within the period of limitation. Learned Additional District Judge erred in holding that since the Respondents had not filed any Appeal or cross-objections, the issue qua limitation was liable to be decided in favour of the Plaintiff. As per Order 41 Rule 22, the State could have agitated the issue qua limitation without filing the appeal or cross appeal with a view to support the decree. Learned State counsel has submitted that the suit filed by the Plaintiff was beyond limitation and there is force in the arguments raised by the learned State counsel.

9. Learned Counsel for the Appellant has pleaded parity with the case of Harbhajan Singh, whose suit was decreed by the trial Court and appeals were dismissed by the lower appellate Court and by this Court and thereafter, the SLP was dismissed by the Apex Court. However, in the said case, the point qua limitation was not raised by the State, whereas, in this case, the point qua limitation has been duly agitated by the State. No substantial question of law arises in this regular second appeal, which would warrant interference by this Court.

Accordingly, the same is dismissed.