
(2011) 09 P&H CK 0200

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 3887 of 2007

Ram Singh

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision: Sept. 2, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 80
- Punjab Police Rules, 1934 - Rule 16.28, 16.29, 16.29(2), 16.32

Citation: (2011) 164 PLR 258

Hon'ble Judges: Mohinder Pal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Mohinder Pal, J.

This regular second appeal is against the judgment of reversal passed by the first appellate Court vide which the impugned order of punishment dated 5.1.1995 and the order passed by the appellate authority dated 26.7.1995 were set aside by the trial Court, however, the same have been upheld by the first appellate Court by setting aside the order of the trial Court. 2. Brief facts of this case are that the plaintiff (appellant herein) joined the Punjab Police as Constable in Faridkot District on 22.12.1979. He was promoted as Head Constable and then Assistant Sub Inspector in October 2002. The plaintiff was transferred as MHC in the Police Station City Moga on 23.12.1989 where he remained posted upto 23.1.1990. It is his case that he was not given full charge by his predecessor MHC Shamsheer Singh and to that effect he reported to the In-charge of Police Station. Later on a departmental inquiry against him, against Head Constables Harmail Singh No.446 and Puran Chand No.978 was initiated.

2. The Inquiry Officer concluded the alleged inquiry and submitted his inquiry report on 17.8.1992. During inquiry proceedings the plaintiff filed the reply to the notice.

On the basis of the inquiry report, SSP, Faridkot passed the impugned order vide which punishment of one year approved service of the plaintiff was forfeited with cumulative effect. This order was affirmed in appeal by DIG Ferozepur Range vide order dated 26.7.1995. It is contended that the plaintiff filed second appeal/mercy petition on 21.9.1995 which was also dismissed on 23.6.2000. Against this order, the plaintiff once again filed a revision before the State Government which is stated to have been dismissed on 24.8.2001. As the petition filed by the appellant was dismissed by the State of Punjab, the appellant approached the Court of Civil Judge (Junior Division), Faridkot by way of suit for declaration. So the plaintiff approached the Civil Court with the prayer that the impugned order vide which one year service of the plaintiff was forfeited with cumulative effect was arbitrary, illegal, void, cryptic, non-speaking, passed due to non-application of mind and against the principles of natural justice and Punjab Police Rules was liable to be set aside.

3. The suit of the plaintiff was contested by the respondents by filing written statement and taking up various grounds including the ground that the suit of the plaintiff was badly barred by limitation and is liable to be dismissed on this score alone. Learned trial Court framed following issues in this case:

1. Whether the plaintiff is entitled for declaration, as prayed for? OPP
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD
3. Whether no valid notice u/s 80 CPC was served upon the defendants? OPD
4. Whether the plaintiff has no locus-standi to file the present suit? OPD
5. Whether the suit of the plaintiff is time barred? OPD
6. Relief.

4. The learned trial Court decreed the suit of the plaintiff while taking into account the finding on issue No.1 by holding that the impugned order challenged by the plaintiff was illegal, null, void and based on wrong inquiry report which was conducted against the Punjab Police Rules. Resultantly, the plaintiff was held entitled to get all the attending service benefits along with interest at the rate of 12 per cent per annum from the due date till the date of actual payment.

5. The first appellate Court took up the issue of limitation and set aside the findings of the trial Court by accepting the appeal and holding that the suit of the plaintiff Ram Singh was time barred. Hence, the present regular second appeal.

6. While arguing before me, learned counsel for the appellant has laid emphasis on the point that the relevant provisions contained in Rule 16.28 of the Punjab Police Rules, 1934 (for short - "the Rules") which provides for a provision of review has been ignored by the appellate Court. It has been submitted that the review petition has been dismissed on 24.8.2001 and it was conveyed to the appellant much later and hence the civil suit filed on 28.8.2004 was within limitation.

7. On the other hand, learned counsel for the respondents while referring to various provisions of the Rules has submitted that there was no provision for the second appeal/mercy petition or further review to the State Government and the limitation starts from 26.7.1995 i.e. the date from which the appeal filed by the appellate before the DIG, Ferozepur Range has been dismissed. It is submitted that the suit filed for declaration against these orders has been filed by the plaintiff before the learned lower Court only on 28.8.2004 which is miserably time barred having not been filed within three years from the date of passing of the appellate order i.e. on 26.7.1995.

8. Learned counsel for the appellant has time and again referred to Rule 16.28 of the Rules which deals with the power to review proceedings. This rule is reproduced as under:

16.28. Powers to review proceedings.- (1) The Inspector-General, a Deputy Inspector-General, and a Superintendent of Police may call for the records of awards made by their subordinates and confirm, enhance, modify or annul the same, or make further investigation or direct such to be made before passing orders. The State Government may also call for the records and review the awards made by the Inspector General of Police Punjab or by any other authority subordinate to him.

(2) If an award of dismissal is annulled, the officer annulling it shall state whether it is to be regarded as suspension followed by reinstatement, or not. The order should also state whether service previous to dismissal should count for pension or not.

(3) In all cases in which officers propose to enhance an award they shall, before passing final orders, give the defaulter concerned an opportunity of showing cause, either personally or in writing, why his punishment should not be enhanced.

9. Close perusal of the provisions reproduced above leaves no doubt that the Inspector General of Police, DIG or the SP may call for records of awards made by their subordinates and confirm, enhance, modify or annul the same. However, there are certain guide-lines and manners which authorize these officers to interfere at appropriate stage and in a prescribed manner. As is apparent from the inquiry proceedings and the trial Court record that second appeal/mercy petition has been preferred to the Director General of Police on 21.9.1995 which has been decided on 23.6.2000.

10. Rule 16.29 of the Rules deals with the right to appeal which reads as under:

16.29. Right of appeal.- (1) Appeals shall lie only against orders of dismissal or reduction or stoppage of increment or forfeiture of approved service for increment.

(2) There shall be one appeal only from the original order, and the order of the appellate authority shall be final.

(3) A copy of the original order appealable shall be supplied to the person concerned free of cost.

(4) to (7) xx xx

11. So Rule 16.29(2) states that an officer whose appeal has been rejected is stopped from applying for a fresh scrutiny or a second appeal. Rule 16.32 further makes it clear that an officer whose appeal has been heard by the Inspector-General, may, however, submit to the Inspector-General of Police a plea for mercy or may apply to Inspector-General for review of his appellate order only on the ground that fresh evidence has become available since the appellate order has been pronounced. In the present case nothing new was available with the appellant to have empowered the Inspector-General or DGP to review his case. It will be relevant to mention here that against this order the appellant once again seems to have approached the State Government and there is no such provision prescribed in the Rules.

12. I am of the considered view that the limitation clock started ticking from 26.7.1995 that is the date on which the appeal filed by the appellant has been dismissed by the Deputy Inspector General of Police. The further right to revision or mercy petition etc. was a discretion of these authorities. It was only the order of the Senior Superintendent of Police and Deputy Inspection General of Police from where the limitation starts. Since the suit has been filed in the trial Court on 28.8.2004 it was hopelessly time barred.

13. Resultantly, there is no error or ambiguity in the judgment passed by the first appellate Court or the impugned order passed by the competent authorities. Consequently, the regular second appeal is dismissed being devoid of any merit.