
(2016) 05 P&H CK 0444

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 4771 of 2014 (O&M)

SPO/Constable IRB Satpal Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 12-05-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2016) 4 PLR 63

Hon'ble Judges : Mr. P.B. Bajanthri, J.

Bench : Single Bench

Advocate : Mr. Vipin Mahajan, Advocate, for the Appellant; Mr. Rahul Verma, AAG, Punjab, for the Respondent-State

Final Decision : Dismissed

Judgement

P.B. Bajanthri, J.—The appellant has questioned the validity of the Appellate Court decision dated 21.5.2014, by which appellant's suit was dismissed.

2. Brief facts of the case is that, the appellant is stated to have appointed as a Special Police Officer on 17.10.1991 under State Police Policy. An FIR No. 159 was filed for the offences under Sections 326/324 IPC on 20.7.2001 against appellant. He was selected and appointed to the post of Constable on 27.8.2002. He was discharged from service on 14.1.2003 with reference to pendency of criminal proceedings against him. Later on he was convicted on 21.4.2006. Thereafter he was acquitted for the offence under Section 326 IPC, whereas sentence awarded under Section 324 IPC was maintained, while releasing him on probation.

3. The appellant filed a suit for declaration to the effect that act of defendant No. 3, not allowing the appellant/plaintiff to join as a Constable in Ist IRB Patiala and the act of defendant No.2 in not allowing the appellant to join duty in his original rank of Special Police Officer in Batala District, is illegal and the appellant is

entitled to join as a Constable Ist IRB Patiala or to join duty in his original post of Special Police Officer in Police District Batala, with consequential relief. Trial Court decreed in favour of the appellant, while directing the defendants No. 1 and 2 to reinstate the appellant/plaintiff with continuity of service and all other consequential benefits within three months of receiving of the order, with an observation that appellant is not entitled for the wages for the intervening period from the date of dismissal to his reinstatement. The respondent-department preferred an appeal before the Appellate Court. The Appellate Court reversed the order of the trial Court. Thus the appellant has preferred the present appeal.

4. Learned counsel for the appellant submitted that he is entitled to be reinstated to the post of Constable or in the alternative Special Police Officer. Upholding of sentence under Section 324 IPC and releasing him on probation would not be a hurdle for joining service. He relied on decision of this Court reported in *Krishan Dev v. State of Haryana* 2003 (2) SLR 658. He also relied on decision of the Supreme Court reported in *Punjab Water Supply and Sewerage Board and another v. Ram Sajivan and another* 2007 (3) SCT 213.

5. Learned counsel for the respondent-State submitted that the appellant was not acquitted honourably, so as to seek for reinstatement, either to the post of Constable or to the post of Special Police Officer, for the reasons that the appellant's conviction under Section 324 IPC has attained finality even though he has been released on probation. Conduct of the appellant is relevant for the purpose of deciding as to whether appellant should be taken back to duty or not, that too in the police department which is a discipline force. Persons who are involved in criminal cases and who have been convicted, such persons should not be continued or taken back to service in the public interest. If such persons are reinstated, reputation of department would be lowered in the eye of general public and public would not have confidence in the State. Therefore, appellant is not entitled to reinstatement. Moreover, appellant has been discharged, which is not questioned by him. Therefore, question of holding disciplinary proceedings is impermissible. Learned counsel for the respondent-State relied on three decisions of the Supreme Court, i) *Union of India and others v. Bakshi Ram* 1990 3 RCR(Criminal) 133; ii) *Karam Singh v. State of Punjab* 1996 AIR (SC) 3159 and; iii) Civil Appeal No. 6423 of 2010 titled as *Sushil Kumar Singhal v. The Regional Manager, Punjab National Bank*. Paragraphs 27 and 28 of *Sushil Kumar Singhal's* case (Supra) reads as follows:-

"27. In view of the above, we reach the conclusion that once a Criminal Court grants a delinquent employee the benefit of Act, 1958, its order does not have any bearing so far as the service of such employee is concerned. The word "disqualification" in Section 12 of the Act, 1958 provides that such a person shall not stand disqualified for the purposes of other Acts like the Representation of the People Act, 1950 etc. The conviction in a criminal case is one part of the case and release on probation is another.

Therefore, grant of benefit of the provisions of Act, 1958, only enables the

delinquent not to undergo the sentence on showing his good conduct during the period of probation. In case, after being released, the delinquent commits another offence, benefit of Act, 1958 gets terminated and the delinquent can be made liable to undergo the sentence. Therefore, in case of an employee who stands convicted for an offence involving moral turpitude, it is his misconduct that leads to his dismissal.

28. Undoubtedly, the appellant was convicted by the Criminal Court for having committed the offence under Section 409 IPC and was awarded two years' sentence. The appellate court granted him the benefit of Act, 1958. The Tribunal rejected his claim for re-instatement and other benefits taking note of the fact that appellant was given an opportunity by the Management to show cause as to why he should not be dismissed from service. The appellant submitted his reply to the said show cause notice. The Management passed the order of dismissal in view of the provisions of the Act, 1949. The Tribunal also took into consideration the contents of the Bi-Partite Settlement applicable in the case and rejected the appellant's claim. The High Court considered appellant's grievance elaborately as is evident from the impugned judgment. We could not persuade ourselves, in the aforesaid fact-situation, that any other view could also be possible."

In view of the aforesaid latest decision, the cited decision of the appellant may not hold good. Therefore, appeal is to be dismissed.

6. Heard learned counsel for the parties.

7. The appellant was appointed as a Constable on 27.8.2002. As on that date he was already facing criminal proceedings in FIR No. 159 dated 20.7.2001 for the offences under Sections 326 and 324 IPC. The official respondents should not have issued appointment order at the first instance. In other words, without verifying the antecedents of the appellant he was appointed. The appellant was discharged from service on 14.1.2003. The appellant has not questioned the order of discharge even after his acquittal under Section 326 IPC, while releasing on probation on 27.8.2007. In the absence of challenge to the discharge order dated 14.1.2003, the suit filed for reinstating the appellant in the post of Constable or Special Police Officer is not maintainable. Even to this date, discharge order dated 14.1.2003 holds good and this Court cannot side track the order of discharge and direct the respondents to reinstate, since appellant has no legal right to seek reinstatement as long as discharge order is in force. Therefore the appellant is not entitled to reinstatement either to the post of Constable or to the post of Special Police Officer.

8. Learned counsel for the appellant submitted that in view of his acquittal, sentence under Section 324 IPC is maintained and releasing him on probation would not be hurdle for taking him back to reinstate him as a Police Constable. At the best, the respondents can hold departmental enquiry and take disciplinary action. Whereas, he is entitled for reinstatement. The Apex Court rightly held that conviction in a criminal case is one part of the case and releasing on

probation is another. Hence, grant of benefit under Probation of Offenders Act only enables the appellant not to undergo the sentence due to his good conduct during the period of probation. The appellant was in the Discipline Force - Police Department, who has been convicted for offence under Section 324 IPC, has no right to seek for reinstatement having regard to his conduct. The decision cited by the appellant counsel is earlier decision of the year 2007, wherein the decision in Karam Singh's case (Supra) was not taken note of. In the Karam Singh's case (Supra) also wherein petitioner was involved in criminal proceedings, he was convicted under Section 302 read with Section 34 IPC and also under Section 324 IPC, later on in appeal conviction was maintained under Section 323 IPC and he was released on probation. In view of the principle laid down in Karam Singh's case (Supra) (Paragraph 4), Sushil Kumar Singhal's case (Supra) (Paragraphs 8, 9 and 17) and Jainendra Singh v. State of U.P. (2012) 8 SCC 748 (Paragraph 31), this Court cannot interfere with the order of the Appellate Court dated 21.5.2014.

9. Accordingly, the appeal stands dismissed.

10. No order as to costs.