
(2012) 02 P&H CK 0053

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2270 of 1998

State Of Punjab and others

APPELLANT

Vs

Pehla Singh, Ex. Asi

RESPONDENT

Date of Decision : 15-02-2012

Acts Referred:

Punjab Municipal Act, 1911 — Section 3(1)(a)

Citation : (2012) 167 PLR 13

Hon'ble Judges : Ajay Tewari, J

Bench : Single Bench

Advocate : S.S. Gill. D.A.G., Punjab, for The State, for the Appellant; S.C. Chhabra, for the Respondent

Judgement

Ajay Tewari, J.—At the very outset Mr. Chhabra states that the brief was taken away by the respondent. However, since the matter relates to an occurrence which took place more than 20 years ago, I have requested him to continue representing the respondent. This appeal has been filed against the concurrent judgments of the Courts below decreeing the suit of the respondent whereby he has challenged his order of termination from service.

2. The respondent joined as a Constable in the year 1967 and was promoted as ASI on 04.12.1990. He proceeded on five days' casual leave on 23.2.1992 and never joined back. Ultimately after regular inquiry in which also he did not join the impugned order dated 15.12.1992 was passed by the S.S.P. dismissing him from service.

3. Both the Courts held that since the order of promotion was passed by the DIG, only the DIG was competent to take action against the respondent.

4. When this appeal was filed, no question of law was proposed. However, today learned DAG has proposed the following question of law:-

Whether the finding of the Courts below that the impugned order was not passed by the competent authority is correct

5. Apart from that he has relied upon State of Punjab and Others Vs. Manohar Lal, wherein also in a similar case where the promotion was done by the DIG and the order of compulsory retirement was passed by the SSP, the Hon''ble Supreme Court held as follows:-

6. On considering the provisions of the aforesaid rules it is quite clear and apparent that the Senior Superintendent of Police, Gurdaspur being the competent authority to make the appointment to the non-gazetted ranks of Sub-Inspectors, is also legally competent to pass the order of compulsory retirement of the plaintiff-respondent in public interest in accordance with the provisions of Rule 3(1)(a) and (b) of the said rules. It has been tried to be contended by referring to the provisions of Rule 13.9, Sub-rule (2) by the respondent wherein it has been provided that substantive promotion to the rank of Assistant Sub-Inspector is to be made by the Deputy Inspector General of Police in accordance with the principles prescribed in Rule 13.1 that the Superintendent of Police is not the competent authority to make the impugned order. It is only the Deputy Inspector General of Police who is competent to make the order of compulsory retirement in question. This argument cannot be sustained in view of the specific provisions made in Rule 12.1 wherein it has been provided that the Superintendent of Police is competent to make the appointment to the non gazetted ranks of Sub-Inspectors of Police and Assistant Sub-Inspector of Police. On a reading of both these provisions of the Rules 12.1 and 13.9(2) it is clear and apparent that the Senior Superintendent of Police, Gurdaspur is legally competent to make the impugned order of compulsory retirement of the plaintiff respondent from service in public interest after his attaining 50 years of age in accordance with the provisions of Rule 3(1)(a) of the Punjab Civil Services (Premature Retirement) Rules, 1975."

6. Learned counsel for the respondent has not been able to cite any contrary judgment. In the circumstances this question of law has to be decided in favour of the appellants.

7. That, however, would not be an end of the matter. In the opinion of this Court yet another question arises, whether a dismissal order can be passed in derogation of the provisions of Rule 16.2. Rule 16.2 reads as under:-

16.2 Dismissal.- (1) Dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete fitness for police service. In making such an award regard shall be had to the length of service of the offender and his claim to pension.

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(2) (3) XX X

8. A perusal of the dismissal order reveals that the entitlement of the respondent to pension was not at all considered. Learned DAG has argued that this point was

never raised before the Courts below. That may be so but he has been candid enough to accept that the question does arise. It cannot be forgotten that the impugned occurrence took place 20 years ago. Now at this stage to subject the parties to a fresh round of litigation would be defeating the course of justice and would result in injustice to the parties.

9. In this regard reliance may be placed upon the case of State of Punjab and others Vs. Dharam Singh, wherein it was held as follows:-

16.21 Status and treatment of officer under suspension.- (1) A police officer shall not by reason of being suspended from office cease to be a Police Officer.

During the term of such suspension the powers, functions and privileges vested in him as a police officer shall be in abeyance, but he shall continue subject to the same responsibilities, discipline and penalties and to the same authorities, as if he had not been suspended.

4. A reading of it would clearly indicate that even during the period of suspension the Police Officer is required to attend to roll call and be available to the authorities. The payment of subsistence allowance, as ordered, under the suspension rule is one fact of it and his duty to be present is another. Nonpayment of subsistence allowance does not entitle a delinquent officer to be absent from duty. It is his duty to claim subsistence allowance, go to the office and collect subsistence allowances and if it is not paid, necessary representation to the higher authorities and, if the grievance is not redressed, in the appropriate forum seeking payment, may be made. But that does not mean that the delinquent officer, in the face of the express rule, can absent himself from duty. Under these circumstances, the conclusion reached by the disciplinary authority that he was wilfully absent from duty is well justified. However, on the quantum of punishment imposed, on the facts and circumstances of the case we are of the view that instead of the removal. Compulsorily retirement from service would be an appropriate punishment.

10. In the circumstances this appeal is disposed of with the direction that the judgments and decrees of the Courts would be set aside and the order of dismissal from service would be converted into that of compulsory retirement from the date of his initial absence. In this view of the matter the appellants are directed to work out the superannuation benefits and release the same to the respondent within three months from today failing which he would be entitled to interest at the rate of 8% p.a. from the date/s amount/s fell due.