

**(2006) 01 P&H CK 0102**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Regular Second Appeal No. 1998 of 1998

The State of Punjab and Others

APPELLANT

Vs

Budha Singh, Ex. Constable No. 1088/GSP

RESPONDENT

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**Date of Decision :** 18-01-2006

**Acts Referred:**

Civil Procedure Code Amendment Act, 1976 — Section 100  
Punjab Courts Act, 1980 — Section 100, 41

**Citation :** (2006) 143 PLR 289 : (2006) 3 SLJ 362

**Hon'ble Judges :** Viney Mittal, J

**Bench :** Single Bench

**Advocate :** D.S. Jandiala, A.A.G, for the Appellant; P.S. Goraya, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Viney Mittal, J.—The defendants, State of Punjab and others, having lost before the learned first Appellant Court have approached this Court through the present regular second appeal.

2. The facts which emerge from the record show that plaintiff-Budha Singh filed a suit for declaration to the effect that the Order dated November 23, 1993 passed by the Senior Superintendent of Police, Gurdaspur, defendant No. 2 vide which the plaintiff was retired from service prematurely was illegal and bad. He also challenged the order dated July 14, 1994 vide which the Director General of Police, Punjab rejected the subsequent request made by the plaintiff for withdrawal of his resignation/request for premature retirement.

3. The plaintiff pleaded that he was enlisted as a Constable with the Punjab Police with effect from March 14, 1972. In 1991, the son of the plaintiff was murdered by the terrorists. It was claimed by him that on account of the aforesaid, fact, the plaintiff was mentally disturbed and therefore, he filed an application on November 18, 1993 seeking his voluntary retirement. The aforesaid request of the plaintiff was accepted on November 23, 1993 by the

Senior Superintendent of Police. Subsequently, the plaintiff filed an application on February 16, 1994 withdrawing the aforesaid request made by him on November 18, 1993. The aforesaid request made by the plaintiff was forwarded to the Director General of Police, Punjab. Since in the meantime, the Senior Superintendent of Police had already accepted the request of the plaintiff, therefore, the Director General of Police on July 14, 1994 rejected the request of the plaintiff. The plaintiff claimed that the aforesaid Orders passed by the Senior Superintendent of Police and the Director General of Police were illegal and bad. Consequently, he filed the suit in question.

4. The defendants contested the claim of the plaintiff. It was maintained by them that while filing the application on November 18, 1993, the plaintiff had requested that he be retired with effect from December 1, 1993. Consequently, the Senior Superintendent of Police accepted the aforesaid request of the plaintiff on November 23, 1993 and the plaintiff was ordered to be retired with effect from December 1, 1993. In these circumstances, the defendants maintained that any subsequent application of the plaintiff on February 16, 1994 withdrawing his original request was wholly without any basis, inasmuch as the original request of the plaintiff had already been accepted in the meantime. Consequently, the Director General of Police had rightly dismissed the request of the petitioner on July 14, 1994.

5. The suit of the plaintiff was dismissed by the learned Trial Court. The learned trial Court found it as a fact that when the plaintiff had filed an application, Ex.DI, on February 18, 1993, then, he had specifically mentioned therein that he be allowed to retire with effect from December 1, 1993. Accordingly, the Senior Superintendent of Police had accepted his request and allowed him to retire with effect from December 1, 1993, vide Order Ex.PI. The said order was to take effect from December 1, 1993 as desired by the plaintiff. It was also held by the learned Trial Court that since the aforesaid request of the plaintiff had already been accepted by the authorities, therefore, the plaintiff could not be heard to claim that he had withdrawn the aforesaid request subsequently on February 16, 1994.

6. The plaintiff took up the matter in appeal.

7. The learned first Appellate Court on reconsideration of the controversy, allowed the appeal filed by the plaintiff. It was held that since the Order dated November 23, 1993 had been passed by the Senior Superintendent of Police within a period of three months from the request of the plaintiff and the aforesaid period of three months was, in fact, to be treated as notice period, therefore, when the plaintiff had withdrawn the aforesaid request within the aforesaid three months, then he could not be voluntarily retired and the subsequent request made by the plaintiff was liable to be accepted. Consequently, the appeal of the plaintiff was allowed and as a result thereof, the suit filed by the plaintiff was decreed; It was held that the plaintiff was entitled to all service benefits and continuity of service including pay. and allowances from

the date he had been retired from service.

8. At this stage, it may be noticed that the present regular second appeal had been filed in the year 1998 under the provision of Section 41 of the Punjab Courts Act, 1980. A Full Bench of this Court in the case of Ganpat Vs. Ram Devi and Others, had taken a view that in view of the aforesaid local law (Punjab Courts Act), the amended provisions of Section 100 of the Code of Civil Procedure, as amended in 1976, were not applicable to the second appeals filed in this Court. Accordingly, no substantial question of law was framed nor the aforesaid regular second appeal was admitted on any such substantial question of law. However, the Hon'ble Supreme Court of India in the case of Kulwant Kaur and Others Vs. Gurdial Singh Mann (dead) by Lrs. and Others etc., has held that after the amendment of the CPC in the year 1976, thereby amending Section 100, Section 41 of the Punjab Courts Act had become redundant and repugnant to the Central Act i.e. CPC and, therefore, was to be ignored and, therefore, the second appeal shall only lie to this Court u/s 100 of the amended CPC on a substantial question of law,

10. In view of the law laid down by the Apex Court in Kulwant Kaur's case (supra), during the course of arguments, the following substantial questions of law have arisen for consideration:

A. Whether the learned first Appellant Court had misread the document Ex.DI, the application filed by the plaintiff on November 18, 1993, wherein he had specifically stated that he be retired with effect from December 1, 1993 and on account of the aforesaid misreading, whether the findings recorded by the learned first Appellate Court are judicially perverse and liable to be set aside?

B. As to whether the plaintiff having never served a notice for three months while making the original request on November 18, 1993 and an order having been passed on November 23, 1993 accepting the aforesaid request, still the aforesaid notice period could be presumed to be operative and whether on account of the aforesaid fact, the plaintiff could withdraw his request on November 16, 1994?

11. I have heard Shri D.S. Jandiala, learned Additional Advocate General, Punjab appearing for the appellants and Shri P.S. Goraya, learned Counsel appearing for the respondent, and with their assistance have gone through the record.

12. Shri D.S. Jandiala, learned Additional Advocate General, Punjab has vehemently argued that the learned first Appellate Court has completely misread the application, Ex.DI dated November 18, 1993 filed by the plaintiff wherein it had been subsequently mentioned by the plaintiff that he wanted voluntary retirement and pension with effect from December 1, 1993. It is on account of the aforesaid fact that the said application was accepted by the Senior Superintendent of Police on November 23, 1993 and the order of voluntary retirement was to take effect with effect from December 1, 1993. The learned Counsel argued that on account of the aforesaid misreading, the findings

recorded by the learned first Appellate Court cannot be legally sustained since they are judicially perverse. It has been argued by the learned Counsel that admittedly the application dated November 16, 1994 withdrawing the earlier request was filed by the plaintiff much after the order had been passed by the Senior Superintendent of Police on November 23, 1993 and therefore, the said request could not be entertained and the same was validly and rightly rejected on July 14, 1994 by the Director General of Police. It has further been contended that since the plaintiff had not served any notice for three months, therefore, the order was passed on November 23, 1993 by the Senior Superintendent of Police and the plaintiff could not be heard to claim that he had withdrawn the original request within the notice period.

13. As against this, Shri P.S. Goraya, learned Counsel for the respondent has argued that the notice period was mandatory under the Rules. A person seeking voluntary retirement was required to serve a three months' notice and therefore within the aforesaid period of three months, the person making request could always change his mind and withdraw the request. According to Shri P.S. Goraya, once the plaintiff had filed an application on November 16, 1994 withdrawing his request within the notice period, then the order dated November 23, 1993 was liable to be withdrawn and in any case, his subsequent request could not be rejected by the Director General of Police on July 4, 1994. It has also been argued that in any case, a perusal of Ex.DI shows that the foot note to the application has been added later on wherein it had been mentioned that the pension/voluntary retirement was to take effect from December 1, 1993. Shri Goraya has argued that the aforesaid foot note was not shown to be in the hand writing of the plaintiff and that the defendants had not led any evidence to show that the aforesaid foot note was written by the plaintiff in the original application. In support of his contention, Shri P.S. Goraya has relied upon two judgments of the Hon'ble Supreme Court of India in Balram Gupta Vs. Union of India (UOI) and Anr, and J.N. Srivastava Vs. Union of India (UOI) and Another, .

14. I have thoughtfully considered the rival contentions of the learned Counsel for the parties.

15. The facts which emerge from the record clearly show that the plaintiff had originally filed the application, Ex.DI, on November 18, 1993. A perusal of the application shows that there is a foot note added and in the aforesaid foot note, it has been mentioned that the aforesaid voluntary retirement/pension be given to the plaintiff with effect from December 1, 1993, although during the course of the arguments, learned Counsel for the plaintiff has argued that the aforesaid foot note was not in his hand writing. I am afraid, neither any such plea was taken by the plaintiff in the plaint nor any evidence to that effect was led by him during the course of trial. It was for the plaintiff to prove his case that the original application dated November 18, 1993 was to take effect after the expiry of three months as per Rules applicable to him. In these circumstances, when the plaintiff made a request that he be voluntarily retired with effect from

December 1, 1993 on account of his personal reasons and mental condition, then it was natural for the Senior Superintendent of Police to have accepted the aforesaid request by passing the order dated November 23, 1993. Nothing has been shown by the plaintiff that the aforesaid request was to take effect after the notice period.

16. No such notice was served by the plaintiff nor any such notice was demanded by the respondents. The requirement of the notice therefore in these circumstances, stood waived when the Senior Superintendent of Police accepted the aforesaid request of the plaintiff on November 23, 1993.

17. There is no quarrel with regard to proposition of law that if a notice of three months is given by an employee as required under the Rules and the aforesaid request is withdrawn by him within the aforesaid notice period, then even if an order allowing him to retire has been passed in the meantime, still the employee was well within his rights to withdraw the said request within the notice period. The law laid down by Apex Court in Balram Gupta's case and J.N. Srivastava's case is only to that effect. However, as noticed in the present case, there was no notice ever served by the plaintiff. In these circumstances, the aforesaid authorities are not attracted to the present case.

18. No other point has been urged.

19. In view of the discussion above, the aforesaid questions of law, A and B, are answered in favour of the defendants/appellants and against the plaintiff/respondent. As a consequence of the answer to two substantial questions of law, the present appeal is allowed. The judgment and decree of the learned first Appellate Court are set aside. The suit filed by the plaintiff shall stand dismissed.

20. However, there shall be no order as to costs.