

CASE NO.:
Appeal (civil) 5625 of 2002

PETITIONER:
State of Punjab and Ors.

RESPONDENT:
Balwinder Singh

DATE OF JUDGMENT: 16/02/2006

BENCH:
Arijit Pasayat & Tarun Chatterjee

JUDGMENT:
JUDGMENT

ARIJIT PASAYAT, J.

The State of Punjab and its functionaries are the appellants in this appeal, directed against the final order and judgment dated 05.07.2001 passed in a Regular Second Appeal by a learned Single Judge of the Punjab and Haryana High Court.

The controversy lies within a very narrow compass.

The respondent filed a Suit for a declaration that the order dated 05.04.1995 passed by the Deputy Inspector General of Police, PAP, Jalandhar Cantt whereby his appeal was dismissed and the order dated 31.08.1994 passed by the Commandant, 13th Bn. PAP, Jalandhar Cantt dismissing him from service were not in order. The Commandant in departmental proceedings held that his absence from duty during the periods 08.02.1994 to 16.03.1994 and from 19.04.1994 to 24.02.1994 was to be treated as non duty and the period of suspension was to be held to have merged for all practical purposes. Respondent filed a Suit. His grievance was that the orders were in violation of the service rules, violative or principles of natural justice and, therefore, he was entitled to a declaration that he continued to serve the department as Head Constable, as was the position before 31.08.1994 with consequential reliefs. His case, as reflected in the plaint was that he was appointed as Constable on 27.07.1981 and was promoted as Head Constable in June, 1990. He remained absent on account of his ailment and went to his village for treatment after informing the Incharge Officer. An enquiry was conducted on the ground that he had unauthorisedly remained absent from duty. The enquiry officer had found him guilty and consequently, on the basis of the report of the enquiry officer, which was accepted by the disciplinary authority, he was dismissed from service on 31.08.1994. The appeal to the Deputy Inspector General of Police was also dismissed. The State of Punjab filed written statement and raised a preliminary objection regarding maintainability of the Suit. On merits, it was stated that he was recruited as a Constable. He was promoted as Head Constable. The authority who had ordered his dismissal was the competent authority. This plea was raised to counter the plea of the plaintiff that the promotion having been given by the Deputy Inspector General of Police, he could be dismissed only by the said authority and not by the Superintendent of Police. The Trial Court decreed the Suit. Appeal filed before the Additional District Judge, Jalandhar was also dismissed. The primary reasons indicated by the first appellate authority was that the plaintiff having been appointed by the Deputy Inspector General of Police and not by the Superintendent of Police, the dismissal order, if any, could be passed by the Deputy Inspector General of Police and not the Superintendent of Police. A Second Appeal under Section 100, Code of Civil Procedure, 1908 (in short 'the Code') was filed. The Second Appeal was also dismissed upholding the conclusions of the Trial Court and the first appellate court so far as the authority of the Superintendent of Police to

dismiss the respondent is concerned.

When the matter was placed for hearing, reliance was placed on a three Judge Bench decision of this Court in Civil Appeal No. 3274 of 2001 wherein it was noted that when the order of promotion was passed by the Inspector General of Police, the order of dismissal could not have been passed by the Commandant.

Mr. Arun Kumar Sinha, learned counsel appearing for the State of Punjab and its functionaries submits with reference to Punjab Police Rules, Chapter-XII relating to appointments and Enrollments that in the earlier order, the relevant rules were not taken note of. He referred to Rule 12.1, 13.3(1) and (2) 13.8(1) and submitted that the Superintendent of Police was the authority who could grant the promotion. The matter was placed before the Deputy Inspector General of Police at the time of annual inspection for his approval so that the formal order of promotion could be passed. He has filed copies of certain documents, particularly, the order passed by the Deputy Inspector General of Police relating to the promotion in question.

We find that these aspects were not considered by the High Court. Had these been considered, the High Court would have been in a better position to appreciate the rival stands. It is also correct, as conceded by Mr. Arun Kumar Sinha, learned counsel appearing for the appellants that these rules do not appear to have been placed for consideration before the earlier Bench. We, therefore, deem it appropriate to remit the matter to the High Court for fresh consideration on merits. The judgment of the High Court is set aside. We make it clear that we have not expressed any opinion on the merits of the cases.

Learned counsel for the respondent, with reference to Rule 16.38 submitted that the procedure adopted by the authority is clearly untenable. This is an aspect which can also be taken up by the High Court at the time of hearing of the second appeal.

The appeal is, accordingly, disposed of.