

CASE NO.:
Appeal (civil) 8156 of 2001

PETITIONER:
State of Punjab & Anr

RESPONDENT:
Hari Singh

DATE OF JUDGMENT: 26/02/2008

BENCH:
A.K.Mathur & Aftab Alam

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO.8156 OF 2001

AFTAB ALAM, J.

1. This appeal is directed against the order dated 3.2.2001 passed by a Learned Single Judge of the Punjab and Haryana High Court, dismissing in limine the second appeal filed on behalf of the State of Punjab (the Appellant). As a result, the concurrent judgments and decrees passed by the trial court and the first appellate court in favour of the plaintiff-respondent were upheld.

2. The respondent joined the Punjab Police as a constable and on 1.4.1999 he was promoted to the rank of Assistant Sub-Inspector. According to the respondent, his promotion as Assistant Sub-Inspector was made by an order passed by Deputy Inspector General of Police, Ferozepur. In 1993, the respondent was subjected to a departmental proceeding on the charge that as in-charge, of the escort of the Deputy Commissioner Ferozepur, he, in league with LC Latwinder Singh, driver, stole 3339 liters of petrol by making wrong entries in the log book. In the departmental enquiry the charge against the respondent was established and on the basis of the enquiry report the Senior Superintendent of Police, Ferozepur passed the order, dated 28.2.1995 giving the respondent the punishment of with-holding five annual increments with cumulative effect with the further direction for recovery of half of the cost of the stolen amount of petrol at the price prevailing at the relevant time. Against the order passed by the Senior Superintendent of Police, the respondent preferred a departmental appeal. The Deputy Inspector General of Police, Ferozepur by order, dated 5.7.1995 dismissed the appeal subject to reducing the period of withholding the annual increments from five years to two years.

3. The respondent then took the matter to the court and filed civil suit No. 212 in the Court of Civil Judge, Junior Division, Ferozepur seeking a declaration that the punishment order passed by the Senior Superintendent of Police and confirmed (subject to reduction) by the Deputy Inspector General of Police, was illegal, inoperative, null and void. He further sought consequential direction for release of his annual increments with interest at the rate of 18% per annum, and a permanent injunction restraining the defendant authorities from making recovery of 50% of the price of stolen petrol. The punishment order was challenged

primarily on the ground that the respondent's promotion as Sub Inspector of Police was made by the order of Deputy Inspector General, and hence, the Senior Superintendent of Police had no authority to pass any punishment order against him. The order of the Senior Superintendent of Police, dated 28.2.1995 was, therefore, without any authority or competence. The other ground on which the punishment order was challenged was that copies of certain documents as asked for by the respondents were not supplied to him in the course of the departmental enquiry.

4. In support of the plea that he was promoted as Asst. Sub Inspector by an order passed by the Deputy Inspector General the respondent produced before the court the photocopy of an order, dated 1.4.1990 which was issued under the signature of the Deputy Inspector General, Ferozpur and which was marked as Ext. P-1. On the basis of Ext. P1 the trial court accepted the respondent's contention that he was promoted as Assistant Sub-Inspector by an order of the Deputy Inspector General and the Senior Superintendent, therefore, had no authority to pass an order of punishment against him. The trial court also accepted the respondent's case that the departmental enquiry was vitiated because documents asked for by the respondent were not supplied to him and, therefore, the enquiry could not form the basis for the punishment order. It accordingly decreed the suit by judgment and order dated 2.9.97.

5. Against the judgment and decree passed by the trial court the state preferred an appeal (Civil Appeal no 277) before the District Judge, Ferozepur. The District Judge accepted the findings arrived at by the trial court and dismissed the appeal by judgment dated 2.6.1999. The second appeal (RSA No. 4641 of 1999) preferred by the State was dismissed by the High Court as noted above.

6. On hearing counsel for the parties and on going through the record of the case, we find that the High Court and the Courts below took a patently wrong view of the matter, and the decree passed by the trial court in favour of the respondent and upheld by the first appellate court and the High Court is plainly unsustainable. The finding arrived at by the trial court (that remained undisturbed up to the High Court) that the respondent was promoted by the order of Deputy Inspector General of Police, Ferozepur is bad both in law and on facts. The finding is solely based on Exhibit P1 which is the Photostat copy of the order, dated 1.4.1990 and which was mistaken by the trial court as the order granting promotion to the respondent as Assistant Sub Inspector of Police. On a careful examination it would appear that though it was indeed signed by the Deputy Inspector General, it was an order approving the list of constables who were recommended by the DPC for promotion to the rank of Asst. Sub Inspector of Police. At the end of that order, it is clearly stated that the list (from serial Nos.47 to 69) was approved for promotion and further that necessary gazette notifications should be issued by the concerned Senior Superintendents of Police. It is clear that the promotion of the respondent as Assistant Sub-Inspector was not legally formalized by the order of the DIG, dated 1.4.1990, and the actual promotion was made by orders passed by the concerned Senior Superintendents of Police (in this case, of Ferozepur). The order of the senior Superintendent of Police by which

the respondent was actually promoted was not produced by either side.

7. Here, it is important to bear in mind that in the order, dated 1.4.90 the way the Deputy Inspector General after giving approval to the select list left the actual promotions to be made by the respective Senior Superintendent of Police was perfectly in accordance with the statutory rules. Rule 12.1 in chapter XII of the Punjab Police Rules lays down that the appointing authority for Sergeants, Sub-Inspectors and Assistant Sub-Inspectors, is the Superintendent of Police.

8. It may also be noted here that this question earlier came up before this court in State of Punjab vs. Manohar Lal (1986) Supp SCC 524. Manohar was a Sub-Inspector of Police, and he was given the punishment of compulsory retirement by the Senior Superintendent of Police, Gurdaspur. He, like the present respondent, claimed that his promotion as Sub Inspector was made by the DIG and, therefore, the Senior Superintendent of Police was not competent to impose on him the penalty of compulsory retirement. The trial court decreed the suit in his favour, and the decree was sustained, as in the present case, up to the High Court. In appeal, the Supreme Court framed the question arising for consideration as follows:

"the only question that arises for consideration in this appeal is whether the order of compulsory retirement made by the Senior Superintendent of Police, Gurdaspur is illegal and invalid, being passed by an authority lower in rank than the appointing authority which according to the respondent is the Deputy General of Police."

The court then examined the relevant provisions, including rule 12.1 of Punjab Civil Service Rules and in paragraph 6, found and held as follows.

"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 herein 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 Rules 3(1)(a) of the Punjab Civil Services (Premature Retirement) Rules, 1975."

The decision in Manohar Lal fully applies to the facts of this case and it must, therefore, be held that the order of punishment passed against the respondent by the Senior Superintendent of Police, Ferozepur did not suffer from any lack of authority and competence and it was perfectly legal, valid and enforceable.

9. We also find no substance in the subsidiary ground on which the respondent's suit was decreed. From the records it appears that the respondent had asked for the log books of different other vehicles which were not the subject matter of the charge. Since he was unable to show any relevance of those log books to the enquiry into the charges against him, the log books/documents were not brought before the enquiry. There is nothing to indicate that the respondent suffered any prejudice on that account. It is therefore impossible to hold that the departmental enquiry was vitiated due to non production of documents asked for by the respondent and on that basis no punishment could be imposed against him. [see: Syndicate Bank Vs. Venkatesh Gururao Kurati (2006) 3 SCC150 and U.P.State Textile Corporation Ltd. Vs. P.C.Chaturvedi (2005) 8 SCC 211]

10. On a careful consideration of the materials on record, we are satisfied that the order of the High Court and the judgments and decrees passed by the court below are illegal and unsustainable. We accordingly set aside the judgments and decrees and dismiss the suit filed by the plaintiff-respondents.

11. In the result, the appeal is allowed, but with no order as to costs.