

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO.5822 OF 2008
(Arising out of SLP(C) No.13753 of 2007)**

STATE OF HARYANA & ORS.

...APPELLANT (S)

VERSUS

RANBIR SINGH

...RESPONDENT(S)

ORDER

Leave granted.

Respondent – plaintiff was a Police Constable. He was dismissed on 5th February, 1998. Order of dismissal was passed by Inspector General of Police, Gurgaon. Against the Order of dismissal, respondent herein filed a Suit for declaration that the Order of dismissal be declared as null and void.

In the Suit five issues were framed. We are concerned with Issue No. 2 and Issue No. 3.

Issue No.2 [as reframed] reads as under:-

“Whether the dismissal order was null and void for not obtaining prior concurrence of the District Magistrate in terms of Rules 16.38 of PPR as applicable to the State of Haryana which is the constitutional mandate under Article 311 of the Constitution?

Issue No.3:

Whether the plaintiff is entitled to be reinstated with all service benefits i.e. salary and other allowances along with all other incidental reliefs?”

The Trial Court came to the conclusion that in the F.I.R. No. 11 dated 20th January, 1997 respondent was acquitted. The Trial Court further found that the Departmental Inquiry which was simultaneously instituted on 20th January, 1997, stood conducted without concurrence from the District Judge. Therefore, according to the Trial Court, there was failure on the part of the Department in complying with Rule 16.38 of Punjab Police Rules, 1934, as applicable to the State of Haryana. We quote hereinbelow the said Rule 16.38 of the Punjab Police Rules, as applicable to the State of Haryana:

“Rule 16.38: Criminal offence by police officers and strictures by courts – procedure regarding –(1) Where a preliminary enquiry or investigation into a complaint alleging the commission by an enrolled police officer of a criminal offence in connection with his official relations with the public, establishes a prima facie case, a judicial prosecution shall normally follow. Where, however, the Superintendent of Police proposes to proceed in the case departmentally, the concurrence of the District Magistrate shall be obtained.

This finding of the Trial Court on Issue No. 2 has been affirmed by the First Appellate Court and the High Court. We see

no infirmity as far as this finding goes. Rule 16.38 proceeds on the basis that where the judicial prosecution is pending and the Department seeks to hold a Departmental Inquiry simultaneously, prior concurrence of the District Magistrate is required to be taken. Therefore, all the Courts below were right in coming to the conclusion that the Departmental

Inquiry which was conducted was null and void, that it was in the absence of concurrence of the District Judge.

However, on Issue No. 3 the Trial Court came to the right conclusion that in this case the respondent has admitted even in his cross-examination that he was found in a drunken position on duty even on earlier occasions. The Trial Court found further that the respondent had made a categorical unequivocal admission to that effect even before the punishing authority that he used to drink during duty hours. In view of the said admission the Trial Court rightly came to the conclusion that the respondent was entitled to reinstatement without back wages. The Trial Court found that the respondent's case comes in the category of “no work, no pay”. This finding of the Trial Court was reversed by the First Appellate Court which directed not only reinstatement but also back wages. The decision of the First Appellate Court has been affirmed by the High Court. Hence the Department has come by way of this Civil Appeal.

Looking to the admissions made by the respondent herein, we are of the view that the Trial Court was right in decreeing the

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Suit in favour of respondent No. 1 by ordering reinstatement without back wages. We are of the view that the First Appellate Court and the High Court should not have interfered with the decree passed by the Trial Court. In the present case, as stated above, respondent has admitted, both before the punishing authority and in his cross-examination in Court that he used to drink during duty hours. In the circumstances, respondent would be entitled to only reinstatement without back wages.

Accordingly, the Department's Civil Appeal is partly allowed with no order as to costs.

.....J.
[S.H. KAPADIA]

New Delhi,
September 23, 2008

.....J
[B. SUDERSHAN REDDY]