

STATE OF PUNJAB AND ORS.

v.

NACHHATTAR SINGH

APRIL 30, 1990

[LALIT MOHAN SHARMA AND M.M. PUNCHHI, JJ.]

Civil Procedure Code, 1908: Section 100—Second Appeal—Serious question of law involved—High Court not to dismiss the appeal in limine.

Punjab Police Rules, 1934: Rule 16.2(2)—Police Officer—Conviction of—Dismissal from service—Suit challenging dismissal—Period of limitation—What is.

The respondent, a constable, convicted under sections 325/34 of the Indian Penal Code along with another co-accused constable and dismissed from service, filed a suit challenging his dismissal, which was dismissed by the trial court holding that it was barred by limitation. On appeal the First Appellate Court decreed his suit by holding that the respondent-plaintiff was discriminated because his co-accused was re-instated in service pursuant to the decision in the suit filed by the co-accused; his dismissal was void on the ground of arbitrariness, and the bar of limitation was not applicable.

The defendant-appellant filed a regular second appeal against the aforesaid decree before the High Court which was dismissed *in limine*.

In the appeal to this Court it was contended on behalf of the appellant that the High Court erred in dismissing the second appeal *in limine*.

Allowing the appeal, this Court,

HELD: 1. Serious questions of law are involved in this case and they should not have been lightly brushed aside by the High Court in the manner it has been done. Therefore the High Court erred in dismissing the second appeal *in limine*. [824F; 825D]

2. Rule 16.2 (2) of the Punjab Police Rules, 1934 mandatorily directs that a police officer judicially sentenced to rigorous imprisonment exceeding one month shall be dismissed, and this mandate of law

cannot be ignored on the ground that in the case of another member of the police force a mistake was committed. [824F]

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3. The appellant's assertion that the respondent's co-accused who was reinstated in service pursuant to the Court's decision was subsequently dismissed has not been denied by the respondent. The case is, therefore, remitted to the High Court for fresh disposal. [824G; 825D]

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4055 of 1987.

From the Judgment and Order dated 11.8.1987 of the Punjab and Haryana High Court in R.S.A. No. 2092 of 1987.

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C.M. Nayar for the Appellants.

R.P. Agarwal and U.S. Prasad for the Respondent.

The Judgment of the Court was delivered by

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SHARMA, J. This appeal of the State of Punjab by special leave arises out of a suit filed by the respondent, Nachhattar Singh. The plaintiff-respondent was serving the State Police as a constable when an incident took place on 17.2.1971, which led to the prosecution of the plaintiff along with the Head Constable Kahan Singh and the Sub-Inspector Baldev Singh. The charge made against the plaintiff was that he physically assaulted and detained one Gurdial Singh. The accused were tried and Baldev Singh was acquitted. So far the plaintiff and Kahan Singh were concerned, they were found guilty under s. 325 read with s. 34 of the Indian Penal Code and several other sections, and were sentenced to rigorous imprisonment for six months each. The conviction was maintained up to the Supreme Court stage. The Senior Superintendent of Police, Patiala, thereafter dismissed the plaintiff on 20.4.1976. This order of dismissal was challenged as illegal in the present suit which was instituted on 6.11.1982.

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2. Besides taking several technical objections, the suit was defended on merits, as well as on the ground of limitation. From the judgment of the trial court it appears that only two questions were pressed by the parties, namely, whether the suit was barred by limitation and whether the order of dismissal was illegal on the ground that the plaintiff was not served with a show cause notice before the impugned order was passed. Both the issues were decided by the learned

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- A Subordinate Judge against the plaintiff and the suit was accordingly dismissed.

3. The plaintiff appealed against the decision. It appears that before the Additional District Judge, who heard the appeal, it was contended on behalf of the plaintiff that the other accused constable
- B Kahan Singh, who was also convicted with the plaintiff, had also filed a separate suit against his dismissal from service, which was decreed with an observation that it was open to the competent authorities to pass fresh order of punishment in accordance with law, but while no further punishment was awarded to Kahan Singh, the respondent's service stands terminated. A plea of discrimination was taken on this
- C basis which was accepted by the first appellate court and the suit was decreed. On the question of limitation the court after a very brief discussion in the judgment held that the impugned order of dismissal was void on the ground of arbitrariness and, therefore, the bar of limitation would not apply. It was further observed that this decision
- D would not preclude the authority to award a minor punishment, provided such a punishment has been awarded to the other police officials tried and convicted along with him. The authority was also permitted to take a decision in regard to the pay and allowance for the period the plaintiff remained out of service because of his being in jail.

4. The defendant-appellants filed a regular second appeal before
- E the High Court against the decree of the first appellate court which was dismissed at the admission stage by merely saying:—

“HEARD. DISMISSED”

- It has been contended on behalf of the appellants, and in our view
- F correctly, that serious questions of law are involved in this case and the High Court erred in dismissing the second appeal *in limine*. It has been argued that Rule 16.2(2) of the Punjab Police Rules, 1934 mandatorily directs that a police officer judicially sentenced to rigorous imprisonment exceeding one month shall be dismissed, and this mandate of law cannot be ignored on the ground that in the case of another member of
- G the police force a mistake was committed. Besides, it has been asserted on oath before this Court and not denied by the respondent that the aforesaid Kahan Singh had to be re-instated in service for a short time in pursuance of the decision in the suit as the order of his dismissal had been passed by an authority not competent in this regard, and that later he was again dismissed. It has also been pointed
- H out that another convicted constable Surinder Singh was given the

benefit of probation by the criminal court and his case, therefore, is distinguishable. Even in the concluding portion of the last paragraph of the judgment of the Additional District Judge, the possibility that "the other police officials convicted with him" (that is, the plaintiff) might have been later punished, is recognised.

5. It has been further urged on behalf of the appellants that the finding of the Additional District Judge on the question of limitation is patently illegal inasmuch as the judgment assumes that no law of limitation is applicable to suits where an order is impugned as being void. The High Court should have examined the plaint for finding out the cause of action for the suit and then in that light determined the correct article of the Limitation Act applicable to the case. Serious objection has been taken against the observations of the first appellate court permitting the competent authority to inflict only minor punishment on the plaintiff in certain conditions, and the direction about the payment of the salary and the other emoluments. After hearing the learned counsel for the parties, we agree with the appellants that the question involved in this suit should not have been lightly brushed aside by the High Court in the manner it has been done. We, therefore, set aside the judgment of the High Court and remit the case to it for fresh disposal in accordance with law. It will be open to the appellants to file an application for admitting additional evidence in regard to the further orders passed against Kahan Singh subsequent to the civil court's decree in his favour, and to argue before the High Court that the case of the present plaintiff is distinguishable. The High Court should call for the records and decide the case finally at the motion stage itself as the case is an old one. In the event of admission of fresh evidence, the High Court shall permit the plaintiff to file relevant rebutting evidence. The operation of the decree of the first appellate court shall remain stayed till the final disposal of the second appeal by the High Court. The appeal is accordingly allowed. There will be no order as to costs.

T.N.A.

Appeal allowed.