

State of Punjab and Others

Vs

Nachhattar Singh

Civil Appeal No. 4055 of 1987

(L. M. Sharma, M. M. Punchhi JJ)

30.04.1990

JUDGMENT

SHARMA, J -

1. 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 February 17, 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 Section 325 read with Section 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 the April 20, 1976. This order of dismissal was challenged as illegal in the present suit which was instituted on November 6, 1982.

2. Besides taking several technical objection, 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 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 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 the behalf of the plaintiff that the other accused constable 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 the 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 the discrimination was taken on this 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 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 the allowance for the period the plaintiff remained out of the service because of his being in jail.

4. The defendant-appellants filed a regular second appeal before 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 correctly, that serious question of law are involved in this case and the High Court erred in the 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 the another member of 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 reinstated 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 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 official 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 suit 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 the 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 the 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 courts 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 the 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.

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