**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**RSA-2819-1997(O&M)**
**Date of decision:-15.01.2024**

The State of Punjab and others

...Appellants

Versus

Sukhwinder Singh (deceased through LRs)

...Respondents

**CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present: Mr.Maninderjit Singh Bedi, Addl.A.G., Punjab
for the appellants.

Mr.Sukhvir Singh Mattewal, Advocate
for the respondent.

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**SUVIR SEHGAL, J.(ORAL)**

1. State – defendants are in second appeal before this Court challenging the concurrent finding of fact recorded by both the Courts below.

2. Facts, in brief, deserve to be noticed.

3. As per the pleaded case of the plaintiff – respondent, he was appointed as a Constable with the police force on 13.06.1996. He had a good service record, but he was dismissed from service vide order dated 05.02.1991. It has been averred that before dismissal, no regular departmental inquiry was held nor was the plaintiff given any opportunity to defend himself. It has been pleaded that the plaintiff was named as an accused in FIR No.20 dated 20.01.1991 lodged at Police Station GRPS, Amritsar under Section 120-B, 379, 409 IPC and Section

3 & 4 of Terrorist and Disruptive Activities (Prevention) Act, 1987 and the dismissal order is based on the registration of the FIR. After the plaintiff – respondent was acquitted by the Trial Court on 17.11.1992, he filed an appeal before the IGP, Railways, which was dismissed on 27.03.1993. Challenging both the orders, he filed a suit for declaration that both the said orders are illegal, *mala fide*, arbitrary etc. and violative of the Punjab Police Rules, 1934 as well as the Constitution of India. Plaintiff also sought a declaration to the effect that he continues to be a Constable and is entitled to all the pay, privileges etc. Upon notice, suit was contested by the defendants – appellants by filing a written statement, wherein various objections were taken. On merits, it was submitted that the plaintiff – respondent did not have a clean past and was given a written warning when he was caught taking illegal gratification in the year 1989. It has been further submitted that on 19.01.1991, a special track patrol party was sent on Amritsar - Beas Section at 8:30 PM, which consisted of 6 members including the plaintiff – respondent. One LMG rifle with 8 magazines filled with 200 cartridges was issued to Constable Ajaib Singh and he was deputed a helper. The other members on the patrolling duty were issued one 303 bore rifle of 50 cartridges each and Constable Charanjit Singh was issued 46 cartridges. After completing its round, when patrol party reached back at Amritsar, they reported loss of one LMG with 8 magazines filled with 200 cartridges and one 303 bore rifle with five cartridges. It was stated that the arms were handed over to terrorists and the plaintiff - respondent along with Constable Balwinder Singh were the master-mind. Acquittal of the plaintiff in the criminal trial was

admitted and it was submitted that the star prosecution witness did not support the version of the prosecution. It was further submitted that the activities of the plaintiff - respondent were a threat to public peace and order and that the plaintiff – respondent had hatched a conspiracy of handing over of arms and ammunition to the extremists. It was further submitted that the impugned order has been rightly passed and the provisions of Rule 16.38 of the Punjab Police Rules are not attracted. Plaintiff filed replication and re-asserted the allegations levelled in the plaint.

4. On the basis of the pleadings of parties, issues were framed and after the parties led evidence, trial Court by judgment dated 01.12.1994, decreed the suit and declared both the impugned orders as illegal and void while holding that plaintiff - respondent is entitled to all the consequential benefits. Appeal preferred by the defendants – State was dismissed by the First Appellate Court by judgment dated 12.05.1997. In this backdrop, defendants – State are before this Court in the present second appeal.

5. State counsel has argued that dismissal order was passed in exercise of power under Article 311(2) (b) of the Constitution of India as it was not reasonably practicable to hold a regular departmental inquiry because plaintiff - respondent was mixed with terrorists and had handed over arms and ammunition to them. He asserts that reasons for dispensing with the inquiry had been recorded separately, but the trial Court decreed the suit holding that the reasons had not been brought on record. He submits that an application for leading additional evidence was filed before the lower appellate Court, but the same was rejected

while dismissing the appeal of the appellants. It is his argument that the lower appellate Court has erred in rejecting the application and in considering a very material document.

6. On the other hand, counsel for the respondent – plaintiff has supported the orders passed by the Courts below and has urged that there was no material with the authority to come to the conclusion that it was not possible a hold a departmental inquiry and as the plaintiff – respondent had been tried on the same charges by the criminal Court and had been acquitted, his services could not be dispensed with, without holding a regular inquiry. He has placed reliance upon the judgments in ***Arjan Singh Versus State of Punjab and others, 1996(1) S.C.T. 597, Ex.Sub Inspector Puran Chand Versus State of Punjab, 1996 (1) S.C.T. 625, Gurcharan Singh Versus State of Punjab and others, 1996 (1) S.C.T. 600, Jaswant Singh Versus State of Punjab and others, 1991 (1) S.C.T. 125, Darshan Jit Singh Dhindsa Versus State of Punjab, 1993 (1) S.C.T. 338, Ex.H.C. Kuljit Singh Versus State of Punjab, 1999 (3) S.C.T. 212*** and ***Paramjit Singh, Ex-Head Constable Versus State of Punjab, 1996 (1) S.C.T. 709***.

7. I have considered the submissions made by counsel for the parties and have examined the record with their able assistance.

8. While dismissing the application for additional evidence filed by the defendants – State, the Lower Appellate Court has held that the application does not specify the contents of the note sought to be produced. The Court further was of the view that there is nothing to show that the evidence was not to the knowledge of the appellants and even after exercise of due diligence, it could not be produced by them

before the trial Court. The Court was of the opinion that as this evidence was never sought to be produced before the trial Court, the application was not maintainable. Still further, the Lower Appellate Court was of the view that there was a delay in the presentation of the application inasmuch as it had been preferred in September, 1995, whereas the appeal had been preferred in February, 1995.

9. In the opinion of this Court, the Lower Appellate Court has misdirected itself while declining the application and the order rejecting the application and the dismissal of the first appeal cannot be sustained for the reasons discussed in the succeeding paragraphs.

10. The reasoning given by the Lower Appellate Court for rejecting the application is highly technical. It is not the requirement of Order 41 Rule 27 CPC that the additional evidence sought to be produced should be reproduced in the application. The note recording the reasons for dispensing with the inquiry, which the State - appellants intended to bring on the record by way of additional evidence, was appended with the application and should have been looked into, to appreciate its importance. An examination of the note dated 04.02.1991 shows that the Punishing Authority has given detailed reasons for coming to the conclusion that it was not reasonably possible or practical to hold an inquiry. The authority was of the view that as the plaintiff – respondent and his colleagues had acted in connivance while delivering arms to an extremists, none of these persons were likely to come forward to depose in the departmental inquiry. It has been found that the plaintiff – respondent was planning to join the extremist group, was in contact with extremists and the militants to whom the arms were to be

supplied had not been arrested and even if they were apprehended, they were not likely to depose against him. In these circumstances, satisfaction has been recorded that it was not reasonably practical to hold a departmental inquiry against plaintiff – respondent and by exercising power under Article 311 (2)(b) of the Constitution, plaintiff – respondent is being dismissed from service by a separate order.

11. An analysis of this note is sufficient for this Court to come to the conclusion that the document sought to be produced by the defendants – State was a vital document, which would have enabled the Court to pronounce the judgment and would have advanced the substantial cause. This aspect has unfortunately been overlooked by the Lower Appellate Court. Even if this document was to the knowledge of the State – defendants and could not be produced by it, this Court is of the view that the document is imperative for the just decision of the appeal on merits. Lower Appellate Court has been unduly influenced by the fact that the application for additional evidence had been moved more than six months after the institution of the appeal. This cannot be the reason for rejecting the application.

12. In ***Sanjay Kumar Singh Versus State of Jharkhand (2022) 7 SCC 247***, Hon'ble Supreme Court has held as under:

> *"5. The High Court has rejected the said application by observing that the application does not satisfy the requirement of Order 41 Rule 27 read with Section 96 CPC. The High Court has also observed that the appellant has failed to establish that notwithstanding exercise of due diligence, such additional evidence was not within his knowledge and could not after*

*exercise of due diligence be produced before the Courts below.*

*6. However, the High Court while considering the application for additional evidence has not appreciated the fact that the documents which were sought to be produced as additional evidence might have a bearing on determination of the fair market value of the acquired land. It is to be noted that except the sale deed dated 29.12.1987, which was rejected by the Courts below, no further evidence was on record to determine the fair market value of the acquired land. It was a case of awarding of fair compensation to the landowner whose land has been acquired for public purpose. It cannot be disputed that the claimant whose land is acquired is entitled to the fair market value of his land.*

*7. It is true that the general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. It may also be true that the appellate court may permit additional evidence if the conditions laid down in this Rule are found to exist and the parties are not entitled, as of right, to the admission of such evidence. However, at the same time, where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record, such application may be allowed. Even, one of the circumstances in*

*which the production of additional evidence under Order 41 Rule 27 CPC by the appellate court is to be considered is, whether or not the appellate court requires the additional evidence so as to enable it to pronouncement judgment or for any other substantial cause of like nature.*

*8. As observed and held by this Court in the case of A. Andisamy Chettiar v. A. Subburaj Chettiar (2015) 17 SCC 713, the admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. It is further observed that the true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced."*

13. In view of the above settled position of law, this Court is of the view that the Lower Appellate Court has gravely erred in coming to the conclusion that the noting is not necessary for the purpose of deciding the appeal. This Court is of the view that this document in fact goes to the root of the matter and was necessarily required to be gone into before adjudicating the matter on merits.

14. For the foregoing reasons, order passed by the First Appellate Court rejecting the application for adducing additional

evidence is set aside and the appellants – State are permitted to bring additional evidence on the record by producing the note dated 04.02.1991 in accordance with law. Consequently, the impugned judgment passed by the First Appellate Court is also set aside and the matter is remitted back to the said Court for decision afresh in accordance with law on its own merits.

15. It is clarified that anything said hereinabove shall not have any impact upon the decision of the first appeal on merits.

16. Appeal is disposed of.

17. Pending application (s), if any, are also disposed of.

18. Parties are directed to appeal before the First Appellate Court on 20.03.2024.

**(SUVIR SEHGAL)**
**JUDGE**

**15.01.2024**
**Brij**
**Whether reasoned/speaking : Yes/No**
**Whether reportable : Yes/No**