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In the High Court of Punjab and Haryana at Chandigarh**719****RSA-1874-2001 (O&M)****Date of Decision: October 22, 2024****THE PUNJAB STATE AND ORS****.....APPELLANTS****VERSUS****SHRI JASWINDER SINGH****....RESPONDENT****CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. S.S. Hira, DAG, Punjab.

Mr. M.L. Saini, Advocate for the respondent.

SUDEEPTI SHARMA, J (ORAL)

1. The State of Punjab has preferred the present appeal against the judgment and decree dated 01.02.2001 passed by the learned Additional District Judge, Jalandhar whereby the appeal filed by the respondent against dismissal of civil suit dated 17.01.1997 passed by learned Civil Judge (Junior Division), Jalandhar, whereby suit for declaration to the effect that order dated 16.01.1996 passed by the Additional Inspector General of Police, PAP, Jalandhar Cantt. whereby, revision petition filed by the respondent was rejected and further challenged the order dated 06.02.1995 passed by the Commandant, 9th Battalion, PAP, Amritsar, whereby, he was dismissed from service and the period from 13.10.1994 to 15.12.1994 was treated as non-duty period, was allowed.

2. Brief facts of the case are that the plaintiff filed a suit for declaration that the order dated 16.1.1996 passed by the Additional Inspector General of

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Police, PAP Jalandhar Cantt. whereby his revision- petition was rejected and in which order dated Nil passed by the Deputy Inspector General of Police, Admn. PAP, Jalandhar, Cantt. rejecting his appeal and order dated 6.2.1995 bearing memo No.9505/CRC, dated 6.9.1995 passed by the Commandant, 9th Battalion PAP, Amritsar dismissing him from service and treating the period from 13.10.1994 to 15.12.1994 as non-duty and without pay period have merged is illegal, void, unlawful, unconstitutional, arbitrary, discriminatory and malafide, against the provisions of law, service rules and rules of natural justice and, therefore, the same is not binding on him and he continued to serve the department as Constable before 2.6.1995 and is entitled to all rights privileges and other service benefits attached to that post on the ground that he joined the Punjab Police Department as Constable in the PAP Jalandhar Cantt. on 7.6.1988 and was attached with 82 Battalion PAP, Bahadurgarh, Patiala, he was transferred to 9th Battalion PAP, Amritsar in the year 1989. From the very first day of his joining service, he had been working very hard, honestly and to the entire satisfaction of his superior officers, who were satisfied with his work and conduct and also gave him good reports from time to time. For law and order duty, the plaintiff was sent to Delhi with a PAP (Reserve). In the Month of October, 1994, he was still posted at Delhi for the same duty. His elder sister expired and the marriage of his younger sister was fixed for 15.10.1994 to be performed with the husband of his deceased sister, whereupon he applied for leave but the same was declined. He, therefore, left the place of his posting to attend the said marriage. He alleged that thereafter he fell ill and remained under treatment in Gupta Nursing Home, Kurali. On having been declared fit to resume duty, the plaintiff reported back on 15.12.1994 in the Battalion Headquarter at Amritsar. He was treated as absent from duty from

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13.10.1994 to 15.12.1994 and ordered to be tried departmentally. Shri Ajit Singh, Reserve Inspector of Police, 9th Battalion, PAP, Amritsar, conducted the departmental inquiry against the plaintiff, in contravention of the provisions of law, service rules and rules of natural justice. He returned a finding against the plaintiff and held him guilty. The plaintiff further alleged that he was not even given an opportunity of being heard and the Commandant, 9th Battalion, PAP passed an order dated 2.6.1995 dismissing him from service and the period from 13.10.1994 to 15.12.1994 was ordered to be treated as non-duty period and without pay.

3. Feeling aggrieved by the said order the plaintiff filed an appeal which was dismissed by the Deputy Inspector General of Police, Admn. PAP, Jalandhar Cantt. vide order dated nil conveyed to him by the Commandant, 9th Battalion, P.A.P., Amritsar vide his Memo No.9505/CRC, dated 6.09.1995. The plaintiff filed a revision against the said order which was rejected by the Addl. Director General of Police, PAP, Jalandhar Cantt. vide his order dated 16.1.1996. The plaintiff claimed the order dated 16.1.1996 in which order dated 26.2.1996 passed by the Deputy Inspector General of Police, Admn. PAP, Jalandhar Cantt. and order dated 2.6.1995 have merged as illegal and void on the grounds that he was not granted leave despite repeated requests and there being compelling reasons of marriage of his sister and thereafter his falling ill did not constitute any misconduct warranting departmental action against him. He was not supplied with copies of the documents relied upon by the department during the course of inquiry. The inquiry was not conducted in accordance with the provisions of Rule 16.24 of the Punjab Police Rules, and he was not allowed to cross-examine the witnesses. The Enquiry Officer obtained his signatures on blank papers on the pretext that no action would be taken against him. He was not allowed to lead defence evidence.

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The Reserve Inspector was not competent to conduct the inquiry as he was not a Gazetted Officer. He was not called by the Commandant for service of show cause notice on him nor did he explain the charges proved against him. The absence from duty does not constitute gravest act of misconduct and as such the punishment of dismissal could not have been inflicted upon him. The impugned order has been passed in contravention of the provisions of Rule 16.2 of the Punjab Police Rules. No opportunity of personal hearing was afforded to the plaintiff before passing the impugned order and punishment awarded to the plaintiff is not in consonance with the allegations levelled against him and the punishment is much, too, severe. The punishment of treating the absence period as non-duty and without pay period cannot be inflicted on any enrolled Police Officer as per the rules. The previous record of service of the plaintiff has been taken into consideration while passing the impugned order without affording him any opportunity of rebutting the same. The favourable entries in the service record of the plaintiff were not considered, while passing the impugned order. The case of the plaintiff has been illegally discriminated from the cases of other Police Officials similarly circumstanced and the Deputy Inspector General of Police, Admn. PAP and the Additional Director General of Police, PAP, Jalandhar Cantt., did not assign any reasons for rejecting his appeal and revision. He also served a notice under Section 80 C.P.C. on the defendants, but to no effect.

4. Upon notice, defendants appeared and filed written statement, wherein apart from taking preliminary objections of maintainability of suit, no cause of action, jurisdiction to try the suit by the Civil Court were pleaded. Further that plaintiff was afforded with all legal opportunities and the orders passed were legal and valid and prayer for dismissal of the suit was made.

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5. From the pleading of the parties, the following issues were framed:-

“1. Whether the plaintiff is entitled to declaration as prayed for? OPP

2. Whether the suit is not maintainable? OPD

3. Whether the notice u/s 80 C.P.C. is legal? OPP

4. Whether the courts at Jalandhar has jurisdiction to try the suit: OPD

5. Relief.”

6. After hearing both the parties and perusing the whole record, the learned Civil Judge (Senior Division), Jalandhar dismissed the suit of the plaintiff/respondent.

7. The appeal filed by the respondent/plaintiff before the First Appellate Court was allowed. Hence, appellant-State filed the present appeal.

SUBMISSION OF COUNSEL FOR THE PARTIES

8. Learned State counsel for the appellant contends that the First Appellate Court without taking into consideration the facts on record has wrongly allowed the appeal, filed by the respondent/plaintiff.

9. Per contra, learned counsel for the respondent/plaintiff contends that the First Appellate Court has rightly decided the appeal.

10. I have heard learned counsel for the parties and perused the whole record of the case. Relevant portion of the judgment passed by the First Appellate Court is reproduced as under:-

“12. Admittedly, the impugned order Ext.P1 dated 2.6.95 was passed against Jaswinder Singh, appellant/Plaintiff as he



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remained absent from duty w.e.f. 13.10.94 to 15.12.94 for 64 days. Rule 16.2. of the Punjab Police Rules read as under :-

“16.2 (1) Dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for Police service. In making such an award regard shall be had to the length of service of the offender and his claim to pension.”

*From the bare reading of the provisions of rule 16.2 of Punjab Police Rules it is clear that the dismissal shall be awarded only for the gravest act of misconduct. The Division Bench of our own High Court has observed in **State of Punjab Versus. Parkash Chand, Constable 1002 (1) Services Law Reporter Page 174.** as under :-*

“This Court has in a number of cases gone into the matter in order to find as to what would really constitute a gravest act of misconduct. A number of cases have been cited before us but we have chosen to pick up only one which deals with the question of absence without leave. In Darshan Singh's case (Supra) the learned Single Judge has held that absence without leave for almost 13 months would not in the circumstances of that case amount to the gravest act of misconduct.”

*Hon'ble Mr. Justice S.C.Malte, Judge of Our own High Court has also observed in **Jaswant Singh Vs State of Punjab 1997***



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(1) Recent services Judgements 768 that mere absence from duty would not be necessarily a gravest act of misconduct unless it is coupled with some other facts that would show that the delinquent was guilty of continued misconduct showing incorrigibility and complete unfitness for Police service. A similar view was also taken by Hon'ble Mr. Justice T.H.B. Chalapathi, in Ex Constable Balwant Singh Versus. The state of Haryana and others 1999(1) Recent Services Judgment 680. As already mentioned above there was only a charge against the delinquent that he remained absent from duty from 13.10.94 to 15.12.94 though he had submitted the explanation and medical certificate which was not considered as correct by the Punishing authority and there was no other charge against the appellant/plaintiff. In the case of State of Punjab versus. jutani Parkash Chand (Supra) the Division Bench of our own High Court has observed that in Darshan Singh's case the learned Single Judge has held that absence without leave for almost 13 months would not in the circumstances of that case amount to the gravest act of misconduct. Thus in the light of the ruling referred to above, mere absence from duty would not be necessarily a gravest act of misconduct and thus the order passed by the punishing authority was set aside. In the case in hand, there is no charge levelled against the appellant/plaintiff except that he remained absent from duty and the same cannot be considered to be a gravest act of misconduct.



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13. *I find force in the arguments advanced by the learned Govt. Pleader that the previous conduct of the appellant/plaintiff was not considered to pass the impugned order though a reference has been made in the impugned order Ext.P1. The learned counsel for the appellant/plaintiff has cited the ruling in **Mahipat, Ex.Constable Vs. State of Haryana and others 1994 (4) Services Law Reported 311 (supra)**. In the presence of the ruling of Division Bench of our own High Court in **Constable Jagmal Singh Versus, State of Haryana and others, 1998 (1) Recent service Judgments 151**, the impugned order is not the basis of the previous conduct of the appellant/plaintiff. It has also been observed in **Constable Jagmal Singh vs. State of Haryana (supra)** that record was checked and as a member of disciplined force, he was expected to be more responsible and he gave no indication thereof. Their Lordships have observed that in such a situation it cannot be said that the view taken by the respondent as unfair or arbitrary. In the case in hand also only the previous conduct of the appellant/plaintiff was highlighted in the impugned order but the previous conduct of the appellant/plaintiff is not the basis of the order and thus no opportunity was required to be given to the plaintiff to explain his previous conduct.*

14. *In view of what has been discussed above, I must hold that the punishing authority has passed the order showing the period of absence from duty as leave without pay which*

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amounts to the regularisation of the period of absence from duty and thus the charge of absence from duty did not survive and the punishing authority has not passed the order in view of the provisions of Rule 16.2 of the Punjab Police Rules, because mere absence from duty would not be necessarily a gravest act of misconduct and thus the impugned order passed by the punishing authority cannot sustain and the same is set aside. Accordingly the appeal is accepted and the judgement and decree passed by the Court of Mrs. Preeti Sahni, Civil Judge (Junior Division) Jalandhar, dated 17.1.1997 is set aside and the suit of the plaintiff for declaration to the effect that the order dated 16.1.96 passed by the Additional Director General of Police, P.A.P., Jalandhar Cantt. whereby the revision-petition of the plaintiff was rejected and in which order dated nil passed by the Deputy Inspector General of Police, Admn. PAP Jalandhar Cantt. rejecting his appeal which was conveyed by the Commandant, vide his Memo No.9505/CRC, dated 6.9.95 and order dated 2.6.95 passed by the Commandant, 9th Battalion, PAP Amritsar whereby he was dismissed from service and the period from 13.10.94 to 15.12.94 has been treated as non-duty and without pay period, have merged is illegal and void, unlawful and unconstitutional, arbitrary, capricious, null, wanton, discriminatory and malafide, against the provisions of law, service rules and rules of natural justice, unjust and improper, inoperative and ineffective and is,

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therefore, not binding on him and that the plaintiff continues to serve the department as Constable as before 2.6.95 and is entitled to all rights, privileges and other service benefits attached to that post, is decreed with costs. Decree sheet be prepared accordingly and the file be consigned to the Record Room. Lower Court record be sent back.”

CONCLUSION:-

11. A perusal of the record shows that the plaintiff/respondent remained absent from duty from 13.10.1994 to 15.12.1994. There is absence of plaintiff/respondent of two months. Moreover, the defendants/appellant in written statement have specifically stated that the act and conduct of the plaintiff was not satisfactory and on previous occasions also, he remained absent from duty without leave and that the plaintiff was given the following punishments previously also i.e.:-

- i) Censure for remaining willful absent from duty for 23 days, LWP vide O.B. No 161/91,
- ii) Warning for remaining willful absent from duty for 26 days, LWP vide O.B. No. 432/90 and
- iii) Censure for remaining willful absent from duty for 8 days, LWP/NDP vide O.B. No. 62/95.

12. So taking into consideration all these facts, it is found that the previous conduct of the plaintiff/respondent was also not upto the mark. Moreover, while going through the whole enquiry file, it is found that the plaintiff/respondent was given every opportunity of being heard during the enquiry proceedings and the enquiry proceedings were conducted as per law and procedure prescribed therein.

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So the order passed upon these enquiry proceedings is valid and binding upon the plaintiff/respondent.

13. The findings of the learned First Appellate Court that mere absence from duty would not be necessarily a grave act of misconduct, is not acceptable to this Court.

14. The Hon'ble Supreme Court in **State of U.P. versus Ashok Kumar Singh**, 1996 (1) SCC 302 has held as under:-

“8. We are clearly of the opinion that the High Court has exceeded its jurisdiction in modifying the punishment while concurring with the findings of the Tribunal on facts. The High Court failed to bear in mind that the first respondent was a police constable and was serving in a disciplined force demanding strict adherence to the rules and procedures more than any other department. Having noticed the fact that the first respondent has absented himself from duty without leave on several occasions, we are unable to appreciate the High Court's observation that 'his absence from duty would not amount to such a grave charge'. Even otherwise on the facts of this case, there was no justification for the High Court to interfere with the punishment holding that 'the punishment does not commensurate with the gravity of the charge' especially when the High Court concurred with the findings of the Tribunal on facts. No case for interference with the punishment is made out.”

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15. As held by the Hon'ble Supreme Court that Police is a disciplined force, therefore, I do not find any infirmity in the order dated 02.06.1995 passed by the Commandant, 9th Battalian, PAP, Amritsar, whereby respondent was dismissed from service.

16. In view of the above, the present appeal is allowed. The judgment and decree dated 01.02.2001 passed by the First Appellate Court is set aside, whereas the judgment and decree dated 17.01.1997 passed by the learned Civil Judge (Junior Division) is upheld.

17. Decree-sheet be drawn accordingly.

18. Pending application(s), if any, also stand disposed of.

October 22, 2024
A.Kaundal

(SUDEEPTI SHARMA)
JUDGE

Whether speaking/ reasoned : Yes/No
Whether Reportable : Yes/No