

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

Date of Decision: 11.02.2015

R.S.A. No.2732 of 1997

State of Punjab & others ...Appellants

Vs.

Chamkaur Singh ...Respondent

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. P.S.Bajwa, Addl. AG, Punjab,
for the appellants.

Mr. Gurdeep Singh, Advocate,
for the respondent.

HEMANT GUPTA, J. (ORAL)

The defendants are in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby the order of dismissal dated 06.07.1989 and the order in appeal dated 09.10.1992 were set aside for the reason that the punishing authority has not examined Rule 16.2 of the Punjab Police Rules contemplating that the dismissal shall be awarded only for the gravest acts of misconduct.

The following substantial question of law arises for consideration:

“Whether the order of dismissal passed by the competent authority after following the due procedure can be interfered with, when the plaintiff has abstained from duty for more than 49 days having 7 years & 7 months of service?”

The brief facts out of which the present appeal arises are that the plaintiff-respondent was posted at Police Lines, Patiala on 3.07.1988. However, he was declared absent from duty on 30.07.1988, but he rejoined his duties on 22.08.1988. On account of absence of the plaintiff for 49 days and 19 hours, an inquiry was initiated and Inspector Gurdeep Singh was appointed as the Enquiry Officer, who submitted his enquiry report. Pursuant to such report, the Senior Superintendent of Police issued a show cause notice to the plaintiff. After considering the reply filed, the order of dismissal was passed on 06.07.1989 for the reason that the petitioner has not given reply to the show cause notice. Thereafter, the plaintiff-respondent filed an appeal, which was also dismissed on 09.10.1992.

Before the Civil Court, the challenge to the order of dismissal is on the grounds that he was ill and on account of his illness, he went to the Doctor for treatment and that his leave was not rejected during the currency of the period under leave and that absence is not gravest act of misconduct.

In the written statement, the stand of the defendant-appellants is that all the documents were supplied to the plaintiff-respondent and full opportunity was given to him to defend himself in the inquiry proceedings and that he abstained from duty without any leave, permission or without submitting any medical certificate. He remained absent from duty knowingly and intentionally. The plaintiff did not submit reply to the show cause notice and consequently the order of dismissal was passed. The orders passed by the competent authorities are legal, constitutional and in accordance with the principles of natural justice. The plea taken by the plaintiff that he was ill was denied and it was asserted that the plaintiff should have appeared before his superiors and got leave sanctioned, but he failed to do so.

From the pleadings of the parties, the trial Court framed the following issues:

- “1. Whether the impugned orders dated 06.07.1989 and 09.10.1992 are illegal, null and void? OPP
2. Whether the plaintiff is entitled to the declaration as prayed for? OPP
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD
5. Relief.”

To prove its case, the plaintiff tendered into evidence documents Ex.P1 to Ex.P-10, whereas the defendants tendered enquiry file Ex.D1. After considering the documents on record, the learned trial Court found that from the pleadings, documents and evidence on record, it is clear that the plaintiff never remained absent on any earlier occasion. He was not habitual absentee or has not been awarded any punishment prior to the passing of the impugned order dated 06.07.1989. Therefore, it is mandatory, before awarding the punishment of dismissal from service, that the conduct of the delinquent was gravest act of misconduct and that too when it impinges the pensionary rights of the delinquent after being long length of service. It was also found that the punishing authority was not at all alive to the provisions of Rule 16.2(1) of the Punjab Police Rules and that the punishment order does not show that the punishing authorities have taken into consideration the length of service of the plaintiff and his claim to pension before passing the impugned orders. Consequently, the trial court set aside the order of punishment with liberty to the defendants to pass any order under Rules against the plaintiff afresh from

the stage after completion of enquiry as no formal defect has been pointed out in conducting of the enquiry and enquiry report. Such judgment and decree was affirmed in appeal.

Before this Court, learned counsel for the appellants refers to the judgment of Hon'ble Supreme Court of India in State of Punjab Vs. Ram Singh Ex. Constable AIR 1992 SC 2188, wherein it has been held that a singular act of delinquency in its performance and its effect on the discipline and the nature of duty is a gravest act of misconduct. He also refers to another judgment of Hon'ble Supreme Court reported as State of U.P. Vs. Ashok Kumar Singh AIR 1996 SC 736, wherein it has been held that absence from duty of a member of the disciplined force is a gravest act of misconduct. He also refers to the Division Bench judgment of this Court in State of Haryana & others Vs. Gurdev Singh 1981 (3) SLR 130 as well as Single Bench judgment reported as State of Punjab Vs. Karnail Singh 1993 (1) PLR 317, whereby the appeal of State stands allowed for the reason that absence from duty is a gravest misconduct.

On the other hand, learned counsel for the respondent relies upon a judgment of Hon'ble Supreme Court in Shri Bhagwan Lal Arya Vs. Commissioner of Police Delhi & others JT 2004 (3) SC 384 as well as Division Bench judgment of this Court in State of Punjab Vs. Parkash Chand, Constable 1992 (1) SLR 174, wherein absence from duty for 13 months was not considered to be a gravest act of misconduct.

I have heard learned counsel for the parties and with their assistance gone through the record. The relevant Rule 16.2(1) of the Punjab Police Rules reads as under:

“**16.2. Dismissal** – (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.

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Both the Courts below have not found any infirmity in the conduct of the enquiry proceedings or the conclusion thereof. The only infirmity pointed out is that the mandate of Rule 16.2 has not been examined. The length of service of the plaintiff-respondent was apparent on record, the date of joining having been mentioned by the plaintiff as 30.11.1981. The order of dismissal was passed on 06.07.1989 though the plaintiff abstained from duty in July, 1988. Therefore, the plaintiff had worked for almost 7 years before he abstained from duty. With the length of service of about 7 years, the plaintiff does not get any right of pension. The absence from duty for more than 49 days without any leave or information even with 7 years of services shows the lack of discipline, which is the first requirement of a disciplined force. Therefore, the plaintiff is not entitled to pension nor has such length of service, which affects his right of pension. Therefore, the length of service having unblemished record could not be a ground for interfering in the order of dismissal.

In Ram Singh's case (supra), the Hon'ble Supreme Court held to the following effect:

“7. Rule 16.2(1) consists of two parts. The first part is referable to gravest acts of misconduct which entails awarding an order of dismissal. Undoubtedly there is distinction between gravest misconduct and grave misconduct. Before awarding an order of dismissal it shall be mandatory that dismissal order should be made only when there are

gravest acts of misconduct, since it impinges upon the pensionary rights of the delinquent after putting long length of service. As stated the first part relates to gravest acts of misconduct. Under General Clauses Act singular includes plural, “act” includes acts. The contention that there must be plurality of acts of misconduct to award dismissal is fastidious. The word “acts” would include singular “act” as well. It is not the repetition of the acts complained of but its quality, insidious effect and gravity of situation that ensues from the offending ‘act’. The colour of the gravest act must be gathered from the surrounding or attending circumstances. Take for instance the delinquent who put in 29 years of continuous length of service and had unblemished record; in thirtieth year he commits defalcation of public money or fabricates false records to conceal misappropriation. He only committed once. Does it mean that he should not be inflicted with the punishment of dismissal but be allowed to continue in service for that year to enable him to get his full pension. The answer is obviously no. Therefore, a single act of corruption is sufficient to award an order of dismissal under the rule as gravest act of misconduct.

8. The second part of the rule connotes the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service and that the length of service of the offender and his claim for pension should be taken into account in an appropriate case. The contention that both parts must be read together appears to us to be illogical. Second part is referable to a misconduct minor in character which does not by itself warrant an order of dismissal but due to continued acts of misconduct would have insidious cumulative effect on service morale and may be a ground to take lenient view of giving an opportunity to reform. Despite giving such opportunities if the delinquent officer proved to be incorrigible and found completely unfit to remain in service then to maintain discipline in the service, instead of dismissing the delinquent officer, a lesser punishment of compulsory retirement or demotion to a lower grade or rank or removal from service without affecting his future chances of re-employment, if any, may meet the ends of justice. Take for instance the delinquent officer who is habitually absent from duty when required. Despite giving an opportunity to reform himself he continues to remain absent from duty off and on. He proved himself to be incorrigible and thereby unfit to continue in service. Therefore, taking into account his long length of

service and his claim for pension he may be compulsorily retired from service so as to enable him to earn proportionate pension. The second part of the rule operates in that area. It may also be made clear that the very order of dismissal from service for gravest misconduct may entail forfeiture of all pensionary benefits. Therefore, the word ‘or’ cannot be read as “and”. It must be disjunctive and independent. The common link that connects both clauses is “the gravest act/acts of misconduct”.

9. The next question is whether the single act of heavy drinking of alcohol by the respondent while on duty is a gravest misconduct. We have absolutely no doubt that the respondent, being a gunman having service revolver in his possession, it is obvious that he was on duty; while on duty he drunk alcohol heavily and became uncontrollable. Taking to drink by itself may not be a misconduct. Out of office hours one may take to drink and remain in the house. But being on duty in a disciplined service like police service, the personnel shall maintain discipline and shall not resort to drink or be in a drunken state while on duty.....”

In Gurdev Singh’s case (supra), a Division Bench of this Court observed as under:

“5.To our mind, the cases with regard to misconduct on the part of the police officers while on duty have not to be interfered with by the Courts lightly unless it is found that the action has been taken wantonly or arbitrarily.”

In Bhagwan Lal Arya’s case (supra), the appellant absented on medical grounds. The Court found that Rule 16.2 provide that penalty of removal can be imposed only in cases if grave misconduct and continued misconduct indicate incorrigibility and complete unfitness for police service. It was found that the absence of the appellant on medical grounds with application for leave as well as sanction of leave can under no circumstances, be termed as grave misconduct or continued misconduct rendering him unfit for police service. The said case does not support the plaintiff, as the facts are

altogether very different. The Judgment in Parkash Chand’s case (supra) is

prior to the judgment of Hon'ble Supreme Court in Ram Singh's case (supra) and, thus, not binding on this court.

The matter has been examined later in another judgment reported as Union of India Vs. Harjeet Singh Sandhu, (2001) 5 SCC 593, wherein the Court held as under:

“21. “Misconduct” as a ground for terminating the service by way of dismissal or removal, is not to be found mentioned in Section 19 of the Act; it is to be read therein by virtue of Rule 14. Misconduct is not defined either in the Act or in the Rules. It is not necessary to make a search for the meaning, for it would suffice to refer to *State of Punjab v. Ex-Constable Ram Singh (1992) 4 SCC 54*, wherein the term “misconduct” as used in the Punjab Police Manual came up for consideration of this Court. Having referred to the meaning of “misconduct” and of “misconduct in office” as defined in *Black's Law Dictionary* and *Aiyar's Law Lexicon*, this Court held: (SCC p. 58, para 6)

“[T]he word ‘misconduct’ though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order.”

22. In the context in which the term “misconduct” has been used in Rule 14, it is to be given a wider meaning and any wrongful act or any act of delinquency which may or may not involve moral turpitude,

would be “misconduct”, and certainly so, if it is subversive of army discipline or high traditions of army and/or if it renders the person unworthy of being retained in service. The language of sub-rule (2) of Rule 14 employing the expression “the reports on an officer’s misconduct” uses “reports” in plural and misconduct in singular. Here plural would include singular and singular would include plural. A single report on an officer’s misconduct may invite an action under Section 19 read with Rule 14 and there may be cases where there may be more reports than one on a singular misconduct or more misconducts than one in which case it will be the cumulative effect of such reports on misconduct or misconducts, which may lead to the formation of requisite satisfaction and opinion within the meaning of sub-rule (2) of Rule 14”.

In view of the above, I find that both the Courts have erred in law in interfering in the order of punishment only for the reason that the length of service or claim of pension have not been examined or the absence from duty is not a gravest act of misconduct. The plaintiff had worked for less than 8 years and was, thus, not eligible for pension. The act of absence from duty for 49 days by a member of a disciplined force is nothing but gravest act of misconduct. The term “misconduct” has to be given a wider meaning and any wrongful act or any act of delinquency would be “misconduct”, and certainly so, if it is subversive of discipline.

Consequently, while answering the substantial question of law, the present appeal is allowed. The judgment and decree passed by the Courts below are set aside and the suit dismissed.

11.02.2015
Vimal

(HEMANT GUPTA)
JUDGE