

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

**Regular Second Appeal No.1065 of 2001 (O&M)
Date of decision : 21.04.2015**

Haryana State and others

....Appellants

versus

Rishal Singh

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Samarvir Singh, DAG, Haryana,
for the appellants.

Mr. R.K. Malik, Senior Advocate,
with Mr. Mandeep Singh, Advocate,
for the respondent.

RITU BAHRI, J.

Defendant-State of Haryana has come up in regular second appeal against the judgment dated 21.10.2000 passed by the Additional District Judge, Narnaul, partly allowing the appeal filed by the plaintiff-respondent against the judgment and decree dated 31.01.1998.

Rishal Singh-plaintiff was enrolled in Haryana Police Department as a Constable on 09.12.1976. While posted at Rewari, he proceeded on leave on 05.01.1991 as his wife was seriously ill. He approached the MHC and sought leave for two days. The MHC had obtained his leave application and allowed him to proceed on leave with the assurance that he would get the leave sanctioned and would also record his departure report. He applied for extension of leave and thereafter, joined his duty. Later on, he came to know that his leave was not sanctioned and

departmental proceedings had been initiated against him. He was charge-sheeted for being absent from duty w.e.f. 05.01.1991 to 19.01.1991 i.e. for 13 days, 21 hours and 30 minutes. Consequently, his services were terminated vide order dated 14.01.1992 passed by the Superintendent of Police, Narnaul. Appeal against the said order was dismissed by the Deputy Inspector General of Police, Gurgaon Range, Gurgaon on 17.07.1992. Both the aforesaid orders were challenged by the plaintiff-respondent before the trial Court by way of a suit for declaration.

Upon notice, defendants-appellants filed joint written statement, wherein they controverted the stand taken by the plaintiff-respondent in the plaint and pleaded for dismissal of the suit.

The trial Court dismissed the suit. However, the lower appellate Court examined the case of the plaintiff-respondent in view of the judgment delivered by this Court in **Punjab State Vs. Rur Singh (died) through his Lrs.**, 2000 (1) RSJ 100. In this case, it was held that if the delinquent was dismissed from service on account of absence from duty and the period of absence had been considered as leave of kind due, the order of dismissal could not be sustained.

In the case of the respondent-plaintiff, period of absence had been sanctioned as leave of kind due. Further, the lower appellate Court has taken into consideration that the plaintiff had put in 15 years of service when the impugned order had been passed. Under Rule 16.2 (i) of the Police Rules, while passing an order of dismissal from service, the entire service period has to be taken into considered and only in the case of gravest act of misconduct or the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service, the

punishment of dismissal is to be awarded. While passing such order, regard has to be made to the lengthy service of the offender and his claim for pension. In the present case, plaintiff-respondent had put in 15½ years of service on the date of his dismissal and his lengthy service had not been considered by the punishing authority. Reference was made to the judgment passed in **State of Haryana Vs. Lachman Singh**, 1992 (2) RSJ 398.

Suit of the plaintiff-respondent was decreed by the lower appellate Court on the grounds; (i) his absence from duty had been treated as 'leave of the kind due' and (ii) dismissal order had been passed against the provisions of Rule 16.2 (i) of Punjab Police Rules.

The present appeal, filed by State of Haryana, was admitted on 25.09.2001 and the operation of the judgment and decree passed by the lower appellate Court was stayed till further orders.

Heard, counsel for the parties.

It is not in dispute that the plaintiff had overstayed the leave from 05.01.1991 to 19.01.1991 i.e. 13 days, 21 hours and 30 minutes and the punishing authority had converted this period of absence as leave of the kind due. Reference, at this stage, can be made to the judgment passed in **Rur Singh's** case (supra), wherein this Court had set aside the order of dismissal, where absence from due had been treated as leave without pay. In para Nos.6 and 7 of the said judgment, it was further observed as under:-

“6. As against this, there is a judgment also of the Supreme Court in the case of **The State of Punjab and others V. Bakshish Singh, JT 1998 (7) SC 142 : 1997 (3) SCT 401 (SC)**. In that case there was a finding of the Additional District Judge as below:-

“In view of the above brief discussion, I am of the considered opinion that once period of absence is treated as leave of the kind whatsoever, the fact that the delinquent remained absent from duty cannot be sustained after the period has been treated on leave of

whatsoever kind it may be. Thus, the findings of the learned lower court upon this matter are hereby confirmed.

7. In that case, the lower appellate Court having affirmed the findings of the trial Court that the charge of absence from duty did not survive, proceeded to consider the question whether absence from duty was a misconduct of the gravest kind so as to warrant the maximum penalty of dismissal from service or it was mere misconduct for which lesser punishment would be appropriate. It was further held therein that having found that it was not a case of misconduct of the gravest kind, the lower appellate Court remanded the case back to the punishing authority for passing a fresh order of punishment. The appellant in that case filed a second appeal which was dismissed summarily. In that case, the Supreme Court did not approve the later part of the order and passed the following order in the concluding part of the judgment:-

“(a) The appeal is allowed.

(b) The judgment dated 15.01.1996 passed by the lower appellate Court in so far as it purports to remand the case to the punishing authority as also the judgment of the High Court dated 21.08.1996 are set aside.

(c) The judgment and decree passed by the trial Court is upheld.”

At this stage, reference can be made to a judgment delivered by the Division Bench of this Court in **Dhan Singh Vs. State of Haryana and others**, 2008 (3) SCT 816. In this case, the petitioner had served the department for 11 years and 9 months when his services were terminated. While terminating his services under Rule 16.2 of Punjab Police Rules, the length of service was not taken into consideration. In para No.17 of the aforesaid judgment, the Division Bench observed as under:-

“17. The petitioner's misconduct for remaining absent on two occasions has been established. Even if the act of the petitioner is not considered as “gravest misconduct” as it does not fall within the purview of Explanation appended to rule 16.2, it definitely is an act which constitutes misconduct. There are at least two acts of misconduct. Cumulative effect of misconduct also makes a Police Officer incorrigible and unfit for police service. However, the authorities have not applied their mind and not taken into consideration the length of service of the petitioner and his right to pension while awarding the punishment. It has been stated by the

petitioner in ground (c) of this petition that he has rendered 11 years 9 months service. No rule has been brought to our notice that the petitioner is not entitled to any pensionary benefits for rendering about 12 years of service. Giving consideration to the length of service, the right to pension is inherent under Rule 16.2 itself and thus, it cannot be ignored. The authorities having failed to adhere to the rule while awarding punishment renders the impugned order of punishment illegal and unwarranted. It is also settled law that when a relevant provision is given go by, it amounts to arbitrary exercise of power and such an order is not sustainable.”

In this very judgment, reference was made to a decision given in **Randhir Singh Vs. Dy. Inspector General of Police, Ambala Range, Ambala Cantt & another**, 2004 (4) SCT 462, wherein the scope of Rule 16.2 of the Punjab Police Rules, 1934 was considered. In this judgment, it was observed as under:-

“14.I have perused the order of punishment dated 07.12.1984 (Annexure P-3). The punishing authority, while inflicting the punishment of dismissal from service on the petitioner, admittedly, did not take into consideration the fact that the petitioner had rendered more than 10 years service entitling him to pensionary benefits. The punishing authority also did not take into consideration the fact that the petitioner had not committed any act of omission or commission described as “gravest acts of misconduct” by the rule itself, while inflicted the gravest punishment prescribed. In its aforesaid action, the authorities obviously did not follow Rule 16.2 in its letter and spirit. It is mandatory for the punishing authority to take into consideration the length of service of an employee and his claim to pension before inflicting the punishment of dismissal from service under Rule 16.2 of the Punjab Police Rules.”

The Judgment delivered by the Division Bench in **Dhan Singh's** case (supra) had been followed by a Co-ordinate Bench of this Court in **Om Parkash Vs. State of Haryana and others**, CWP No.702 of 1994 (decided on 20.07.2012). In para No.9 of the judgment, it was observed as under:-

“9. A Division Bench of this Court in **S.I. Surinder Singh vs. State of Punjab, 2008 (6) SLR 556**, also while noticing that the Courts are

normally not to interfere in the quantum of punishment inflicted by the employer on its employees, allowed the writ petition after noticing that the petitioner had completed 20 years of service on the date of his dismissal after holding that there is violation of mandatory Rule 16.2 of PPR. Similar view was also taken by another Division Bench in ***Dhan Singh vs. State of Haryana, 2008 (3) SCT 816***, wherein also service of the petitioner who had rendered 11 years and 9 months of service was taken into consideration and the dismissal order which had been upheld by the authorities was set aside and it was directed that the matter should be reconsidered. In ***Shiv Raj Sidhu vs. Union of India, 2011 (2) SCT 626***, another Division Bench of this Court set aside the order of dismissal of the petitioner therein and held that punishment of forfeiture of two years of service would be sufficient punishment as the employee has joined as Assistant Sub Inspector on 21.05.1973 and was to retire on 30.11.2006, just six months prior to his dismissal on 18.05.2006.”

In the facts of the present case, the suit of the plaintiff-respondent was decreed by the appellate Court as the order of dismissal had been passed without adhering to Rule 16.2 of Punjab Police Rules when the absence from duty had been treated as 'leave of the kind due'. The plaintiff-respondent was appointed as constable in the year 1976 and he had been dismissed from service on 14.01.1992 when he had rendered his services for almost 15½ years. In these circumstances the order of dismissal from service could not be sustained.

In the light of the above discussion, this Court is of the view that the impugned judgment has been passed on correct appreciation of evidence and no perversity, much less illegality has been found therein warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

(RITU BAHRI)
JUDGE

21.04.2015

ajp