

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 2859 of 2011

DATE OF DECISION: 24.4.2015

Karnail Singh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspaper may be allowed to see judgment?**
- 2. To be referred to reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present:- Mr. S.K. Garg Narwana, Senior Advocate
with Mr. Naveen Gupta, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. D.A.G., Haryana.

DAYA CHAUDHARY, J.

The present petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of impugned order dated 9.3.2007, whereby, the petitioner has been dismissed from service on the ground of absence of 172 days from duty without considering his length of service. A further prayer has also been made for quashing of impugned orders dated 4.6.2009 and 23.12.2009, whereby, the appeal as well as revision of the petitioner against the order of dismissal have been rejected. A prayer has also been made for issuing directions to the respondents to reconsider the

punishment keeping in view the earlier service and to grant consequential benefits.

The petitioner was working as Constable in Haryana Police since September, 1989. He was dismissed from service vide order dated 9.3.2007 as he remained absent from duty for a period of 172 days and 6 hours. Aggrieved by the order of dismissal, the petitioner filed an appeal before Inspector General of Police, Ambala Range, Ambala, which was rejected on the ground of limitation vide order dated 1.6.2009. Thereafter, revision filed by the petitioner was also dismissed by Director General of Police vide order dated 23.12.2009.

Orders of dismissal from service as well as appeal and revision are subject matter of challenge in the present writ petition.

Learned senior counsel for the petitioner contends that as per Rule 16.2 (1) of Punjab Police Rules (hereinafter referred to as 'the Rules'), the order of dismissal can be passed only for gravest act of misconduct. The absence from duty is not the gravest act as in the explanation to the said Rule, eight categories have been specified. Absence from duty has not been considered as gravest act of misconduct but still the petitioner has been dismissed from service debarring him from civil employment and now he cannot be appointed to any public post. Learned senior counsel further contends that 18 years of service rendered by the petitioner has not been considered while dismissing him from service and penalty imposed upon the petitioner is extremely on higher side. Learned senior counsel for the petitioner also contends that the appeal filed by the petitioner has been dismissed only on the ground of delay and the petitioner has not been heard on merits and the impugned order passed in the appeal is also contrary to the principles of natural justice. It is also the argument of learned senior counsel for the petitioner that the petitioner has not been

supplied the requisite documents and, therefore, he could not file reply. Learned senior counsel has also relied upon the judgments of Hon'ble the Apex Court in the case of **Harjit Singh and Another Vs. State of Punjab and another** 2007 (4) SLR 645, **Dashrath Rupsingh Rathod Vs. State of Maharashtra and another** (2014) 9 SCC 129, of this Court in **Satbir Singh Constable Vs. The Director General of Police, Haryana and others** 2013 (3) SCT 76, **State of Punjab Vs. Gurkeerat Singh** 2002 (3) SCT 623, **Dhan Singh Vs. State of Haryana and others** 2009 (1) RSJ 62, **Virender Singh Vs. State of Haryana and others** 2014 (1) SCT 561 and **Balwinder Singh Vs. State of Punjab and others** (2013-1) PLR 323, in support of his contentions.

Learned counsel for the respondent-State opposes the submissions made by learned counsel for the petitioner and submits that the petitioner was given full and complete opportunity but he did not file the reply and also did not appear during personal hearing which would show that he has admitted the charge levelled against him. Learned State counsel further submits that the petitioner is a habitual offender as he has also been awarded punishment on various occasions. In the year 2000, two increments and thereafter in the year 2003 five increments of the petitioner with permanent effect were stopped. Thereafter, again three increments were stopped w.e.f. 9.4.2004. The petitioner is habitual absentee and was unfit to perform his duties in the disciplined force like Police Department. Learned State counsel submits that nothing has been said by the learned senior counsel for the petitioner that the findings are perverse, without any evidence or mandatory provisions of law have not been followed. It has been held in various judgments of this Court as well as of Hon'ble the Apex Court that in case a Police Constable remains absent from duty without leave for a longer period it amounts to grave

misconduct. Learned State counsel has also relied upon the judgments of Hon'ble the Apex Court in the case of **Union of India and others Vs. Giriraj Sharma** 1995 (7) SLR 695, **State of U.P. Vs. Ashok Kumar Singh** 1996 (2) SCT 139, of this Court in **Ex. Constable Sat Pal Vs. State of Haryana** 1998 (2) SCT 408, **Constable Jagmal Singh Vs. State of Haryana** 1998 (1) SCT 260 and **Ex. Constable Balbir Singh Vs. State of Punjab and others**, in support of his contentions.

Heard the arguments advanced by learned senior counsel for the petitioner as well as State and have also gone through the impugned order of dismissal as well as orders passed in the appeal as well as in the revision.

Rule 16.2 is relevant for the controversy in hand, which is reproduced 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.”

“Explanation- For the purpose of sub rule (1), the following shall, inter alia, be regarded as gravest act of misconduct in respect of a Police Officer, facing disciplinary action:-

- (i) Indulging in spying or smuggling activities;
- (ii) Disrupting the means of transport or of communication;
- (iii) Damaging Public Property;
- (iv) Causing indiscipline amongst fellow policemen;
- (v) Promoting feeling of enmity or hatred between different classes of citizens of India on grounds of religion, race,

- caste, community or language;
- (vi) Going on strike or mass casual leave for resorting to mass abstentions;
- (vii) Spreading disaffection against the Government; and
- (viii) Causing riots and the like.

The said provision has been examined by this Court as well as by Hon'ble the Apex Court with regard to the issue as to what constitutes the gravest act of misconduct and the incorrigibility and complete unfitness for service in Police Department. The second portion is with regard to the length of service of offender and his claim for pension has also been examined time and again. A three-judge Bench of Hon'ble the Apex Court in the case of **State of Punjab and others Vs. Ram Singh Ex. Constable**, 1992 (3) SCT 448 bifurcated the abovesaid rule into two categories and held that both have to be examined separately. Firstly, it has to be seen by the punishing authority that the misconduct of the petitioner is single act or include several acts and even in case of a single act, whether it was sufficient to award the punishment of dismissal. With regard to second part of the Rule, it was held that after taking into consideration the cumulative effect of the unfitness of the person, the length of service of the offender and his claim for pension has to be taken into consideration. Thus, length of service and claim for pension in order to enable the person to earn proportionate pension was to be examined by the punishing authority also. The relevant part of judgment of Hon'ble the Apex Court reads as under:-

“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 clause 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 that put in 29 years of continuous length of service and had unblemished record; in 30th year he commits defalcation of public money or fabricates false records to conceal misappropriation. He only committed once. Does it mean that 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 rules as gravest act of misconduct.

The second part of the rule connotes the cumulative effect of continued misconduct proving incorrigibility and complete unfitness of 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 of 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 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 complete unfit to remain in service than 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 an 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."

The said view still hold the field and it is in view of the aforesaid observations, the case has to be examined as to whether the

petitioner was such an employee whose incorrigibility and complete unfitness was there for service in police department.

In the present case, it has specifically been mentioned in the written statement as well as in the argument raised by learned State counsel that the petitioner is a habitual offender as he has been awarded many punishments on different occasions. In the year 2000, two annual increments of the petitioner were stopped with cumulative effect and thereafter in the year 2003, his five increments were stopped with permanent effect. Thereafter also, three increments of the petitioner were again stopped w.e.f. 9.4.2004. As per the case of the petitioner, the act and conduct of the petitioner for remaining absent for a period of 172 days does not come under the gravest act, whereas, as per the stand of the respondent-State it is not a single act of remaining absent for a considerably long period but earlier also the petitioner has been awarded major punishments on various occasions.

The parameter for judicial interference in matters of punishment was laid down in case of **Union of India and another Vs. S.S. Ahluwalia** 2007 (4) SCT 83, wherein, it was observed as under:-

“The scope of judicial review in the matter of imposition of penalty, as a result of disciplinary proceedings, is very limited. The Court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved. In such a case, the Court is to remit the matter to the disciplinary authority for reconsideration of the punishment. In an appropriate case, in order to avoid delay the court can itself impose lesser penalty...”

Admittedly, the petitioner remained absent for a period of 172 days and he has been awarded major punishments of stopping of annual

increments with cumulative effect earlier also. There was no mitigating circumstance which has come on record in favour of the petitioner. The appeal as well as revision filed by the petitioner have also been dismissed. The punishing authority has passed the order of dismissal by taking into consideration the past record of the petitioner. The competent authority had to consider whether the petitioner was guilty of such act or misconduct which may warrant the extreme penalty of dismissal. The rule undoubtedly provides inter alia that while awarding the penalty of dismissal the total length of service of the offender is to be considered. The purpose of the rule while awarding the punishment of dismissal is that the punishing authority should keep in mind that the employee is likely to be deprived of his valuable right to get pension. In the present case, undoubtedly, the petitioner is having 18 years of service to his credit but he remained absent not only for 172 days but on several earlier occasions also. The petitioner has been awarded various punishments of stoppage of his annual increments with cumulative effect. In case titled as **State of Punjab Vs. Parkash Chand** 1992 (1) SLR 174, the petitioner was awarded penalty of stoppage of seven increments vide three separate orders. He had been warned, censured and also got six adverse reports. Thereafter, in the year 1995, he remained absent for 59 days which would show that it was not a case of solitary absence at a particular point of time. The petitioner in that case remained absent on various occasions and was also punished. The Division Bench of this Court while deciding that case had specifically observed that the misconduct was of the "gravest kind". The judgments relied upon by the learned counsel for the petitioner are not applicable in this case as it was a case of single misconduct but in the present case not only the petitioner was absent for 172 days but earlier also, the petitioner was awarded major punishments of stoppage of annual increments with

cumulative effect, which would clearly show that the petitioner was a habitual offender and did not make any effort to improve himself inspite of giving opportunity to continue with the service.

Accordingly, I am of the considered view that it cannot be said that the view taken by the respondents was arbitrary and as such no ground is made out to exercise the discretionary jurisdiction under Article 226 of the Constitution of India. Thus, there is no merit in the contentions raised by learned senior counsel for the petitioner and petition being devoid of any merit is hereby dismissed.

24.4.2015
pooja

(DAYA CHAUDHARY)
JUDGE