

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

109

Regular Second Appeal No.3745 of 2014 (O&M)
Date of Decision: November 16, 2015

Sarabjit Singh

...Appellant

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Puneet Kumar Bansal, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.8653-C of 2014

Prayer in this application is for condonation of delay of 2 days
in filing the appeal.

For the reasons mentioned in the application, which is duly
supported by the affidavit of the applicant-appellant, the present application
is allowed.

Delay of 2 days in filing the appeal stands condoned.

RSA No.3745 of 2014

Challenge in this appeal is to the judgment and decree passed
by the Civil Judge (Junior Division), Ferozepur, dated 08.05.2012 by which
the suit filed by the appellant-plaintiff for declaration that the order dated
27.08.2003 passed by the Senior Superintendent of Police, Moga,
dismissing the appellant-plaintiff from service because of his absence from
duty for 91 days, 7 hours and 10 minutes, the order dated 04.06.2004 passed
by the Deputy Inspector General of Police, Ferozepur Range, Ferozepur,

dismissing the statutory appeal and the order dated 14.12.2005 passed by the Additional Director General of Police (Administration), Punjab, rejecting his further appeal, are illegal, null and void, unconstitutional, *ultra vires*, against the rules of natural justice and law and are inoperative qua the appellant-plaintiff with consequential relief of payment of arrears of pay with interest, reinstatement in service etc., stands dismissed, appeal against which preferred by the appellant-plaintiff has also been dismissed by the District Judge, Ferozepur, on 16.01.2014.

2. It is the contention of learned counsel for the appellant-plaintiff that the appellant-plaintiff was appointed as a Constable on 17.11.1989 and was dismissed from service on 27.08.2003. He has, thus, completed about 14 years of service. His further contention is that prior to issuing the show cause notice after holding the inquiry, when the charge-sheet was issued to the appellant-plaintiff, in the said charge-sheet there was no reference to the previous conduct of the appellant-plaintiff and, therefore, the same could not have been taken into consideration by the punishing authority while passing the impugned order. While passing the order of dismissal, the punishing authority has not taken into consideration the length of service of the appellant-plaintiff and his entitlement to the benefits under the statutory rules such as pension etc. and has straightway passed the order of dismissal. He, thus, contends that the said order cannot sustain as it is mandatory requirement of Rule 16.2 of the Punjab Police Rules. He further contends that the punishing authority was mandated to give a finding that he was totally incorrigible and unfit for retention in service prior to passing such a harsh order of dismissal from service which again has not been complied

with and, thus, the impugned orders of dismissal as also the orders of the Appellate Authorities cannot sustain and deserve to be set aside.

3. I have considered the submissions made by learned counsel for the appellant and with his assistance, have gone through the judgments passed by the Courts below.

4. Rule 16.2 of the Punjab Police Rules, on which reliance has been placed by the counsel for the appellant-plaintiff, gives the power to the punishing authority to pass an order of dismissal where it is satisfied that the employee is incorrigible and not suitable for retention in service and is also required to take into consideration the length of service of the employee. In the present case, as is apparent from the pleadings and not disputed, the appellant-plaintiff admittedly remained absent from duty without intimation for a period of 91 days, 7 hours and 10 minutes. A regular departmental inquiry has been held against him. The findings recorded by the Inquiry Officer hold him guilty of misconduct of absence from duty. It is settled preposition of law that even a day's absence from duty without justification and to the satisfaction of the punishing authority is, in a disciplined force, in itself a grievous act of misconduct. As the appellant-plaintiff has remained absent from duty for 91 days, it cannot be said that it would not be a grievous act of misconduct on the part of the appellant-plaintiff. In a disciplined force where such a long absence from duty has been established, the conduct of the appellant-plaintiff cannot be said to be of such a nature as would call for any lenient consideration. Merely because specific words, which have been used in the statute, have not been mentioned in the order of dismissal, would not mean that the

competent authority has not applied its mind to the said aspect. The earlier conduct of the appellant-plaintiff has also been taken into consideration which clearly establishes that on earlier five occasions, he has remained absent from duty. This further fortifies that the appellant-plaintiff has earlier also not conducted himself in a manner which would be expected of a official of a disciplined force. The impugned orders are thus in accordance with law.

5. An assertion has been made by the counsel for the appellant-plaintiff that the earlier conduct of the appellant-plaintiff was not a subject of the charge-sheet which was served upon him and, therefore, could not have been taken into consideration. This argument is devoid of merit as the misconduct was only limited to the extent of his absence from duty for 91 days and for that particular instance, the inquiry was held.

6. As regards his earlier conduct i.e. the absence from duty on earlier occasions, is a matter of record with which the appellant-plaintiff was confronted when the show cause notice was served upon him to which he had not responded and the same had been taken into consideration by the punishing authority, which clearly establishes that he has admitted the factum of his being absent on earlier occasions while in service. The absence from duty, that too of an official/officer of a disciplined force, cannot be lightly taken note of or ignored especially when it is not a stray incident, which also should not have been condoned earlier and the punishing authority in the present case has rightly proceeded to pass an order of dismissal from service.

7. Both the Courts below have returned concurrent findings after

properly appreciating the pleadings and the evidence brought on record as also the legal position as settled by the Courts. The findings, thus, recorded by the Courts below cannot be faulted with.

8. No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

November 16, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE