

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

CWP No. 12476 of 2012
Date of decision: 17.03.2016

Pargat Masih (since deceased) through L.Rs.Petitioner(s)

Versus

State of Punjab and others ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. R.K. Arya, Advocate,
for the petitioner.

Mr. L.S. Virk, Addl. A.G., Punjab.

G.S.SANDHAWALIA, J.

The petitioner challenges the order dated 20.11.2009 (Annexure P-1) passed by respondent no. 3 whereby, he has been dismissed from the post of P.H.C. on account of his absence from 24.10.2008 to 25.10.2008 and from 30.10.2008 till the time of passing of the order. The said order has been further upheld in appeal on 17.04.2012 (Annexure P-2) the ground that if the appellant was ill, he should have brought the same to the notice of the concerned officer and should have gone after getting the leave sanctioned. Accordingly, in spite of the delay in filing of the appeal, the punishment order has been upheld on merits. The employee himself expired on 02.11.2014 and his legal representatives are now contesting the present round of litigation.

Counsel for the petitioner has thus restricted his claim only to the fact that the length of service was not taken into consideration while passing the impugned order since the petitioner had over 30 years of service

on the date of dismissal having joined the Force in 1978.

Rule 16.2 of the Punjab Police Rules reads thus:-

“16.2. Dismissal- Dismissal shall be awarded only for the gravest act 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.”

The authorities are, thus, under an obligation to consider the length of service while making an award regarding the gravest act of misconduct or the incorrigibility and unfitness of the police personnel to continue in service. The purpose is the right of pension the employee is entitled to.

In the present case, it is not disputed that the absence of the deceased-employee has been proved on record by following proper departmental procedure. The petitioner never even joined the inquiry proceedings and resultantly, the impugned order was passed. However, respondent no. 2 has not noticed the second portion of the above mentioned Rule regarding the length of the service, on which account itself, the order is liable to be modified. The said issue is no longer *res integra* and has been examined by the three-Judge Bench of the Apex Court in ***State of Punjab and others vs. Ram Singh Ex-Constable, 1992 (4) SCC 54***. The relevant portion reads thus:-

“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 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.

8. 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 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".

The said view was followed in ***Harjit Singh and another vs. State of Punjab, 2007 (9) SCC 582*** and the punishment order was converted into an order of compulsory retirement to meet the ends of justice as the occurrence was of the year 1984.

In similar circumstances, a Division Bench of this Court in ***S.I.***

Surinder Singh vs. State of Punjab and others, 2008 (4) SCT 72, while keeping in mind the 20 years of service of the employee, directed that the order of voluntary retirement be passed so that the person could get his retiral dues. In *Shiv Raj Singh Sidhu vs. Union of India and others, 2011 (2) SCT 626*, the Division Bench took into account 33 years of service and held that the punishment of forfeiture of two years of service was appropriate.

Resultantly, keeping in view the fact that the petitioner had over 30 years of service at the time of dismissal and the length of service had not been taken into consideration by the disciplinary authorities, it would be appropriate if it is converted into an order of compulsory retirement w.e.f. 20.11.2009. The respondents would then process the case of the deceased-employee for release of retiral benefits in accordance with the Rules. The payment would be made to the legal representatives within a period of 3 months from the date of receipt of certified copy of the order. In case the needful is not done, the legal representatives would be entitled to the interest @ 8% per annum till recovery.

Accordingly, the present writ petition stands partly allowed.

17.03.2016
shivani

(G.S. SANDHAWALIA)
JUDGE