

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

CWP No.16697 of 2013 (O&M)
Date of Decision: 25.10.2016

Babu Lal (since deceased) through his LR's

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. J.P.Sharma, Advocate for the petitioner

Mr.Hitesh Pandit, Addl.A.G., Haryana

RAJIV NARAIN RAINA, J. (Oral)

1. The petitioner is dead. He is represented by his legal heirs/representatives after the application under Order 22 Rule 3 of the CPC was allowed on 16th October, 2015. The amended memo of parties is on record. The facts briefly stated are as follows.

2. The late petitioner-Babu Lal was appointed as Constable in Haryana Police on 27th July, 1992. He served the Department for 20 years and earned promotion as an Exemptee Head Constable at the material time. A departmental enquiry was initiated against him on 7th June, 2012 on the allegations that while posted at Police Lines, Rewari, he entered the Moharir Room barefoot and created a ruckus described in case papers as making “uproaring”. He was medically examined and found to have consumed alcohol and this was taken to be commission of gross negligence and indiscipline. The Medico Legal Report proves that Babu Lal had consumed alcohol, but he was not under the influence of liquor which means that he was not intoxicated or drunk. In the MLR, the condition is recorded as “alcoholic breath smell”.

notice on 31st July, 2012. The defaulter submitted a written reply on 22nd August, 2012. He contended that he was mentally disturbed because of excess expenditure on the marriage of his daughter for which he had borrowed money from his brother and had to repay. On the day in question, he took the defence that he suffered from vomiting and fever while present in Police Lines, Rewari. This story was found to be a concoction by the department. The Superintendent of Police, Rewari by order dated 23rd August, 2012 (Annex. P-1) one day after submission of the written reply, dismissed him from service. He had by then put in 20 years of qualifying service for pension. It is recorded in the impugned order of dismissal that petitioner Babu Lal had promised not to repeat the conduct in future. This was taken as an admission of fault. In these circumstances, as recorded in the order, he begged for mercy on a promise not to repeat the misconduct in future. This was obviously to invite the least punishment. The fact remains that he had consumed alcohol, but he was neither intoxicated nor in drunken state while entering the Moharir's Room. There is no gain-saying that the enquiry went against him and charge was proven which led to his dismissal. Aggrieved by the order, he filed appeal before the Inspector General of Police, South Range, Rewari which was turned down on 17th December, 2012 (Annex. P-2). The Director General of Police, Haryana vide his order dated 6th June, 2013 (Annex. P-3) endorsed the view of the authorities below and upheld the dismissal. The Director General of Police, Haryana has recorded in his order that Babu Lal had unstable gait and had started misbehaving under the influence of liquor. It is argued on behalf of the deceased petitioner that the blood sample taken on the fateful day was sent for chemical analysis, but the report never came back. He was, therefore, dismissed without evidence of alcohol content in the blood stream. Absence of report of chemical

evidence available on record that Babu Lal reported for duty in a drunken state. If he misbehaved, what was the nature of the imputed misbehaviour of what he actually did in the Moharir's room to invite the severest punishment of dismissal from service, is not known.

4. The other argument raised by the learned counsel for the L.Rs and on behalf of the late petitioner is that there is no direct evidence produced in the enquiry as to whether the level of alcohol was offensive in degree so as to create impediments in the performance of duties. The categorical finding of the medical expert was that Babu Lal was not under the effective intoxication and this is a vital clue to figure out the quantum of punishment required to be applied in a case of this kind involving a policeman. The question at large is whether the extreme punishment of dismissal from service is meet and just in the circumstances even taking the evidence against him as it is, would then a reasonable person of ordinary intelligence choose only the penalty of dismissal or some other lesser punishment in the range of punishments and degrees of injury. In short, the search in this case is for an answer on quantum of punishment.

5. It may be noted that the Enquiry Officer framed the charge-sheet on 25th June, 2012 against Babu Lal and got it approved from the Superintendent of Police, Rewari. Babu Lal pleaded not guilty and denied the charges but excused himself from producing any defence witness and relied only on his reply to the show-cause notice. While the charge-sheet is dated 25th June, 2012 the written reply is dated 22nd August, 2012. There is no allegation of any past misconduct or of Babu Lal's long association with the bottle and could not hold it. The episode was a single incident in 20 years of service. The Superintendent of Police, Rewari in his order has not taken into consideration the question of

the rule under which action was taken, except to observe that he had given his “deep thoughts to the character and inclination of the defaulter towards maintenance of discipline” and from those inferences, facile as they seem, the disciplinary authority had formed a “firm opinion” that Babu Lal had no regard to the rules and regulations of the police department and his retention in service, by no means, could be considered useful in any way. A perusal of the order of dismissal reveals several flaws of reasoning which discredit the seriousness of the order. The evidence has not been discussed as was produced by the prosecution in the enquiry. The defence plea of a concocted story was not enough to disbelieve Babu Lal tried for consuming alcohol while on duty in the domestic enquiry, and therefore, only the level of consumption of alcohol and its obnoxiousness was material to the consideration whether he should be dismissed from service or some lesser punishment would do. In these circumstances, there is not even an iota of discussion on content of alcohol in the blood or right to pension and whether the parameters of Rule 16.2 of the Punjab Police Rules, 1934 as amended and applicable to the State of Haryana have been considered objectively and dealt with substantially to prove that Babu Lal was an incorrigible employee and deserved no other punishment except the extreme punishment of dismissal or had rendered himself totally unfit for police service. All the three impugned orders, as I read them, appear to have been passed in a very casual off handed manner and in the most arbitrary fashion without due application of mind causing grievous civil consequences on Babu Lal and greater still on his family members.

6. Learned counsel for the State harps on consumption of alcohol, but admits that the chemical analysis report was not forthcoming when action was taken. So the levels of alcohol are not known. If the delinquent promised not to

therefore, punishment could have been imposed even to the extreme extent of dismissal. If the Enquiry Officer framed the charge-sheet and got it approved from the disciplinary authority, no prejudice was caused to the petitioner.

7. I have heard the learned counsel and considered the rival contentions of the parties and have perused the record placed in the paper-book.

8. I have no doubt that the punishment of dismissal is extremely harsh, oppressive and arbitrary to the levels of interference indicated in the Wednesbury principles. The punishment of dismissal is totally disproportionate to the gravity of the misconduct. Consumption of alcohol by a policeman on duty cannot be encouraged or given premium and has to be dealt with by a firm hand, but still keeping in view the medical evidence of mere consumption of alcohol without accompanying drunken levels the petitioner could have been dealt with by imposing a punishment lesser than dismissal, especially when it was his first offence with no past record of alcoholism impeding judgment. If Babu Lal misbehaved in the Moharir's Room, there is no specific evidence of type of misbehaviour in the charge-sheet or from the words of the witnesses when they deposed in the witness box. There is no evidence that the petitioner abused anyone or injured any person during the episode. The extreme punishment of dismissal not only disturbs but shocks the conscience of the court and, therefore, intervention in the impugned orders have become necessary to serve the ends of justice. For these reasons, I find sufficient merit in this petition and would prefer to allow the same on the question of reduction of quantum the penalty imposed being too wide off the mark of reasonableness, while reasonableness is a major part and parcel of Article 14 of the Constitution.

9. In view of the reasons recorded above, this petition is partly allowed and the impugned orders dated 23rd August, 2012 (Annex.P-1), 17th

petitioner cannot be reinstated in service and only monetary benefits will flow to the LR's. since the petitioner is dead, and it would to my mind serve no useful purpose to remand this matter to the police department for re-consideration on quantum of punishment as the L.Rs may not be able to defend the actions of the dead man to which they were not privy to and would be in the dark except on hearsay or what they may have learnt in Babu Lal's lifetime. Instead, this Court is of the considered view that dismissal should be converted to one of compulsory/premature retirement with right to pension with effect from 23rd August, 2012 [the date of dismissal] till the death of Babu Lal or till deemed compulsory retirement by virtue of this order, whichever event was earlier, and thereafter all the service benefits would be available to his LR's including family pension to his widow. The monetary dues be determined and paid to the LR's within three months from the date of receipt of a certified copy of this order, failing which the principal amount will carry 12% interest till payment.

25.10.2016
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes