

RSA-3138-2012

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In the High Court of Punjab and Haryana at Chandigarh.

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Date of Decision:01.04.2016

Rajinder Singh

....Appellant

Versus

The State of Punjab and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

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

Mr. Neeraj Yadav, AAG, Punjab.

SABINA, J.

Appellant had filed suit for declaration challenging the order dated 23.06.2005, whereby his services were terminated.

Case of the appellant, in brief, was that he was serving as a Constable with the respondents and was placed under suspension w.e.f. 26.07.2004. Being a heart patient, appellant suffered pain in his chest on 21.08.2004 and was admitted in private hospital for treatment and remained admitted in the said hospital upto 04.12.2004. Due to this reason, appellant could not report for duty and the department dismissed him from service on the allegation that he had remained absent from duty w.e.f. 21.08.2004 to 12.12.2004. Hence, the suit was filed by the appellant.

Respondents in their written statement averred that

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the appellant had been dismissed from service after following the due procedure of law. Appellant had remained absent from duty for 113 days 18 hours and 10 minutes. It was further averred that the appellant had been awarded following punishments during his service tenure:-

- i) In the year 1991 for willful absence awarded 15 days punishment drill for 6 times.
- ii) Censured in the year 1993.
- iii) During 1998 one year approved service was forfeited for consuming alcohol (liquor).
- iv) During the year 1999, one year approved service was forfeited for willful absence.
- v) During the year 2000, censured for willful absence.
- vi) During the year 2003 three years approved service was forfeited for willful absence.
- vii) During the year 2005, two years approved service was forfeited for willful absence.
- viii) During the year 2005 one year approved service was forfeited for willful absence.

It was the case of the respondents that the appellant was in the habit of remaining absent and in his entire service he had remained absent for 622 days.

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On the pleadings of the parties, following issues were framed by the trial Court:-

- “1. *Whether the plaintiff is entitled to the relief of declaration as prayed for? OPP*
2. *Whether the suit of the plaintiff is not maintainable in the present form? OPD*
3. *Whether notice u/s 80 CPC served upon the defendant is not legal and valid one? OPD*
4. *Relief.”*

Parties led their evidence in support of their respective pleas.

Trial Court vide judgment/decreed dated 21.11.2009 decreed the suit of the appellant. However, in appeal filed by the respondents, the judgment/decreed passed by the trial Court were set aside by the First Appellate Court vide judgment/decreed dated 08.05.2012. Hence, the present appeal by the appellant-plaintiff.

Learned counsel for the appellant has submitted that the appellant had rendered 15 years of service with the respondents. The misconduct alleged to have been committed by the appellant could not be said to be gravest act of misconduct. Hence, the impugned order of dismissal passed against the appellant was liable to be set aside as it was in violation of Rules 16.2 of the Punjab Police Rules, 1934 ('Rules' for short). In support of his arguments, learned

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counsel for the appellant has placed reliance on **SI Surinder Singh Vs. State of Punjab and others , 2008(4) S.C.T. 72**, wherein it was held as under:-

“The case of the petitioner would be covered by the aforementioned principle, inasmuch as, the disciplinary and punishing authority has ignored from consideration while passing the order of dismissal, the mandatory requirement of Rule 16.2(1) of the Rules. The petitioner has rendered meritorious service from 10.10.1970 to 16.3.1992 and, therefore, the order of dismissal would not be sustainable.

In view of the above and keeping in view the peculiar facts and circumstances of this case, we deem it just and appropriate to set aside the order of dismissal, dated 17.9.1993 (P-1) and consequential orders dated 14.12.1993 (P-6) and 18.3.1994 (P-7). The petitioner has already completed 20 years of service till the date of his dismissal as he has joined as Constable on 10.10.1971, and in terms of direction issued by Hon'ble the Supreme Court in Inder Singh's case (supra), he would be entitled to retire voluntarily from the CID Department on the post of Sub Inspector w.e.f. the date he has been dismissed from service.

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Accordingly, the CID Department of the Punjab Police through respondent No. 1 is directed to pass an order of voluntary retirement of the petitioner from the post of Sub Inspector by treating him in service till 17.9.1993 nay 30.09.1993. Accordingly, his pension and other retiral benefits be calculated and paid to him alongwith his arrears of salary. In the facts and circumstances of the case, the petitioner is held entitled to payment of simple interest @ 9% per annum on the delayed payment from the date the judgment in Inder Singh's case was delivered i.e. 3.10.1997, till the date of actual payment. The needful shall be done within a period of two months from the date of receipt of a certified copy of this order.”

Learned counsel for the appellant has further placed reliance on **Dhan Singh Vs. State of Haryana and others 2008(3) SCT 816, Virender Singh Vs. State of Haryana and others 2014(1) SCT 561, Bikram Singh Vs. State of Punjab and others 2014(1) SCT 554, Narinder Kumar Vs. State of Haryana and others 1995(4) SCT 222, State of Punjab and others Vs. Jaspinder Singh 2008(3) SCT 262, Ex. Constable Malkiat Singh Vs. State of Punjab and others 2012(4) SCT 233, The State of Punjab Vs.**

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Parkash Chand 1992(1) SCT 123 and Satbir Singh
Constable No.902/RTK Vs. The Director General of Police,
Haryana and others 2013(3) S.C.T 76.

Learned State counsel, on the other hand, has opposed the appeal and has submitted that the appellant was a habitual absentee and had remained absent for a total period of 622 days in his service career. Hence, the order of dismissal passed against the appellant was liable to be upheld.

The scope of judicial review regarding interference with punishment order is very limited. The jurisdiction of this Court is only to see the method/manner of awarding punishment. The Court is only concerned with the procedure adopted by the Punishing Authority. If the procedure adopted by the Punishing Authority is according to rules and natural justice, then no interference with the punishment order is called for. This Court cannot go into the merits of the case. In case, the finding of the Inquiry Officer is based on some evidence, then the Court cannot re-appreciate the evidence or weigh the same like the Appellate Authority. So long as there is some evidence in support of the conclusion arrived at by the departmental authority, the same has to be sustained. Some defect in the inquiry has to be pointed out before this Court can interfere with the punishment order. Further more, if

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defect is pointed out then the delinquent employee has to show as to what prejudice has caused to him on account of the said defect. The Court exercising jurisdiction of judicial review is not to interfere with the finding of the fact arrived at in a departmental inquiry excepting in a case of mala fide or perversity.

Rules 16.2 of the Rules, reads as under:-

“16.2 Dismissal.-(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 service of the offender and his claim to pension.”

[(2) If the conduct of an enrolled police officer leads to his conviction on a criminal charge and he is sentenced to imprisonment, he shall be dismissed:

Provided that a punishing authority may, in an exceptional case involving manifestly extenuating circumstances for reasons to be recorded and with the prior approval of the next higher authority impose any punishment other than that of dismissal:

Provided further that in case the conviction of an enrolled police officer is set aside in appeal or revision, the officer

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empowered to appoint him shall review his case keeping view the instructions issued by the Government from time to time in this behalf.]

(3) When a police officer is convicted judicially and dismissed, or dismissed as a result of a departmental enquiry, in consequence of corrupt practices, the conviction and dismissal and its cause shall be published in the Police Gazette. In other cases of dismissal when it is desired to ensure that the officer dismissed shall not be re-employed elsewhere, a full descriptive roll, with particulars of the punishments, shall be sent for publication in the Police Gazette.”

Thus, as per the above Rule, punishment of dismissal shall be awarded to an employee only for the gravest acts of misconduct or in case cumulative effect of the continued misconduct proves incorrigibility and complete unfitness for police service. Admittedly, in the present case, the appellant was ordered to be dismissed from service after holding departmental inquiry and admittedly the inquiry was held by the respondents before passing the order of dismissal, in accordance with law. The only argument raised by the learned counsel for the appellant, during the course of arguments is that the appellant had rendered more than 15

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years of service with the respondents and on account of passing of the order of dismissal, he has been deprived of his claim for pension.

In the present case, although, the order of dismissal was passed on the charge that the appellant had remained absent from duty for more than 113 days but the fact remain that during his entire service career, appellant had been punished on various occasions on account of his absence from duty. Appellant, in fact, had remained absent from duty for 622 days in his entire service career.

In these circumstances, it is evident that the appellant was a habitual absentee and despite the fact that on many occasions punishment orders were passed qua his absence from duty but he had failed to improve his conduct. Appellant was working as a Constable in the Police Force and was a member of a disciplined force. Appellant had alleged at the time of filing the suit that he could not attend his duty on account of his illness. However, during inquiry proceedings, the appellant had not taken the plea that he could not attend his duty on account of his illness nor had proved the record regarding his admission in the hospital of Dr. Kamal Jyoti.

The First Appellant Court while rejecting the plea of the appellant that he was absent on medical grounds, has observed as under:-

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“A perusal of the said judgment shows that absence of the delinquent official was on account of medical grounds and his leave was sanctioned and in those circumstances his absence was not held as 'grave misconduct'. But in the present case, though plaintiff pleaded that he suffered heart pain and remained admitted in the hospital of Dr. Kamal Jyoti, during the period in question, but enquiry file, photocopy of which is on the file, shows that he did not take any such plea before the Enquiry Officer nor he led any evidence to that effect. Again, he failed to show on the file by leading cogent and convincing evidence that he was actually sick during the relevant period and his absence was not intentional. The averment made by him in the plaint that the punishing authority also held that he was admitted as in-door patient from 21.08.2004 to 04.12.2004 is not correct. A perusal of the order dated 23.06.2005 (Ex.P1) shows that the punishing authority did not admit this fact and simply mentioned the averment as made by the delinquent official in his reply to the show cause notice given to him. Thus, it cannot be said that the plaintiff was actually sick and on that account he remained absent

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from duty. Even if it is taken that he was bed ridden, no evidence has come on the file that he actually applied for leave at any point of time or the concerned authority sanctioned the same. Thus, his willful absence from duty for a period of more than 113 days, clearly tantamount to grave misconduct, rendering him unfit for police service.”

The reasons given by the First Appellate Court while rejecting the plea of the appellant that he was absent on medical ground are sound reasons.

Keeping in view the facts and circumstances of the present case, the judgments relied upon by the learned counsel for the appellant fail to advance the case of the appellant as in the present case, the appellant was a habitual absentee and had remained absent for about 622 days in his entire service career.

No substantial question of law arises in this appeal, warranting interference by this Court.

Dismissed.

April 01, 2016
kapil

(SABINA)
JUDGE