

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

RSA-4112-2014

Date of decision: January 21, 2016

EX-CONSTABLE KULDEEP SINGH

.....Appellant

Versus

STATE OF PUNJAB & ANOTHER

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: MR. S.K.Arora, Advocate
for the appellant

SABINA, J

Appellant had filed suit for declaration challenging the order of his dismissal and the orders whereby his appeal and revision were dismissed.

The case of the appellant-plaintiff, in brief, was that he had joined as Constable with the defendants and had been confirmed on 21.5.1990. In the year 2003, departmental inquiry was initiated against the appellant on the allegation that he had remained absent from duty with effect from 9.8.2003. Appellant reported back for duty on 31.1.2004 and had, thus, remained absent for a period of five months and twenty two days. Appellant was dismissed from service by the Punishing Authority vide order dated 12.6.2007.

Appeal filed by the appellant against the said order was dismissed by

the appellate authority vide order dated 14.8.2007. Thereafter, appellant preferred revision before the Inspector General of Police and the same was dismissed vide order dated 9.1.2008. Thereafter, appellant filed the appeal before the Director General of Police and the same was rejected on 28.1.2009. The case of the appellant further was that the impugned orders had been passed against the rules of natural justice and were illegal, null and void.

Defendants, in their written statement, averred that the suit filed by the appellant was time barred and bad for non-joinder of necessary parties. On merits, it was averred that the appellant was appointed as Constable on 21.5.1990 and had remained absent from duty and due to this reason, the impugned orders were passed.

On the pleadings of the parties, following issues were framed by the trial Court on 4.10.2011:-

- “1. Whether plaintiff is entitled for declaration as prayed for? OPP
2. Whether the plaintiff is entitled for consequential relief as prayed for? OPP
3. Whether suit of the plaintiff is not maintainable in the present form? OPD
4. Whether suit of the plaintiff is time barred ? OPD
5. Whether the suit is bad for non-joinder of necessary parties? OPD
6. Relief.”

Parties led their evidence in support of their respective

pleas.

Trial Court vide judgment and decree dated 4.10.2011 dismissed the suit of the plaintiff. The said judgment and decree were upheld in appeal filed by the appellant by the First Appellate Court vide judgment and decree dated 6.2.2014. Hence, the present appeal by the plaintiff.

Learned counsel for the appellant has submitted that the punishing authority, while passing the impugned orders, had not taken into consideration the length of service of the appellant. Appellant had rendered 13 years of service with the defendants. As per Rule 16.2 of the Punjab Police Rules, 1934 dismissal could 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. There was no finding to the effect by the Punishing Authority that the appellant had committed the gravest act of misconduct or that the cumulative effect of continued misconduct proved incorrigibility and complete unfitness for police service. In support of his arguments, learned counsel has placed reliance on judgments of this Court Ex.Constable Malkiat Singh vs. State of Punjab and others 2012(4) SCT 323; Virender Singh vs. State of Haryana and others 2014(1) SCT 561 and Satbir Singh Constable No.902/RTK vs. The Director General of Police, Haryana and others 2013(3)SCT 76.

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 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.

In the present case, admittedly, appellant was working as Constable with the respondents and was charge-sheeted on the allegation that he had remained absent from duty with effect from 9.8.2003. Appellant reported for duty on 31.1.2004 and had, thus, remained absent for 5 months and 22 days. Admittedly, appellant had participated in the inquiry proceedings. Prosecution had examined seven witnesses during inquiry, whereas, the appellant had examined two witnesses. In departmental proceedings, appellant was found guilty of charges levelled against him. On the basis of the inquiry report submitted by the Inquiry Officer, Defendant No.2 passed the

order dated 12.6.2007 whereby appellant was ordered to be dismissed from service. Thus, in the present case, the punishing authority had proved the punishment order after following due procedure of law.

Rule 16.2 of the Punjab Police Rules, 1934 reads as under:-

16.2 Dismissal (1) Dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect or 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.

[(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 empowered to appoint him shall review his case keeping in 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.”

I have gone through the judgments relied upon by the learned counsel for the appellant. There is no quarrel with the proposition of law that punishment of dismissal is to be awarded in a case where an employee is guilty of misconduct or as the cumulative effect or continued misconduct proving incorrigibility and complete unfitness for police service.

So far as the dismissal order in present case is concerned, the charge against the appellant was that he had remained absent from duty for five months and twenty two days.

DW1, while appearing in the witness box, had deposed that the appellant was habitual absentee and had remained absent from duty willfully prior to the passing of the impugned order. Chances for improvement had been given to the appellant and the period of absence were ordered to be treated as non-duty period. The details of the earlier period of absence of the appellant, as stated by DW1 in para 10 of his affidavit, tendered in evidence in examination-in-chief, read as under:-

i) From 26.8.1997 to 1.11.1997 total absent of 67 days ordered as Non duty, Non Pay.

ii) From 20.10.1998 to 17.2.1999 total absent of 121 days

ordered as Non Duty, Non Pay.

iii) From 09.02.2001 to 21.7.2001 total absent of 5 Months and 12 days ordered as Non Duty, Non Pay and the approved 5 years of service was forfeited.

iv) From 02.04.2003 to 29.04.2003 total absent of 27 days ordered as Non Duty, Non Pay.

v) From 23.7.2001 to 30.8.2001 total absent of 39 days ordered as Non Duty, Non Pay and the approved 5 years of service was forfeited.

vi) From 24.2.2004 to 25.3.2004 total absent of 30 days ordered as Non Duty, Non Pay.

vii) From 21.4.2004 to 22.7.2004 total absent of 3 Months and 1 day ordered as Non Duty, Non Pay and the approved 5 years of service was forfeited."

He further deposed that the appellant had been earlier dismissed from service as he had remained absent from duty vide order dated 17.11.2005.

Thus, from the statement of DW1, it is evident that the appellant was habitual absentee,

In the present case, there is no procedural lapse. During the departmental proceedings, appellant had duly participated in the inquiry. Further from the statement of DW1, it is evident that the appellant was a habitual absentee. It is evident that the impugned order of dismissal of service by the punishing authority was passed after taking into consideration the entire service record of the appellant. Hence, in the facts and circumstances of the present

case, the Courts below rightly dismissed the suit of the appellant. Thus, the judgments relied upon by the learned counsel for the appellant fail to advance the case of the appellant as they are based on different facts.

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

Dismissed.

**(Sabina)
Judge**

January 21, 2016

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