

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

RSA-370-1994

Date of decision: 25.05.2017

State of Punjab & another

... Appellants

vs.

Waryam Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Deepak Garg, AAG, Punjab.

Mr. Sukhbir Singh, Advocate
for the respondent.

Rajiv Narain Raina, J.(Oral)

1. This is an appeal against the judgment of reversal decreeing the suit in favour of the plaintiff. The plaintiff was a Constable in Punjab Police. The charge alleged against him by the department was that he was absent from duty without permission for four months, five days and two hours i.e. falling between the period October 25, 1984 to March 01, 1985. It was plaintiff's case that he was transferred to Ladda Kothi, Sangrur while posted in the Detective Staff, Amritsar. He was charge-sheeted and inquiry was conducted and the charge was proven. The disciplinary authority accepted the report and dismissed the plaintiff Constable from service vide order dated August 19, 1985. The appeal against the dismissal order was filed before the Deputy Inspector General of Police, which was rejected on May 07, 1986 without considering the claim to pension.

2. Feeling aggrieved, the plaintiff-respondent approached the

Civil Court at Amritsar by way of a civil suit, which was dismissed after trial on January 17, 1991. Challenging the said order, the plaintiff-respondent filed an appeal before the lower appellate court which was allowed by setting aside the judgment and decree of the trial Court on the ground that the dismissal was in violation of Rule 16.2 of Punjab Police Rules, 1934. The case of the plaintiff-respondent was not considered while dismissing him from the standpoint of right to pension, which Rule was mandatory.

3. The plaintiff-respondent was initially appointed as a Constable in Punjab Police on January 08, 1962 and was dismissed from service after 23½ years of service, which was long enough to qualify for pension. There is sufficient case law to suggest that when the procedure in Rule 16.2 is departed from grave prejudice results to an employee. Learned counsel for the plaintiff-respondent relies on the decisions of this Court on Rule 16.2 and how it works citing Constable Shiv Charan, No.313 vs. The Superintendent of Police, Gurgaon District, Gurgaon and ors., 1998 (3) RSJ 151, Surinder Singh (S.I.) vs. State of Punjab and ors., 2008 (4) RSJ 613, Dhan Singh vs. State of Haryana and ors., 2009 (1) RSJ 62, State of Punjab and ors. vs. Nirmal Singh, 2003(2) RSJ 704, Punjab State and anr. vs. Shr. Gurmeet Ram (deceased) and anr., 1997(4) RSJ 187 and State of Punjab and ors. vs. Surjit Singh, 2001(4) RSJ 774. The Rule mandates that 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 length of service of the offender and his claim to pension. Moreover, the punishment of dismissal was unduly harsh and disproportionately excessive to the gravity of the charge even taken as proved.

4. In view of the settled position in law and the undisputed fact that the disciplinary authority failed to consider plaintiff's right based on the length of service qualifying for pension in terms of the rules, this appeal filed by the State of Punjab deserves to fail and is hereby dismissed.

5. As a result, the judgment and decree of the lower appellate court is upheld and directions are issued to the disciplinary authority/competent authority to reconsider their decision as per Rule 16.2 and the case law on the subject matter, and pass fresh order within a period of three months from the date of receipt of certified copy of the order. The Department may in accordance with law consider treating the petitioner as deemed to have been retired compulsorily on August 19, 1985 with right to take home pension and other consequential service benefits accruing prior to dismissal.

(RAJIV NARAIN RAINA)
JUDGE

25.05.2017
sonia

1. *Whether speaking/non-speaking?*
2. *Whether reportable?*

Yes
No