

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1864-1999 (O&M)
Decided on: December 6th, 2017

STATE OF HARYANA AND OTHERS

.... Appellants

Versus

CHANDER SINGH , EX.CONSTABLE NO.620/JIND

..... Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Paramjeet Singh, AAG, Haryana.

Mr. Ajay Chaudhary, Advocate
for the respondent.

MAHABIR SINGH SINDHU, J (ORAL)

State of Haryana and its officers/defendants-appellants have filed the present Regular Second Appeal against the impugned judgment and decree dated 08.03.1999 passed by learned Additional District Judge, Hisar here-in-after referred as “First Appellate Court” vide which an appeal preferred by the plaintiff-respondent against the judgment and decree dated 27.03.1998 passed by learned Civil Judge (Junior Division), Hisar, here-in-after referred as “trial Court” thereby dismissing his suit for declaration had been accepted and his dismissal from the post of constable in Haryana Police was converted into compulsory retirement.

2. Brief facts of the case are that the plaintiff-respondent filed a

suit for declaration to the effect that the order of his dismissal from service dated 25.07.1992 (Ex. P-1) passed by the Superintendent of Police Jind, (for short, 'SP Jind'), the appellate order dated 14.01.1993 and the revisional order dated 12.01.1994 passed the Deputy Inspector General of Police, Hisar Range Hisar, (for short, 'DIG') and the Director General of Police Haryana, (for short, 'DGP') respectively, are bad in law and not binding on his rights. Further, prayer was that plaintiff-respondent be allowed to continue in service along with all pay and allowances. It is the pleaded case of the plaintiff-respondent that initially he was appointed as a constable in Haryana Police on 18.03.1976 and while posted in District Jind, the disciplinary proceedings were initiated against him on the allegations of unauthorized absent from duties w.e.f. 11.03.1991 which ultimately resulted into his dismissal from service. Statutory appeal as well as revision were also rejected by the competent authorities and that led to filing of the civil suit. Various grounds were raised in the plaint including that plaintiff-respondent was not able to resume his duties on account of his ill-health and he was undergoing treatment in Medical College Hospital, Rohtak but that aspect of the matter was not considered by any of the authorities. Point was also raised that mere absence from duty does not invite the punishment from dismissal from service. Ultimately it has been submitted that the punishment awarded is highly excessive in view of the facts and circumstances of the case.

Defendants-appellants filed their written statement and raised preliminary objections to the effect that learned Civil Judge at Hisar has no jurisdiction to entertain the present suit as the dismissal order has been

passed by the S.P. Jind and no cause of action has arisen at Hisar.

On merits it was submitted that all three orders passed by the Departmental Authorities were perfectly legal and valid and do not require any interference. It has been submitted that plaintiff-respondent examined four witnesses in his defence before the Enquiry Officer; but none of them was able to support his case regarding the factum of his illness on account of snake-biting and treatment from Medical College & Hospital, Rohtak during the period of absence and even from the cross-examination of prosecution witnesses also he was not able to elicit anything in his favour before the Enquiry Officer. It is further submitted that delinquent should have got sanctioned his leave before he left the station; but he did not care even to inform the department regarding his absence for any such treatment. It is further submitted that enquiry was perfectly legal as per service rules and his wilful absence from duty stands proved and that amounts to gravest act of misconduct and for this he deserves the punishment of dismissal from service only.

The plaintiff-respondent filed replication and reiterated his submissions made in the plaint and in addition submitted that since the appellate order has been passed by DIG, Hisar and therefore the Civil Court at Hisar has the jurisdiction to entertain the suit filed by him.

3. On the basis of pleading of both the parties, learned trial Court framed four issues which read as under:-

- i) Whether the order of dismissal passed by S.P. Jind dated 25.07.1992 and the orders passed in appeal/revision are illegal, null and void? OPP.

- ii) Whether this court has no territorial jurisdiction to entertain and try the present suit? OPD.
- iii) Whether the suit is time-bound? OPD.
- iv) Relief.

Plaintiff-respondent himself appeared as PW1 and brought on record the following documentary evidence to prove his case:-

- Ex. P-1 Dismissal order dated 25.07.1992.
- Ex. P-2 Order passed by D.I.G dated 14.01.1993.
- Ex. P-3 Order passed by D.G.P dated 12.01.1994.
- Ex. P-4 Legal notice dated 30.05.1994.
- Ex. P-5 Postal receipt.
- Ex. P-6 Postal receipt.
- Ex. P-7 Acknowledgement.

On the other hand defendants-appellants examined Maha Singh, C.R.C., Office of S.P. Jind as DW1 and brought on record the following documentary evidence to prove their case:-

- 1) Ex. D-1 Notice dated 06.12.1991.
- 2) Ex. D-2 Summary of allegations dated 06.12.1991.
- 3) Ex. D-3 List of documents dated 06.12.1991.
- 4) Ex. D-4 List of witnesses dated 06.12.1991.
- 5) Ex. D-5 Charge-Sheet dated 18.01.1992.
- 6) Ex. D-6 Enquiry report dated 30.03.1992.
- 7) Ex. D-7 Show cause notice dated 24.06.1992.
- 8) Ex. D-8 Notice for hearing dated 16.07.1992.
- 9) Ex. D-9 Gist of previous bad entries dated 24.06.1992.

10) Ex. D-10 Dismissal order dated 25.07.1992.

11) Ex. D-11 Order passed by D.I.G. Dated 14.01.1993.

12) Ex. D-12 Order passed by D.G.P. Dated 12.01.1994.

4. Learned trial Court while deciding issue No.1 came to the conclusion that order of dismissal passed by competent authority (S.P. Jind) as well as the orders in appeal and revision are legal and valid and decided the issue against the plaintiff. Learned trial Court recorded that on earlier occasions also the plaintiff-respondent had absented from duty without any information and he was awarded punishment of stoppage of five future annual increments with permanent effect. Issue No.2, regarding territorial jurisdiction was decided against the defendant-appellants being not pressed. While deciding Issue No.3, learned trial Court observed that cause of action had arisen on 25.07.1992 and the suit was filed on 21.12.1994 and after taking into consideration the provisions of Article 100 of the Limitation Act, 1963, the suit was held to be barred by limitation and the same was decided in favour of the defendants-appellants. Ultimately learned trial Court dismissed the suit of the plaintiff-respondent vide judgment and decree dated 27.03.1998.

5. An appeal was preferred by plaintiff-respondent against the judgment and decree passed by learned trial Court and learned First Appellate Court came to the conclusion that in view of the long service of more than 16 years to the credit of the plaintiff-respondent and after taking into consideration the nature of his defence plea i.e., absence was not intentional or deliberate but was prevented to attend his duties because of snake-bite, and while pressing into service the Rule 16.2 of Punjab Police

Rules and on relying upon the judgment of this Court reported as 1999(1) Recent Service Judgment, 527, Ex-Constable Ranbir Singh Vs. State of Haryana accepted the appeal while converting the order of dismissal from service into compulsory retirement.

6. Hence, the present second appeal.

7. Learned counsel for the appellants has argued that impugned judgment and decree passed by learned First Appellate Court is not legally sustainable as the charges of gravest acts of misconduct were duly proved and even otherwise the conversion of the dismissal of plaintiff-appellant into compulsory retirement is not permissible under the service Rules. On the other hand learned counsel for the plaintiff-respondent has vehemently opposed the contention on behalf of the appellants and submitted that in view of the length of service of 16 years rendered by plaintiff-respondent, learned First Appellate Court had rightly converted the dismissal into compulsory retirement and to support his contention he has relied upon recent judgment rendered by Coordinate Bench of this Court reported as in Virender Singh Vs. State of Haryana & Others., 2014(1) Service Cases Today, 561.

8. Heard learned counsel for both the parties and perused the record carefully and for deciding the present matter in controversy, the point for determination as a substantial question of law is as under:-

(1). Whether in view of the facts and circumstances of the present case the impugned judgment and decree passed by learned First Appellate Court while converting the dismissal of the plaintiff-appellant from the post of constable into

compulsory retirement is legally sustainable or not?

9. The service conditions for the post of constable and other categories in Haryana Police are governed under The Punjab Police Rules, 1934 (as applicable in Haryana State) (for short 'Rules of 1934') issued by and with the authority of the Provincial Government under Section 7 and 12 of the Police Act (V of 1861).

Rules 16.1 and 16.2 (1) (as published in 3rd Addition; 2017 of Singla Law Agency) being relevant for adjudication of the matter in controversy are reproduced and which read as under:-

“Rule 16.1 Authorized punishments.

- (1) No police officer shall be departmentally punished otherwise than as provided in these rules.
- (2) The departmental punishments mentioned in the second column of the subjoined table may be inflicted on officers of the various ranks shown in the heading Nos. 3 to 6, by the officers named below each heading in each case, or by any officer of higher rank:-

TABLE

1.	2.	3.	4.	5.	6.
Sr. No.	Departmental Punishment.	Inspectors	Sergeants, Sub-Inspectors and Assistant Sub-Inspectors	Head Constables	Constables
1.	Dismissal.	xxxx	xxxx	xxxx	Superintendent of Police. xxxx
2.	Reduction in rank.	xxxx	xxxx	xxxx	Superintendent of Police. xxxx
3.	Stoppage of increment.	xxxx	xxxx	xxxx	Ditto.
4.	Entry of censure.	xxxx	xxxx	xxxx	Superintendent of Police. xxxx

5.	Confinement to quarters for a exceeding 15 days.				Superintendent of Police. xxxx
6.	Extra guard, fatigue or other duty.				Ditto
7.	Punishment drill not exceeding 15 days.				Ditto
8.	Punishment drill not exceeding 10 days.				Assistant and Deputy Superintendents
9.	Punishment drill not exceeding 6 days.				Inspectors
10.	Punishment drill not exceeding 3 days.				Sub-Inspectors.

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(3) For the purposes of these rules, the term “major punishment” shall mean the stoppage of increment, reduction in rank and dismissal and the term 'minor punishment' shall mean all other authorized punishments.

“Rule 16.2 Dismissal

16.2 (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”

Perusal of Rule 16.1 reveals that compulsory retirement is not a punishment enumerated in the table under this Rule. Even otherwise under the service jurisprudence also, generally, the compulsory retirement is not considered as a punishment; rather it is a prerogative under which relationship between the government and its employee(s) comes to an end

and reference in this regard can be made to (1970) 2 SCC 876, R.L Butail Vs. Union of India; (1992) 2 SCC 299, Baikuntha Nath Das Vs. Chief District Medical Officer Baripada. But there may be instance(s) where the compulsory retirement has been prescribed as a punishment; for example under Rule 4 (b) (v) of Haryana Civil Services (Punishment and Appeal) Rules, 2016, the compulsory retirement has been prescribed as a major penalty and in that eventuality the necessary consequences will follow if the same is imposed as a punishment. Be that as it may, in the present case the compulsory retirement has not been prescribed as a punishment under the Rules of 1934; rather the same is simpliciter and a member of the service will be entitled for the retiring pension. Thus the conversion of dismissal of the plaintiff-respondent into compulsory retirement by learned First Appellate Court is virtually exonerating him from the charges of absence from duty and giving a clean chit of his misconduct and the same cannot be construed as a substitution of lesser punishment.

10. The charges against the plaintiff-respondent as per memo dated 18.01.1992 (Ex. D5) are that at the relevant time while posted as a constable in P.S. City Jind, he was performing his duties at Police Post Patiala Chowk, Jind and proceeded to Civil Hospital for taking medicine vide DDR No.11 dated 11.03.1991 at 1.50 PM, but he did not turn up and consequently he was recorded absent from duty vide DDR No.19 dated 11.03.1991 at 7.00 PM and thus he remained unauthorized absent from duty for a total period of 265 days, 4 hours and 35 minutes on three different occasions i.e.,

1) 11.03.1991 to 13.07.1991 (123 days, 22 hours and 25

minutes);

2) 13.07.1991 to 17.10.1991 (for 96 days, 6 hours and 10 minutes);

3) 25.10.1991 to 09.12.1991 (for 45 days);

It has also been alleged that plaintiff-respondent committed the act of gravest misconduct, indiscipline and disobedience. Shiv Parsad Inspector, Welfare, Office of S.P. Jind was appointed as Enquiry Officer and he submitted his report dated 30.03.1992 (Ex. D-6) and found that charges were proved against the delinquent. Thereafter a show cause notice dated 24.06.1992 (Ex. D-7) along with the gist of previous absence from duties and bad entries in the service record dated 24.06.1992 (Ex. D-9) was duly sent to the plaintiff-respondent and afforded him the opportunity to file his reply. The plaintiff-respondent did not choose to file any reply to the show cause notice and thereafter another communication dated 16.07.1992 (Ex. D-8) was also sent to him to file reply, if any, within 3 days and to appear for personal hearing in the matter; but again he neither filed any reply; nor appeared before the competent authority for the personal hearing.

Ultimately after taking into consideration the statement of prosecution-witnesses, defence witnesses, findings of Enquiry Officer, show cause notice and other material available on record, the punishing authority (S.P. Jind) passed the dismissal order dated 25.07.1992 (Ex. P-1) and came to the conclusion that plaintiff-respondent is “habitual absentee” and “incorrigible type of a person” and does not deserve any leniency being a member of disciplined force who remained absent on three different occasions. The punishing authority further observed that dismissal from

service is commensurate to the gravity of misconduct of carelessness, indiscipline and disobedience of lawful order and plaintiff-respondent is “not a fit police official” to be retained in Police Department and deserves to be “weeded out”.

11. A perusal of paragraph-13 of the judgment of learned trial Court clearly reveals that on earlier occasions also the plaintiff-respondent had absented from duties without any information and he was awarded punishment of stoppage of five future annual increments with permanent effect as he was found sleeping under the influence of liquor while on magazine guard duty in Police Lines, Bhiwani and relevant part reads as under:-

Para-13:-

“From a perusal of file, it transpires that on earlier occasions also the plaintiff had absented himself from duty without any information. In 1983, he was awarded punishment of stoppage of five future annual increments with permanent effect as he was found asleep under the influence of liquor while on magazine guard duty in police lines, Bhiwani”.

Learned First Appellate Court without disturbing the findings of learned trial Court as reproduced above came to the conclusion that the plaintiff-respondent was inducted as a constable on 18.03.1976 and he was dismissed from service vide order dated 25.07.1992 and thus he has a long 16 years of service to his credit and keeping in view the nature of his defence plea raised during enquiry, his absence was not intentional and deliberate; but he was prevented to attend the duties on account of snake

bite. Learned First Appellate Court invoked the provisions of Rule 16.2 of the Rules of 1934 and after relying upon the judgment of this Court in Ranbir Singh case (supra), converted the order of dismissal from service into the compulsory retirement. Although, the learned First Appellate Court is swayed with the defence plea of snake-bite raised by the plaintiff-respondent before the Enquiry Officer; but the same was found to be without any substance during the enquiry proceedings. Consequently the Enquiry Officer recorded the specific findings against the plaintiff-respondent while submitting his report dated 30.03.1992 (Ex. D-6) to the effect that charges levelled against the delinquent are duly proved. Even the disciplinary authority also passed a very detailed order dated 25.07.1992 after taking into consideration each and every aspect of the matter and relevant part of which reads as under:-

“The Enquiry Officer went to Rohtak to record the statement of DW Dr. J.S. Bhargawa, Medical College, Rohtak on 25.02.1992. This DW asked the defaulter to produce the O.P.D. card etc. pertaining to the treatment taken by the defaulter from him. But the defaulter could not produce any record and stated that the O.P.D. card issued by him has been misplaced. Thus this DW refused to give his statement in the absence of O.P.D. card etc. and stated that he is unable to state anything in the absence of any record as he attends a large number of patients daily for treatment. Remaining three DWs namely; DW-1 Sh. Balbir Singh S/o Sh. Mugla Ram Jat r/o Bhawar, DW-2 Dr. Sat Narain Verma Incharge PHC Banwasa

(Sonipat) and DW-3 Dr. Khazan Singh Incharge PHC Kalwa were produced by the defaulter and examined by the Enquiry officer”.

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“I have perused the entire record, evidence on file and findings of the Enquiry Officer and I also agreed with the findings of the Enquiry Officer. I perused his past service record also and issued a show cause notice to the defaulter proposing the penalty of his dismissal from service. It is pertinent to mention here that the defaulter had again remained absent from his place of posting and hence the show cause notice dated 24.06.1992 along with a copy of the findings of the Enquiry Officer and the gist of previous absences and bad entries was sent to him at his home address through HC Ram Chander No. 361/Jind and the same was received by the defaulter on 26.06.1992. The defaulter was given 15 days time for filing his reply to show cause notice but the defaulter did not file his reply to show cause notice. A notice No. 757/ST dated 16.07.1992 was sent to defaulter through Const. Tej Pal No. 494/Jind directing the defaulter to produce his written reply and to appear before the undersigned for personal hearing within 3 days of the receipt of the notice otherwise ex parte orders shall be passed. But the defaulter did not submit his written reply to show cause notice nor appeared before the undersigned for personal hearing till today.

Once again I have gone through the statement of PWs, statements of DWs, findings of the Enquiry Officer, show cause notice and other relevant material on file. The defaulter through the statements of DWs has tried to prove that he remained absent as he was ill.

In support of his version the defaulter has produced 3 DWs DW-1 Balbir Singh, who is also the resident of home village of the defaulter, stated that he had given treatment to the defaulter from 14.07.1991 to 09.08.1991 of snake-biting on his leg. This DW is not even a R.M.P and is resident of home village of the defaulter. Hence his evidence carries no weight being interested witness. DW-2 Dr. Sat Narain Verma stated that the defaulter had been taking treatment from him in the month of March and April, 1991 for snake-biting etc. on his leg and he had referred the defaulter to Medical College Rohtak. But the defaulter and this DW could not produce any record in this regard. Hence the evidence of this DW doctor is also not tenable. Moreover this DW could not quote exact period of treatment of the defaulter. DW-3 Dr. Khazan Singh stated that he had given treatment to defaulter as outdoor patient from 13.08.1991 to 01.10.1991 and 24.10.1991 to 02.11.1991 for swelling etc. on his leg and the defaulter could easily walk. He further stated that he never referred the defaulter to some other place for treatment. The defaulter in his written report dated 13.07.1991 stated that he had gone to Civil Hospital Jind for

taking medicines on 11.03.1991 and on other hand he stated in the same report that he took treatment from PHC Chiri on 11.03.1991 i.e. the same day he went to Civil Hospital Jind for taking medicines. He further stated that thereafter he remained under treatment at Medical College, Rohtak. The alibi of the defaulter that he had taken treatment from Medical College Rohtak and thereafter remained under treatment with DW-1 who was not even a R.M.P. is doubtful. Before discharging the defaulter from Medical College, Rohtak he would have been definitely declared fit. Moreover the period of treatment given by these DWs does not cover the entire period of his absence. It is obvious that the defaulter was not so seriously ill. Had he been so seriously ill it would be very difficult for him to reach village Chiri from Jind. The defaulter should have got sanctioned his leave before he left Jind but the defaulter did not care even to inform the department of the reasons of his absence. The defaulter could not produce any evidence in support of his remaining under treatment at Civil Hospital Jind. Neither the defaulter could extract any favour from PWs nor he could prove his defence version from the statement of DWs. Hence the factum of wilful absence of the defaulter stands established beyond any reasonable doubt.

The perusal of his previous service record reveals that he is a habitual absentee and incorrigible type of a person”.

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12. The above findings recorded by the punishing authority were affirmed by appellate as well as revisional authorities and there is no material available on record to differ with those findings. Even the learned First Appellate Court also did not find any flaw with the enquiry report dated 30.03.1992 (Ex. D-6) and the conclusion recorded in para-13 of the impugned judgment reads as under:-

Para-13

“At any rate, in the enquiry report dated 30.03.1992 and the order of dismissal passed by Hari Singh Yadav, the then Superintendent of Police, Jind Exhibit P1 (Ex.D-10) 25.07.1992 on the basis of such enquiry reveal that the appellant had produced three defence witnesses to testify that on account of snake bite, he was to undergo treatment on the prescription of DW-1 Balbir Singh and another doctor of the Medical College, Rohtak but his defence was not accepted because he failed to produce any record in that regard. Dr. Khajan Singh was examined as DW-3 during the domestic enquiry but the appellant failed to show some outdoor prescription chits. **Be that as it may, the appellant is debarred from eliciting some material facts from the Inquiry Officer”.**

Still further all the documents i.e. Ex.D1 to D12 were duly proved by the defendant-appellant as the original record pertaining to the documents was duly brought by the DW-1 at the time of his testimony before learned trial Court. Therefore the conclusion drawn by learned First Appellate Court in para-18 on the basis of defence plea of snake-bite raised

by the plaintiff-respondent is without any basis and thus legally not sustainable being perverse.

13. So far as the conversion of punishment of dismissal of plaintiff-respondent into compulsory retirement by learned First Appellate Court is concerned, the same has been done after taking re-course to Rule 16.2; which inter alia contains that while passing order of dismissal, regard shall be had to the length of service and his claim to pension. The claim for pension as well as scope of compulsory retirement for the post of constable has been stipulated under Rule 9.18 of the Rules of 1934 and according to which 25 years of qualifying service is required and the same reads as under:-

“Rule 9.18 Retiring Pension

(1) Notwithstanding anything contained in these rules, a retiring pension is granted to an officer:-

(a) who is permitted to retire from service after completing qualifying service for twenty-five years or such lesser period of as may, for any class of officers, be prescribed; or

(b) who is compulsorily retired under sub-rule (2) after completing twenty five years' qualifying service;

(c) who is retired by the appointing authority on or after he attains the age of 55 years, by giving him not less than three months' notice; or

(d) who is retires on or after attaining the age of 55 years by giving not less than three months' notice of his intention to retire to the appointing authority:

Provided that where the notice is given before the age of fifty-five years so attained, it shall be given effect to from a date not earlier than the date on which the age of fifty-five years is attained.

Note:- Appointing authority retains an absolute right to retire any Government servant on or after he has attained the age of 55 years without assigning any reason. A corresponding right is also available to such a Government servant to retire on or after he has attained the age of 55 years.

(2) The **Inspector-General of Police** may, with the previous approval of the State Government, **compulsorily retire any Police Officer**, other than an officer belonging to Indian Police Service or Haryana State Police Service who has completed **twenty-five years' qualifying service**, without giving any reasons. An officer who is so compulsorily retired will not be entitled to claim any special compensation for his retirement”.

A perusal of Rule 9.18 reproduced hereinabove clearly reveals that qualifying service of 25 years to the credit of a member of a service including the constable is pre-requisite for pension as well as compulsory retirement and without fulfilling this condition, the compulsory retirement is not permissible under Rule 9.18(2). Thus the conversion of the dismissal of the plaintiff-respondent into compulsory retirement by learned First Appellate Court is de hors the Rule 9.18(2).

14. Even from perusal of the impugned judgment passed by learned First Appellate Court one thing is clear in this case that the enquiry

report dated 25.07.1992 submitted by the Enquiry Officer was not found to be suffering from any infirmity. The Rule 16.2(1) states that 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. Still further this Rule is subject to the safety clause for maintaining the balance while imposing the severest punishment of dismissal upon the delinquent that while passing such an order the length of service and his claim to pension is to be taken into consideration. Although the punishing authority has not exactly used the language of Rule 16.2 while passing the punishment order, but at the same time it has been observed that he is not a fit person to be retained in the Police Department and deserves to be weeded out by way of dismissal from service on account of his habitual absence from duties on three different occasions and incorrigibility as well as his previous service record and thus there is a substantial compliance of the latter part of the Rule 16.2 of the Rules. Even otherwise law is well settled that in such like matters it is the substance of the order which is to be seen and not the exact language to be incorporated as akin to the contents contained in the service rules. Still further, even the appellate as well as revisional authority has also considered this aspect of matter and relevant part of order dated 12.01.1994 (Ex. P-3) passed by the revisional authority reads as under:-

“His past record does not inspire any confidence as he had his 5 future increments stopped with permanent effect in 1983, for serious act of misconduct. His past record has also been taken into consideration by the punishing authority.

There is no extenuating or mitigating factor in favour of the revisionist whose misconduct is of a very serious nature and repeated absences in the same year amounting to over 265 days constitute ample evidence of his incorrigibility.....”

15. No doubt in the case of Ex Constable Ranbir Singh (supra) dismissal of a constable of Haryana Police on account of absence from duty for 344 days was converted into compulsory retirement by a Learned Single Bench of this Court and he had also rendered 17 years of service, but in that case the provisions of Rule 9.18 were not under consideration and thus the same is not helpful to the case of the plaintiff-respondent. Similarly the judgment in Virender Singh. case (supra) relied upon on behalf of the plaintiff-respondent is also not helpful for the simple reason that in that case also the provisions of Rule 9.18 were not under consideration and reference in this regard can be made to paragraph-11 of the same and which is as under:-

Paragraph-11

“Keeping in view the nature of allegations, I am convinced that the punishment imposed is disproportionate to the charges levelled against the petitioner. The authorities have not applied their mind and not taken into consideration the length of service of the petitioner and his right to pension while awarding the punishment. No rule has been brought to the notice of this Court that the petitioner is not entitled to any pensionary benefits for rendering more than 10 years of service. Giving consideration to the length of service, the right to

pension is inherent under Rule 16.2 itself and thus it cannot be ignored. The authorities having failed to adhere to the rule while awarding punishment renders the impugned orders of punishment illegal and unwarranted. It is also settled law that when a relevant provision is given a go by, it amounts to arbitrary exercise of power and such an order is not sustainable”.

At the time of arguments also learned counsel for the plaintiff-respondent was not able to cite any precedent(s) in which the provisions of Rule 9.18 were considered while converting the dismissal of a constable of Haryana Police into compulsory retirement who had rendered service equivalent to the plaintiff-respondent.

16. There is no doubt that disciplined police force is the hallmark and mirror of a civilized society for maintenance of law and order. Thus the indiscipline by the member(s) of police service shall be detrimental to the society at large for maintenance of law and order and the same should not be tolerated as far as possible. Some relevant observations of the Hon'ble Supreme Court in this regard as mentioned in para-6 of the judgment reported as (1992) 4 Supreme Court Cases 54, **State of Punjab & Others Vs. Ram Singh Ex-Constable** read as under:-

“The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious affect in the maintenance of law and order”.

Thus the impugned judgment and decree passed by learned First Appellate

Court while converting the dismissal of the plaintiff-respondent into compulsory retirement is not sustainable in view of the Rule 9.18 of the Rules of 1934. In the opinion of this Court, the provisions of Rules 16.2 (1) cannot be read over and above or in derogation of Rule 9.18 for converting the dismissal of a constable of Haryana Police into compulsory retirement; rather the same is to be applied subject to the parameter as contained in Rule 9.18 otherwise the latter will be rendered as otiose.

17. In view of the above, the present appeal is allowed and the impugned judgment and decree dated 08.03.1999 passed by the learned First Appellate Court is set aside and the judgment and decree dated 27.03.1998 passed by learned trial Court is restored.

Both the parties shall bear their own costs.

(MAHABIR SINGH SINDHU)
JUDGE

December 6th,2017

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No