

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

Regular Second Appeal No.112 of 2007 (O&M)

Date of Decision : December 22, 2017

State of Punjab and another

... Appellants

Versus

Ex. Constable Kulwant Singh

... Respondents

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present : Mr. Sahil Sharma, DAG, Punjab
for the appellants.

Mr. Vipin Mahajan, Advocate,
for the respondent.

RAJ SHEKHAR ATTRI, J.

The defendant-State has come up in this appeal by assailing the judgment and decree passed by the learned first appellate court which reversed the verdict of the trial court and decreed the suit filed by the plaintiff Kulwant Singh (respondent herein).

The facts necessary for disposal of the appeal are that the plaintiff-respondent enrolled as a Constable. He remained absent from duty w.e.f. 21.6.2000 to 25.9.2000 (95 days 19 hours). By treating it as his misconduct, the departmental enquiry was initiated. On 26.7.2001, the enquiry proceedings were fixed for producing defence evidence, however, he could not appear on that day. As such, he was proceeded against *ex parte*. On the same day, the enquiry was decided against him. A show cause notice was issued and ultimately he was dismissed from service vide order

dated 26.12.2001. He challenged the dismissal order through the instant suit

on the following grounds as set out in the plaint :-

“a. That the plaintiff had handed over reply to the show cause notice of dismissal to dealing hand in the presence of a person and had requested him to produce the plaintiff before Disciplinary Authority, but the dealing hand had replied to plaintiff that there was no need to appear before the SSP, Ludhiana. It is evident from the order of dismissal that the dealing hand failed to put up reply of plaintiff to show cause notice of dismissal and thus reply to show cause notice of dismissal submitted by plaintiff was not considered totally which is bad in law.

b. That the Punishing Authority failed to take into consideration the totality of circumstances i.e. own illness of plaintiff during the period from 21.6.2000 to 24.9.2000 and his treatment during above period, because the mere fact of absence itself does not amount to grave misconduct.

c. That the allegations of absence from 21.6.2000 to 25.9.2000 (95 days and 19 hours) are quite baseless and incorrect. The factual position is that while posted as P.S. Division No.3, Ludhiana, the plaintiff had fallen ill on 21.6.2000 due to serious pain in his right leg. The plaintiff was got treated medically by a private doctor from 21.6.2000 to 23.6.2000 but since there was no relief, the plaintiff was further got treated medically by Dr. Rajesh Chopra, BAMS, Gurdaspur from 24.6.2000 to 24.9.2000, who advised the plaintiff complete rest during the above said period. The Doctor declared the plaintiff fit to resume duty on 24.9.2000 and as such, the plaintiff reported for duty on 25.9.2000.

d. The plaintiff had submitted his reply to show cause notice of dismissal along with copy of medical certificate issued by Dr. Rajesh Chopra proving his illness which was not intentional. The Disciplinary Authority failed to demonstrate application of mind and illness of plaintiff.

e. That the Punishing Authority alleged in the impugned

order that the plaintiff remained absent for 399 days previously on several occasions and also his 2 years service was forfeited twice in the year 1995 for absence and also punishment of Censure was awarded to him in the year 1996 for absence but the details of bad entries and previous bad record and detail of alleged absence were not shown in the show cause notice of dismissal. Thus the plaintiff was not made aware of his previous bad record and was thus not given opportunity to defend himself.

f. That the opportunity of personal hearing was not afforded to the plaintiff after he had handed over the show cause notice of dismissal to the dealing hand. As per procedure prescribed in clause (IX) of PPR 16.24, the plaintiff must have been provided opportunity of personal hearing after preparation of final order and before its announcement.”

The suit was contested, *inter alia*, on the grounds that the absence of the plaintiff respondent was willful and that being a member of the disciplined force, he disobeyed the Punjab Police Rules (in short, “the rules). However, it is averred that the enquiry was conducted in accordance with law and as per the rules. Therefore, the same is fully legal and valid.

From the pleadings of the parties, following issues were struck in the case : -

1. Whether the plaintiff is entitled to declaration to the effect that the order dated 26.12.2001 was illegal, null and void along with all consequential benefits? OPP
2. Whether the Civil Court at Gurdaspur has no jurisdiction to try the present case? OPD
3. Whether the plaintiff has no cause of action to file the

present suit? OPD

4. Relief.

Learned trial Court afforded adequate opportunities to both the parties to adduce evidence. On appreciation of evidence, the suit was dismissed on 10.9.2004. However, the first appellate court has accepted the appeal vide its judgment and decree dated 19.9.2006.

I have heard the learned counsel for the parties and gone through the record.

A bare perusal of the evidence available on record transpires that the respondent plaintiff was not given adequate opportunity of being heard during the enquiry proceedings. He could not join the enquiry proceedings on 26.7.2001 and was declared absent. On that day, the case was fixed for producing evidence in defence. However, instead of issuing him notice or affording another opportunity, the enquiry officer concluded the enquiry on the same day in utmost haste.

Apart from it, the *ex parte* order was not passed in accordance with law and the same has been passed in violation of Rule 16.22 and 16.24 of the Rules. Therefore, the entire proceedings have been vitiated.

During the trial of the suit, the respondent plaintiff produced PW3 Dr.Rajesh Chopra who proved medical certificate Ex.PA showing his illness between the period 24.6.2000 to 24.9.2000. Had the respondent plaintiff been given adequate opportunity to adduce evidence in his defence, he would have produced this document before the enquiry officer. But proceeding him *ex parte* on his single day non-appearance entails the withdrawal of the opportunity of being heard.

It is very much clear that in the show cause notice, nothing was mentioned about his past record but at the time of passing the dismissal order, all his past blemished record has been considered which is in complete violation of the law. The division bench of this court in CWP No.13595 of 2004 decided on 21.11.2006 (Gurdev Singh v. State of Punjab and others) has made following observations : -

“It is, therefore, apparent that the respondents while imposing the punishment of dismissal from service on the petitioner took into consideration a charge not at all levelled against the petitioner, namely, of coming on duty in a drunken condition, and also past blemished record, which was not subject matter of the show cause notices issued to him. We are of the considered view that a charge not levelled against the petitioner in the charge-sheet could not have been taken into consideration while inflicting the punishment upon him. We are also of the view that if the authorities were desirous of taking into consideration past record of the petitioner, the show cause notice issued to the petitioner ought to have made a reference to the same and the petitioner afforded an opportunity to respond thereto. Since the aforesaid material has admittedly been taken into consideration while passing the order of dismissal at the hands of the punishing authority, and also by the appellate authority, we are of the view that the punishment order dated 08.06.2001, the appellate order dated 26.12.2002 as well as the revisional order dated 30.01.2004 deserve to be set aside. The same are, accordingly, set aside.”

Similar view has been expressed by this Court in **Mahipat v. State of Haryana**, 1994 (3) Recent Service Judgments 132; **Pritam Singh, Conductor v. The Punjab Roadways**, 1993 (3) Recent Service Judgments 433 and in **State of Haryana v. Mohinder Pratap**, 1997 (1) Recent Service

Learned State counsel has placed strong reliance upon the precedents in cases **Maan Singh v. Union of India and others** (2003) 3 SCC 464 and **Ex. Constable Balbir Singh v. State of Punjab and others** 2013 (1) RSJ 407. However, the same are distinguishable on facts.

On the independent appraisal of the evidence and other material available on the record, this Court is of the considered view that the findings of the learned first appellate court are based upon proper appreciation of evidence and law and do not require any interference. Consequently, the impugned judgment and decrees of the learned first appellate court stand upheld.

As a result, this appeal is devoid of merit and the same is dismissed with costs. Keeping in view the facts and circumstances of the case, a direction is issued that the matter of reinstatement of the plaintiff-respondent be considered within a period of one month from the date of receipt of a certified copy of this order. Liberty is, however, granted to conduct further enquiry from the stage when the delinquent was proceeded against *ex parte* and to pass a fresh order in accordance with law within a period of three months.

December 22, 2017

Paritosh Kumar

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No