

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4453 of 2016 (O&M)

Date of Decision:27.2.2017

Sukhbir Singh

... Appellant

Versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

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

RAJIV NARAIN RAINA, J. (Oral)

CM No.11632-C of 2016

This is an application for condoning the delay of 47 days in re-filing the appeal. For the reasons recorded, CM is allowed. Delay of 47 days in re-filing the appeal is condoned.

RSA No.4453 of 2016

1. Ex-India Leave was sanctioned to the appellant by the Police Department with the condition that he should not extend the same beyond 10th March, 2005. An affidavit was called to agree to the condition for sanctioning leave. It was given on signed paper. The short story is that the appellant reneged from the undertaking. Can he get back to service, is the question that falls for consideration in appeal against a judgment of reversal.

2. To take stock of the necessary facts to appreciate the work of the lower appellate court it is not disputed that the appellant was a Wireless Operator working in the Office of Superintendent of Police, Computer and Telecommunications, Punjab, Chandigarh. The Ex-India Leave was granted from 10th December, 2004 to 10th March, 2005. While

residing abroad, the plaintiff sent an application dated 10th February, 2005 for extension of leave. The same was rejected on 12th April, 2005 by the competent authority in the police administration. His further applications dated 10th May, 2005 and 14th June, 2005 for extension of leave on medical grounds was rejected vide order dated 29th September, 2005.

3. Thereupon, a charge-sheet was issued in absentia and an enquiry was ordered into the misconduct. It was concluded ex parte. The disciplinary authority was the Deputy Inspector General of Police, Computer and Telecommunication, Punjab, Chandigarh who vide impugned order terminated the services of the appellant vide order dated 21st November, 2006 by way of dismissal. The plaintiff acknowledged that the termination order was received by his father at his permanent residential address on 11th February, 2007. The dismissal was for continuous violation of Rules 8.2 and 8.4 of the Punjab Police Rules, 1934 (for short “the Rules, 1934”) for not reporting back after availing Ex-India Leave. Before terminating the services of the appellant, he was supplied the enquiry report and a show-cause notice was issued on 11th February, 2006 at his permanent residential address to answer the report if he had anything to say, but his mother refused to accept the same. Before that second last step was taken, notice was published in two newspapers i.e. the Hindustan Times and Daily Ajit on 31st March, 2006 informing the delinquent of bad tidings in the offing. However, the plaintiff neither joined service by reporting back to the department nor submitted any reply to the second show cause, which came from ex-parte enquiry and consequential dismissal from service on 21st November, 2006.

4. These are the broad facts which were presented in the Court of the learned Civil Judge (Junior Division), Patiala in Civil Suit No.1055T/25.2.2010/20.11.2012 challenging the order dated 21st November, 2006. The suit was filed beyond three years prescribed for limitation under Article 137 of the Limitation Act, 1963 to institute suits. The suit was decreed.

5. It is not disputed that the plaintiff was a confirmed and permanent employee of the Police Department and had acquired a right to the post. In the suit, he alleged that he was wronged by an illegal and non-speaking order which denied him justice.

6. The State had, inter alia, objected that the suit was not maintainable for want of resort to statutory remedy of appeal to the higher authority. This objection is not without merit.

7. Rule 16.24(2)(i) of the Rules of 1934 empower the Superintendent of Police or any Officer of the rank higher than Superintendent to institute or cause to be instituted ex-parte proceedings in a case in which he is satisfied that the defaulter cannot be found or that in spite of notice to attend, the defaulter is deliberately evading service or refusing to attend without due cause. It is not disputed that the procedure in such ex-parte proceedings has to conform to the procedure laid down in Rule 16.24(2)(i) of the Rules of 1934. Notices were sent to the permanent address of the plaintiff and there was refusal by his mother to acknowledge the letter in which the enquiry report was enclosed for delivery.

8. In counterpoint defence strategy, the plaintiff asserted that defendant knew that he was residing in Austria at the time when enquiry proceedings were initiated and when enquiry report was sent to the

plaintiff. And they should have served him at that address as though it was his birthright. The trial court was sadly of the view that actual service is essential for what transpired next, which ingredient is missing in the present case. The trial court noticed the judgments of the Supreme Court in Union Of India & Ors vs Dinanath Shataram Karekar & Ors., (1998) 7 SCC 569 and other judgments in Electronics Corporation of India vs. G.Muralidhar, 2001 (4) SCT 391, Manjit Singh vs. State of Punjab and others, 2008 (3) SCT 332, Surjit Ghosh vs. Chairman & Managing Director, United Commercial Bank and others, 1995 (2) SCT 352, Satnam Singh vs. State of Punjab and others, 2006 (2) SCT 118, Union of India and State of Uttaranchal and others vs. Kharak Singh, 2008 (4) RSJ 597 to arrive at a conclusion that the dismissal order was procedurally improper. Furthermore, in order to establish the point that when the dismissal order is passed by the authority superior to the appointing authority which is itself the appellate authority, then the right to appeal is lost and this also renders the dismissal order legally bad.

9. Still further, the learned trial court observed that Rule 16.2 of the Rules of 1934 provides that dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect of continuous incorrigibility and complete unfitness for police service. The plaintiff had been charge-sheeted and punished due to reasons of his absence from duty. Though even a single act of misconduct may lead to dismissal from service as observed by the Supreme Court in State of Punjab vs. Ram Singh, Ex-constable, 1992 (4) SCC 54, but such an act must be such as falling under the purview of gravest act of misconduct. Therefore, the learned trial court reasoned that “single” act of absence from the duty does not fall under the penumbra of gravest misconducts. The learned

trial court observed that there is nothing on record from which it could be inferred that act and conduct of plaintiff had been of an incorrigible nature justifying dismissal after long years of service. The Sub Judge observed that punishment imposed by the punishing authority is not proportionate to the misconduct and on this account held that the impugned order suffers from legal infirmities and decided the moot issue in favour of the plaintiff and decreed the suit.

10. The State argued in first appeal dissatisfied with the judgment that after all, there was a stipulated term in the order granting Ex-India Leave that plaintiff will not claim extension of leave and therefore, the plaintiff was bound by that term and if he did not obey, he has to bear the consequences of punitive action. The State argued that absence in the present case amounts to the gravest act of misconduct on the part of the plaintiff since he was a member of the disciplined force. The plaintiff had, as said and done, submitted an undertaking in writing that he will not seek extension of Ex-India Leave and as such, the plaintiff was rightly dismissed from service by the department. The department had adhered to the procedure provided under Rule 16.24 (2) (i) in cases of *ex parte* departmental proceedings. A confirmed and permanent employee, the State argued, has no immunity against indiscipline and does not acquire any right to any post even after violating the rules in vogue. The State asserted that the departmental enquiry was initiated on 10th May, 2005 and the notices were served to the plaintiff at his permanent home address as well as the address intimated by him in the beginning of his Ex-India Leave whereas the show-cause notice dated 11th February, 2006 was issued to the plaintiff at his permanent home address. It was know not informed by the plaintiff to

his employer that he had shifted base from Austria to United States of America at address unknown without notifying whereabouts.

11. The learned Additional District Judge sitting in first appeal re-visited the evidence on record and took cognizance of the facts and circumstances of the case while the learned trial court had so simplistically relied on *Electronics Corporation of India, supra* to hold that when the order of termination is passed by the appellate authority, then valuable right of appeal is denied to delinquent without acquainting itself of the law in PPR, 1934 which speaks to the contrary when defining jurisdictions. Such an order, the sub Judge thought, of punishment is liable to be vitiated. However, the learned Additional District Judge with his experience of the law in action rightly culled out the authority which considered the issue pointedly in *U.P. Power Corporation Ltd. vs. Virendra Lal*, 2013 (10) SCC 39 wherein the Supreme Court considered the case of *S.Loganathan v. Union of India and others*, (2012) 1 SCC 293 and observed as follows:-

“20.In *S.Loganathan v. Union of India and others*, a two-Judge Bench placed reliance on the decisions rendered in *Surjit Ghosh (supra)* and *Electronics Corporation of India (supra)* and, eventually, opined that as the appellant’s right to appeal had not been affected by the authority passing the order, the punishment imposed could not be said to be vitiated in law.

21. From the aforesaid enunciation of law it is graphically clear that a higher authority may pass an order imposing a punishment and the same would withstand scrutiny if the right of appeal is not taken away. That apart, if the appellate

authority passes an order as the primary authority and there is provision for further appeal or revision or review it cannot be said that the said order suffers from any illegality...”

12. In the case in hand, no doubt, the order of punishment was passed by the Deputy Inspector General of Police, but against such order, the appeal was competent before the Inspector General of Police as provided under Rule 16.29 (6) of the Punjab Police Rules Vol. II. The Sub Judge clearly fell in error in misunderstanding the case.

13. On the issue of limitation, the trial court was well acquainted that the suit of declaration is to be filed within a period of three years as law prescribed when cause of action accrued to the party but reasoned that the dismissal order was passed on 21st November, 2006. The order was communicated to the plaintiff on 11th January, 2007 and this fact was admitted by DW1 in his cross-examination. A notice under Section 80 CPC was served on the defendants vide registered letter dated 8th December, 2009. Section 15 (2) of the Limitation Act, 1963 excluded period of notice served in computing period of limitation. The suit was instituted on 25th February, 2010 and accordingly, it was within limitation. To this extent it made no mistake. The trial court reinstated the plaintiff and held that the act in not allowing plaintiff to resume service is illegal, null and void and proceeded to declare it in favour of the plaintiff with consequential benefits vide judgment and decree dated 12th April, 2013.

14. Seriously aggrieved by the judgment and decree reinstating the plaintiff to service, the State of Punjab carried appeal to the court of learned Additional District Judge, Patiala. It was urged in first appeal under Section 96 of the Code that even if the enquiry was found faulted,

it would not be proper to direct reinstatement automatically with consequential benefits and the matter requires to be remitted to the disciplinary authority to follow the procedure at the stage from which the fault was pointed out and to take action accordingly. This was a fairly good argument to press for Court opinion. The State relied on the Supreme Court ruling in State of Punjab vs. Dr. Harbhajan Singh, 1996 (3) 82 (SC) to hammer its point in its favour. It was urged that the plaintiff did not exhaust the alternative remedy that the suit is not maintainable and is liable to be dismissed on this score alone. Still further, the State contended that the learned trial court failed to appreciate the repercussions that the plaintiff could have but plaintiff did not turn into the witness box for recording of his testimony, and therefore, the presumption goes against the plaintiff that if he does not appear in the witness box to depose to facts pleaded in his own case in the plaint to claim his relief his case is to be treated as a case of no legal evidence. Moreover, the learned trial court erred in sitting as an appellate authority over the punishment imposed by the authorities in the departmental enquiry. It is argued in appeal that the trial court ought to have remanded the matter back to the departmental authorities from the stage from where the trial court felt that the departmental inquiry was vitiated by error.

15. The learned appellate court re-visited the table provided in the rule and analyzed it correctly that against the dismissal order an appeal lies to the Inspector General of Police. Hence, the right to appeal by the delinquent was not taken away by passing of the order by the Deputy Inspector General of Police. Thus, the order of punishment holds well in law of delegated authority by the State and does not vitiate the

impugned order for it to be set aside. The fact remains that the plaintiff did not prefer an appeal against the impugned order before approaching the trial Court though such right was available to him. The learned appellate court rightly observed that in such a situation, the plaintiff cannot be heard to cry foul. With this reasoning, the learned appellate court set aside the findings of the trial court on this ground.

16. On the other aspect of initiation of ex-parte proceedings under Rule 16.24 (1), the learned first appellate court appears to have scrupulously perused the enquiry file itself. The fact remains that the notice regarding departmental enquiry was sent to the delinquent official through SI Harbans Singh at his permanent address in his native village. Parmanand, the father of the plaintiff informed the serving officer of notice that Sukhbir Singh plaintiff had not returned back from abroad. Even prior to conclusion of domestic proceedings, Inspector Kanwaljit Singh, Inquiry Officer, personally visited the address of the plaintiff on 28th July, 2005 and vide statement Ex.DA/8, Dhani Devi, mother of the plaintiff intimated the runner of the message that the plaintiff had still not returned from abroad. In such circumstances, every opportunity was provided to the plaintiff before proceeding with the inquiry ex parte. Thus, mere ordering of inquiry under Rule 16.24 (1) does not prove that in fact the enquiry was held *ex parte* when due notices were issued to the plaintiff to participate in the inquiry proceedings and he failed to respond to the same and to participate in the inquiry proceedings. The first appellate court held that no fault can be found with holding of inquiry in this manner ex parte to favour a runaway ensconced with better life in a land of opportunity. I ask why he should he want to return, if not for clover. I believe he should be disallowed this pleasure.

17. The other ground that weighed with the learned trial court was that the inquiry report was not sent to the plaintiff at his foreign address i.e. in Austria which was available with the department. The learned first appellate court delved into evidence and fathomed from there that the finding of the trial court on this issue is misconceived as letters Ex.DA/4 and Ex.DA/5 were sent on the overseas address of the plaintiff and both these letters were sent through registered A/D post to which presumption of delivery is attached. This was good reasoning based on statutory law which ignorance will not remedy.

18. By adopting this line of reasoning the learned first appellate court rightly came to the conclusion that apart from intimating the plaintiff about inquiry underway and rejection of his leave sent to his permanent address, due intimation was also given to him at his address in Austria provided by him. There was another material fact which turned the tables on the plaintiff. Due intimation was not given by the plaintiff of his address in Austria provided by him had ceased to exist as he had migrated to the USA. It is rather interesting that the learned counsel for the plaintiff put registered cover Ex.P-29 sent to Ashok Kumar, DW1 to prove that plaintiff was not residing at the address given in Ex.DA/13. The learned court *a quo* took a look at the report in hand writing endorsed on this registered cover by the official of the Postal Department which very importantly revealed the note to the effect that “the addressee had gone to U.S.A. Returned back”. The said registered letter was put into transmission on 14th February, 2006 in the Post Office containing the show-cause notice dated 11th February, 2006, pointing in navigation to Ex.DA/13 in which document it is clearly mentioned that copy of report of the inquiry officer was annexed for response to meet

the requirements of the law. Therefore, the plaintiff had constructive notice of what was going on in his department against the interest of the plaintiff.

19. The learned first appellate court on these premises concluded that an effective copy of the inquiry report was sent to the plaintiff and this was sufficient compliance of the law laid down in Union of India And Ors vs Mohd. Ramzan Khan, AIR 1991 SC 471. There was attached a presumption of delivery of postal article. Besides, the parents of the plaintiff residing at Patiala failed to disclose the changed address of USA as the earlier address provided by him was of Austria where their son resided. Thus, no option was left with the defendant to convey the show-cause notice and the enquiry report, but to send the same at the permanent address at Patiala. The learned first appellate court noticed Section 27 of the General Clauses Act which gives rights to a presumption that service of notice has been effected when it is sent to the correct address by registered post.

20. Furthermore, to meet the requirements of the principles of natural justice and due compliance of the service rules, the defendant in its wisdom issued public notice Ex.DF/14 in the Hindustan Times and the Daily Ajit newspapers as is clear from writing Ex.DA/15. There is still another telling fact against the plaintiff that in the notice under Section 80 CPC as well as in the plaint, the address given by the plaintiff is that of “House No.8 Street No.10, Anand Nagar-B, Patiala” to which the notices and the report and the orders were sent.

21. For these justifiable reasons, the first appellate court reversed the findings of the learned trial court regarding non-furnishing of enquiry report to the plaintiff which was found to be misconceived

and contrary to evidence. The misreading of evidence was readjusted after a fresh reappraisal of the evidence on record to suitably and rightly to alter the faulty trial court reasoning.

22. The learned first appellate court then turned its examination to the finding of the trial court that a single act of absence from duty does not fall under the purview of the gravest acts misconduct. The Court of first appeal reasoned that the plaintiff was a Constable of Punjab Police and a member of disciplined and uniformed force which required far greater understanding than was thought by the trial court. There was no doubt that the plaintiff proceeded on Ex-India Leave on 10th December, 2004 to remain abroad till 10th March, 2005 with a clear undertaking that he will not extend the same. Even after declining of the applications for extension of leave, he did not re-join his duties first from 11th March, 2005 to 21st November, 2006 on which date his services were dismissed. Thereafter also, he did not make any effort to resume his duties and only on 8th December, 2009, he came sauntering forward by way of notice under Section 80 CPC only before filing the suit on 24th February, 2010 in the civil court and came forward to seek quashing of the dismissal order passed against him on 21st November, 2011.

23. The testimony of PW-1 Parmanand, father of the plaintiff has admitted in cross-examination that his son had gone abroad 6/7 years back and had not come back during this period on an India visit. From this, the learned first appellate court inferred, quite rightly, that it is clear that the plaintiff had scant respect for his police service on which he is seeking reinstatement. In cases of absenteeism of a Police Constable from onerous duties, the first lower appellate court noticed the ruling of the Division Bench of this Court Prem Nath, Ex-Constable vs. State of

Haryana, (P&H) (DB), 1997 (3) SCT 461 while affirming the dismissal order against a policeman and underlined in emphasis the importance of duties of the ‘men in uniform’. The learned first appellate court culled out the ratio of the judgment as incorporated in paragraph 25 of the judgment which is reproduced and which reads as follows:-

“There is another aspect of the matter. The petitioner was a member of disciplined force. A man in uniform is the symbol of State’s authority. He has to be an example of rectitude and good behaviour. The petitioner by his repeated acts of absence from duty did not conform to the standard of discipline expected of a member of the Police Force. In the view of the rule enunciated by their Lordships of the Supreme Court in State of U.P. and others vs. Ashok Kumar Singh and others, 1996 (1) SCC 302: 1996 (2) SCT 139, absence of a constable on several occasions is a grave misconduct. In such a case, the punishment awarded by the disciplinary authority which has been confirmed by the higher authorities calls for no interference under Article 226 of the Constitution.”

24. In support of the reasoning adopted, the learned first appellate court noticed the law stated in State of Punjab v. Ram Singh, Ex-Constable, (1992) 4 SCC 54 which involved dismissal of a gunman of the Deputy Commissioner of Police, Ropar wherein it has been held that even single act can constitute gravest misconduct. In the case of the plaintiff, there is a continuous misconduct spanning over 4 1/2 years by not turning up even for recording of his own testimony during the trial. The standards of discipline required to be enforced in the Police Department are extraordinary and in the judgment of the superior officer

deserves to be respected and should not be interfered (See: Bhagwat Parshad v. Inspector General of Police, Punjab and others, AIR 1970 P&H 81 which was approved by the Supreme Court in *Ram Singh* case, *supra*. I am convinced that the petitioner abandoned his job and expects on mere technicalities to rise like the phoenix and secure an order of reinstatement to service. In this, the court the Court is helpless and would not act in aid of a person who has found fresh pastures to promote his personal wellbeing. He must rest content with his new found land out of India.

25. There is no legal infirmity in the decision of the authority to categorically conclude that the absence of the plaintiff without any authorised leave was gravest misconduct and gross negligence. In the face of this conclusion, the courts have no jurisdiction to re-examine the question as to whether such act constitutes the gravest act of misconduct (See: Maan Singh vs. Union of India, (2003) 3 SCC 464). Besides, judicial review is not an appeal for the decision, but a review of the manner in which decision is made. Review on the judicial side is not directed against the decision but the decision making process which was not faulty in this case. Judicial review is made to ensure that individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eyes of the court (See: B.C.Chaturvedi v. Union of India, (1995) 6 SCC 749).

26. All that the Court is required to see is whether proper procedure has been followed during the enquiry while passing the punishment order. There is nothing to show in this case that proper procedure was not followed in the departmental enquiry although ex

parte plaintiff. Thus, the lower appellate court rightly concluded that the dismissal order cannot be set aside.

27. The first appellate court rightly accepted the contention raised by the government pleader to the extent that the plaintiff has failed to appear in witness box to support and substantiate his averments in the plaint and merely on a special power of attorney, his father appeared who knew nothing of what his son did to invite dismissal. He has no personal awareness of the facts of the case, and therefore, his testimony was not legal evidence and no weightage can be attached to it, thought the lower appellate court for good reason which I endorse. He could only be in the place of formal evidence above the validity of the power of attorney and filing of the suit and nothing more. The law of evidence testified by power of attorney holder is stated succinctly in Man Kaur (dead) through L.Rs vs. Hartar Singh Sangha and another, (2010) 10 SCC 512 and the learned first appellate court did good work in noticing the judgment and relying upon its ratio in the order. No value can be attached to the statement of interested witness Parmanand, father of the plaintiff who lived in Patiala and whose son never came to visit him during the period of 6-7 years relevant to the case as admitted in his cross-examination. His testimony has been correctly discarded by the lower first appellate court and I support the view.

28. On the question of maintainability of the suit, the first appellate court agreed that the suit was maintainable in absence of filing an appeal/revision before the departmental authorities as provided under the rules by noticing the authority in Sri Ramendra Kishore Biswas vs. The State of Tripura and Ors., 1999 (1) Apex Court Journal 126 (SC).

29. On the reasons paraphrased above from the work of the learned first appellate court, it follows that the judgment and decree of the learned trial court was not acceptable in law and the appeal should have been allowed by reversal. The judgment and decree dated 12th April, 2013 passed by the learned trial court was appropriately set aside by the learned Additional District Judge vide well reasoned judgment translated into the decree sheet dated 16th November, 2015 from which the appeal arises. I support the findings recorded on all the issues dealt with by the learned first appellate court on which the case hinged and would have no hesitation to dismiss this appeal as there is no question of law, much less substantial for this court to answer. This appeal stands dismissed with costs throughout against the plaintiff and in favour of the defendant police department, mistakenly thinking just like in the *sukh* of the country of his adoption, courts might award for frivolous litigation. Let it be known that litigation in India is no longer free as the throw of dice or a game of roulette with the changing times. There is enough certainty in our law that we uphold and the Court is not a stander-by.

(RAJIV NARAIN RAINA)
JUDGE

27.2.2017
MFK

Whether speaking/reasoned

Yes

Whether Reportable

Yes