

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

RSA No.2048 of 2000 (O&M)

Date of decision: 20.08.2019

State of Punjab and others

... Appellants

Versus

Ex.Constable Bhupinder Singh (deceased) thr LRs

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. AA Pathak, Addl. AG, Punjab.

Mr. Vivek Sharma, Advocate for the respondent.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for declaration to challenge dismissal order dated 05.06.1989 and orders dated 14.10.1989 passed by DIG, Patiala Range, Patiala and dated 31.07.1991 by the Director General of Police, Punjab being illegal, ultra-vires, unconstitutional against principles of natural justice and service rules and regulations governing services of the respondent/plaintiff was decreed by the trial Court vide judgment and decree dated 17.04.1995 that came to be affirmed in appeal by the Additional District Judge, Patiala vide judgment and decree dated 03.12.1999.

The respondent/plaintiff was appointed as Constable in Punjab Police in 1972. He was found under the influence of liquor on 21.06.1988 when he was posted at Police Station Kotwali, Nabha. He was placed under

suspension and directed to report for duty at Police Lines, Patiala. He did not join the duties and remained absent from 03.07.1988 to 03.05.1989 i.e. for 305 days. He was served with chargesheet but the same was not replied by him. During pendency of inquiry, he was reinstated on 25.05.1989 without prejudice to enquiry pending against him. During enquiry, he did not appear and was proceeded against ex parte. The enquiry culminated into a report whereby charges leveled against him were found to be proved. He was served with a show cause notice Ex.P39 which was duly replied. Later, order dated 05.06.1989 dismissing the respondent from service was passed by Senior Superintendent of Police, Patiala. Appeal against dismissal order was dismissed by DIG, Patiala Range, Patiala vide order dated 14.10.1989. A revision petition filed before the DGP, Chandigarh also met the same fate vide order dated 31.07.1991.

The appellants/defendants contested the suit and denied the allegations on the basis whereof the orders impugned were sought to be set aside.

The trial Court framed the following issues for determination:-

1. Whether the impugned orders dated 05.06.89, 14.10.89 and 31.07.91 are illegal, null and void?OPP
2. Whether the plaintiff is entitled to the declaration as prayed for?OPP
3. Whether the suit is not properly valued for the purposes of Court fee and jurisdiction?OPD
4. Relief.

The parties were permitted to adduce evidence in support of

their respective contentions. Having heard counsel for the parties in the light of materials on record, the trial Court negated all other contentions of the respondent except that impugned order of dismissal from service has been passed in violation of procedure prescribed in Clause ix of Rule 16.24 of the Punjab Police Rules and accordingly the suit was eventually decreed to the following effect:-

The suit of the plaintiff is decreed and the impugned orders dated 05.06.1989 passed by the SSP, Patiala and order of the DIG, Patiala Range, Patiala dated 14.10.1989 and order dated 31.07.1991 passed by the Director General of Police, Punjab are illegal, null and void and the plaintiff shall be considered to be in continuous service as the impugned orders having never been passed. He shall be entitle to all the benefits of salary and emoluments.

As has been noticed hereinbefore, the appeal preferred by the appellants/defendants was dismissed by the Additional District Judge, Patiala.

Counsel for the appellants would argue that findings of the Courts setting aside order of dismissal for want of compliance with the provisions of Clause ix of Rules 16.24 of the Punjab Police Rules is the result of misreading of evidence on record and misplaced reliance upon Division Bench judgment of this Court **Shri Ram Vs. State of Punjab, 1967 SLR 678**. It is vehemently argued that before passing order of dismissal by SSP, Patiala, the delinquent official/respondent was personally

called in the office of SSP, Patiala and was served with show cause notice tentatively proposing to impose punishment of dismissal from service and even the respondent was allowed an opportunity to appear in person before the punishing authority in response to the proposed punishment of dismissal from service. It is further argued that the respondent submitted reply to the show cause notice but did not avail of opportunity to appear in person before the punishing authority, therefore, it cannot be held that order of dismissal has been passed without compliance of the procedure prescribed in Clause ix of Rule 16.24 of the Punjab Police Rules. In support of his contentions, he has heavily relied upon another Division Bench judgment of this Court **The State of Punjab Vs. Parkash Chand, 1992(2) PLR 36** wherein judgment of the earlier Division Bench in **Shri Ram's case (supra)** has been considered rather dealt in detail. It is further argued that every case is to be decided in view of its peculiar facts and circumstances and as in the case at hand, the delinquent was given an opportunity to file reply to the show cause notice with liberty to appear before the punishing authority on any working day to say something about the proposed punishment, findings of the Courts by placing reliance upon **Shri Ram's case (supra)** cannot be allowed to sustain, being perverse.

Counsel representing the respondent, on the contrary, has supported the impugned judgments by seeking aid of judgment of the Division Bench in **Shri Ram's case (supra)**.

I have heard counsel for the parties, perused the paper book

and records.

The whole controversy in the present appeal revolves around the issue “whether order of dismissal was passed by Senior Superintendent of Police, Patiala without compliance of mandate of Clause ix of Rule 16.24 of the Punjab Police Rules.”

Before advertng to the submissions made by counsel for the parties, it is appropriate to extract relevant part of Clause ix of Rule 16.24 of the Punjab Police Rules, reads thus:-

No order of dismissal or reduction in rank shall be passed by an officer empowered to dismiss a police officer or reduce him in rank until that officer has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. xx xx

Indisputably, the respondent was served with show cause notice whereby the punishing authority tentatively proposed to impose punishment of dismissal from service in view of the charges proved against him as per the inquiry report, copy whereof was supplied to the delinquent official. The respondent was given 10 days' time to respond to the show cause notice and was given liberty to appear in person on any working day to submit his plea. It is also not denied that in response to the show cause notice Ex.P39, the delinquent official submitted his reply Ex.P41. However, for the reasons best known, the delinquent did not avail of the opportunity to appear in person to explain his position or to say something against the proposed punishment.

The question that now falls for consideration is whether in view of the aforesaid facts obtaining in the case, can the findings of the Courts be sustained that the punishing authority did not comply with the requirements of Clause ix of Rule 16.24 of the Punjab Police Rules, therefore, order of dismissal has rightly been set aside with all consequential benefits flowing therefrom.

In **Shri Ram's case (supra)** on consideration of enquiry report, Superintendent of Police, Hisar called petitioner Shri Ram in person and served upon him the show cause notice dated 25.03.1963 wherein it was mentioned that petitioner was given 10 days' time to make his representation showing cause against imposition of penalty of dismissal from service. The petitioner submitted a detailed representation repeating his version of the story of his absence from the headquarters. The punishing authority disbelieved version of kidney trouble raised by the petitioner and passed the final order in which the last sentence provided as below:-

Consequently the defaulter is dismissed from service with effect from today. I see no extenuating circumstances to give punishment lesser than dismissal. However, a verbal hearing will be given to him under the rules at the time of the announcement of the order.

This Court held that presence of the petitioner before the Superintendent of Police at the time of delivery of show cause notice was at a stage prior to consideration of his defence, the statutory requirements of personal hearing envisaged by Clause ix above the proviso relates to the

stage subsequent to the provisional opinion of the competent authority resulting in service of the show cause notice and prior to final making up of mind by the punishing authority, therefore, an opportunity to have a verbal hearing subsequent to passing of order of dismissal does not amount to compliance of requirements of Clause ix of Rule 16.24 of the Police Rules.

In **Parkash Chand's case (supra)** another Division Bench of this Court after considering the judgments **Shri Ram's case (supra)** and **Baldev Singh Ex-Constable Vs. State of Punjab and others, 1985(2) All India Services Law Journal 1** has held that issuance of a written show cause notice to the delinquent official and consideration of reply received in response thereto amounted to substantial compliance of Sub Rule ix of Rule 16.24(1) of the Police Rules and the said exercise having gone through in the said case fulfills the requirement of law. It was further held that their Lordships are not unmindful of the fact that written representations are often dealt with in a casual and perfunctory manner and to obviate this possibility, if the delinquent official request a personal hearing, it must be given to him and its denial would vitiate any action against the official. With regard to **Shri Ram's case (supra)** it was held that in the said case, the delinquent official was produced before the punishing authority at the time of delivery of show cause notice to him and in the show cause notice, it was clearly set out that the authority had actually made up its mind to award punishment of dismissal. On these facts, the Court held that Clause ix of Rule 16.24(1) required that the show cause

notice was given at the stage subsequent to the provisional opinion of the competent authority and prior to making up of mind of the punishing authority. As the show cause notice had been given after the punishing authority had admittedly made up its mind to award the punishment of dismissal, the show cause notice was mere formality with the result that the requirements of Sub Rule ix of Rule 16.24(1) of the Punjab Police Rules had been violated.

Admittedly, in the case at hand, show cause notice was issued for imposing proposed punishment of dismissal from service. The delinquent was not only given an opportunity to submit his reply to the show cause notice but was also given an opportunity to appear in person to say something about the proposed punishment. In view of peculiar facts and circumstances of the instant case detailed hereinbefore, it is difficult to accept contention of the respondent and sustain findings of the Courts that order of dismissal is vitiated for want of compliance of provisions of Clause ix of Rule 16.24 of the Punjab Police Rules or the delinquent official was not given adequate opportunity to explain his position in regard to proposed punishment. On the contrary, the delinquent official was given opportunity both to submit his explanation in writing as well as to have personal hearing against the proposed punishment of dismissal from service. This apart, perusal of reply to the show cause notice would reveal that despite failing to file reply to the chargesheet or contesting the enquiry proceedings wherein the respondent was proceeded against ex parte, he

tried to explain the charges against him which could only be appreciated either at the stage of consideration of reply to the chargesheet or during the enquiry proceedings. The only submission made by the delinquent against the proposed punishment is that the delinquent is dependent upon his salary and keeping in view the life of children, proposed punishment may be reduced. There is not even a whisper with regard to number of children or their ages whose life was sought to be taken into consideration by filing response to the show cause notice. In view of the above, I have least hesitation to conclude that findings recorded by the Courts with regard to non-compliance of the provisions of Clause ix of Rule 16.24 of the Punjab Police Rules or the impugned orders being vitiated for want of necessary compliance of the aforesaid rule are the result of misreading of evidence and misinterpretation of relevant provision, thus, suffer from perversity and liable to be set aside.

In view of what has been discussed hereinbefore, the appeal is allowed and judgments and decrees passed by the Courts are set aside. As a natural corollary, suit filed by the plaintiff/respondent challenging the impugned orders and claiming consequential relief is dismissed with costs throughout.

20.08.2019
ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes / No
Whether reportable:	Yes / No