

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

RSA No.2647 of 2000 (O&M)

Date of decision: 22.08.2019

The State of Punjab and others

.....Appellants

Versus

Sukhwinder Singh

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ashok Kumar Singla, Sr. DAG, Punjab,
for the appellants.

Mr. K.G. Chaudhary, Advocate,
for the respondent.

Ritu Bahri, J.

This appeal has been directed against the judgment of reversal dated 06.12.1999 passed by the Additional District Judge, Gurdaspur, whereby appeal filed by plaintiff (respondent herein) against the judgment & decree dated 15.06.1998 passed by the Civil Judge (Junior Division), Gurdaspur, has been accepted and suit filed by the plaintiff (respondent herein) for declaration, has been decreed.

Plaintiff-respondent filed the aforesaid suit to the effect that he was enrolled as a Constable on 11.07.1989 on permanent basis. While he was posted at Police Station, Qila Lal Singh, he remained absent from 27.02.1994 to 26.04.1994 i.e. for 57 days, 17 hours and 30 minutes. In this regard, a departmental enquiry was initiated against him. Ultimately, plaintiff was dismissed from service. Appeal against the said order was dismissed on 31.07.1995. As per plaintiff, when he was posted at Qila Lal Singh, he suddenly fell ill on 27.02.1994. Father of the plaintiff, after

informing Munshi of the Police Station, took him to his home town for medical treatment. It was alleged that father of the plaintiff being illiterate person, could not get the said fact recorded in the *roznamcha*. Thereafter, plaintiff got medical treatment from a private practitioner w.e.f. 27.02.1994 to 25.04.1994. During the said period, he was advised to take complete rest. However, the defendants (appellants herein) passed the impugned order of dismissal without considering the aforesaid factual position. Hence, the suit.

Upon notice, defendants filed written statement, wherein it was admitted that plaintiff was appointed as Constable in the Police Department. It was alleged that plaintiff (respondent) was habitual absentee and he remained absent from duty time to time without permission from the authorities. Earlier also, he was discharged from service on 21.05.1992 under Rule 12.21 of the Punjab Police rules, 1934. Later on, he was reinstated without any benefit of absent period. This time also, he remained absent from duty from 27.02.1994 onwards. In this regard, a departmental enquiry was conducted against him. Full opportunity was afforded to the plaintiff to defend his case during enquiry proceedings. On conclusion of enquiry, plaintiff was found guilty and was, ultimately, dismissed from service. Even appeal filed by the plaintiff was dismissed by the DIG, Border Range, Amritsar. It was further submitted that the impugned orders of dismissal did not suffer from any illegality or infirmity. All other allegations levelled by the plaintiff in the plaint were denied and prayer for dismissal of the suit was made.

From the pleadings of the parties, following issues were framed
by the trial Court:-

1. Whether order dated 31.07.1995 passed by defendant No.3 regarding dismissal of plaintiff is illegal amongst principle of natural justice liable to be set aside? OPP
2. Whether subsequent order passed by defendant No.2 in detail is null and void against the principles of natural justice liable to be set aside? OPP
3. Whether suit is bad for want of service of valid notice U/S 80 CPC? OPD
4. Whether this Court has no jurisdiction to try and decide the matter in dispute? OPD
5. Relief.

Trial Court, after going through the evidence led by the parties, dismissed the suit. However, on appeal, the lower appellate Court reversed the findings given by the trial Court and decreed the suit.

Learned counsel for the respondent (plaintiff) has informed that after passing of the judgment dated 06.12.1999 by the lower appellate Court, he (plaintiff) was reinstated in service. He is performing his duties till date.

Learned counsel for the appellants has referred to the judgment passed by this Court in **Mohinder Singh vs. Inspector General of Police (PAP)**, 1994 (2) SCT 381 to contend that absence from duty for a period of two months, will amount to misconduct, which is sufficient for dismissal from service.

Learned counsel for the respondent (plaintiff) has referred to a judgment passed by this Court in **Malkiat Singh (Ex. Constable) vs. State of Punjab and others**, 2012 (4) RSJ 512. This was a case where a constable was dismissed from service without taking into account the length of service rendered by him. A perusal of this judgment shows that petitioner-Malkiat Singh (in that case) had remained absent from duty for a period of 192 days,

07 hours and 45 minutes. Pursuant to show cause notice, the employee had not given any reply. While allowing the writ petition, reference was made to a Division Bench judgment passed by this Court in **Tarlok Singh vs. State of Punjab**, CWP No.205 of 1996 (decided on 14.05.1996) and **Daljeet Singh vs. State of Punjab**, CWP No.6597 of 1994 (decided on 23.08.1994), wherein it has been held that while exercising power under Rule 16.2 of the Punjab Police Rules, it was imperative for such an authority to record a finding that the employee was guilty of the gravest act of misconduct or that he was guilty of continued misconduct, which proved his incorrigibility and complete unfitness for police service. Absence of such a finding would lead to a conclusion that the competent authority has not applied its mind to the nature of misconduct before passing of the order of punishment.

In the facts of the present case, plaintiff-Sukhwinder Singh (respondent herein) was charge-sheeted for remaining absent from duty for 57 days, 17 hours and 30 minutes. Pursuant to the impugned judgment passed by the lower appellate Court, he has been reinstated and is continuing in service.

After going through the impugned judgment, this Court is of the view that the respondent authorities, while passing the impugned order of dismissal, have not referred to Rule 16.2 of the Punjab Police Rules to return a finding that absence of 57 days, 17 hours and 30 minutes from duty would amount to gravest act of misconduct. The ratio of judgments passed by Division Benches of this Court in **Tarlok Singh** and **Daljeet Singh's** cases (supra) is fully applicable to this case. The lower appellate Court has rightly accepted the appeal and decreed the suit filed by the plaintiff. No illegality, much less perversity, has been found in the findings given by the

lower appellate Court, which may warrant interference by this Court. The evidence has been appreciated in the right perspective.

No substantial question of law arises for consideration.

Resultantly, finding no merits, the present appeal is dismissed.

22.08.2019
ajp

(RITU BAHRI)
JUDGE

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