

**IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH
227**

**CM-10941-C-2017 in/and
RSA-2866-2001**

Date of decision: 03.05.2019

STATE OF HARYANA & OTHERS

...APPELLANTS

VS.

BHARAT SINGH

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Pradeep Prakash Chahar, Deputy Advocate General,
Haryana, for the appellants.

Mr. D. Hasija, Advocate,
and Mr. Anirudh Tyagi, Advocate,
for the respondent.

AUGUSTINE GEORGE MASIH, J.

This appeal has been preferred by the State of Haryana and another, who were defendants before the Court below in a suit which has been preferred by the respondent-Bharat Singh, who was working as a Constable in the Police department with the appellant No. 2 and filed a suit for declaration challenging the order dated 19.12.1991 passed by appellant No. 2-The Superintendent of Police, Sirsa dismissing him from service after holding a regular departmental enquiry on the allegations that the respondent-plaintiff proceeded on casual leave for 10 days on 14.03.1991 and was required to report back on duty on 25.03.1991 forenoon but did not turn up, on the ground that the said order of dismissal dated 19.12.1991 is

illegal, null and void and liable to be set aside on various grounds detailed therein, which was decreed by the Civil Judge (Junior Division), Sirsa on 26.11.1998 leading to the filing of an appeal by the appellants-defendants, which was dismissed by the learned Additional District Judge, Sirsa on 03.03.2001.

2. It is the contention of the learned counsel for the appellants that the Courts below have totally misread documentary evidence on record which clearly substantiate the submission of the appellants-defendants that a proper departmental enquiry was held against the respondent-plaintiff as per the Punjab Police Rules and at each stage, the respondent-plaintiff has been served and on most of the occasions personally at the various stages of the enquiry proceedings which aspect has been totally over-looked by the Courts below while coming to a conclusion that the departmental proceedings, which have been held against the respondent-plaintiff, were not in accordance with the Punjab Police Rules and that there has been violation of the principles of natural justice whereas the position is otherwise that the respondent-plaintiff not only absented for the period in question but thereafter also, remained absent till the order of dismissal was passed. He asserts that the departmental enquiry was also held ex-parte against the respondent as he had chosen not to appear before the Enquiry Officer.

3. As regards the observation of the Courts below that the opportunity of personal hearing has not been given to the respondent prior to imposing the order of punishment as provided under the Punjab Police Rules especially Rule 16.24 (a), the same cannot be sustained as the show cause notice along with the copy of the enquiry report has been duly served

upon the respondent-plaintiff but he chose not to file any reply to the show cause notice or to appear personally before the punishing authority and, therefore, it cannot be said that the Statutory Rules were not complied with. Counsel states that the observation of the Courts below that the absence from duty is not a gravest act of misconduct cannot be accepted in the light of the various judgments which have been passed by the Courts including this Court in CWP No. 3682 of 2012 titled as **Kuldeep Singh vs. State of Haryana and others**, decided on 28.02.2012, which is based upon the law settled by the Supreme Court on the question of absence from duty in a disciplined force. He, accordingly, prays that the impugned judgments and decree passed by the Courts below cannot sustain and deserve to be set aside leading to the dismissal of the civil suit, which has been preferred by the respondent-plaintiff.

4. On the other hand, learned counsel for the respondent-plaintiff has vehemently argued that the judgments and decree passed by the Courts below are based upon proper appreciation of the pleadings and evidence on record. It has been asserted that the departmental proceedings, which have been held against the respondent, are in total violation of the statutory Rules. Assertion has been made that the Enquiry Officer has not duly served the notices upon the respondent-plaintiff and no proper opportunity of hearing was given to him before passing an order or proceeding ex-parte against him. Opportunity of personal hearing, which is mandatory as per Rule 16.24 (a) of the Punjab Police Rules as applicable to the State of Haryana, has not been complied with. His assertion is that the punishing authority has not come to a conclusion that the conduct of absence from duty by the respondent-plaintiff was of such a grave nature that it would

make the respondent incorrigible and unfit for continuing in service and, therefore, is a gravest act of misconduct which would warrant punishment of dismissal. He asserts that the principles of natural justice have not been complied with and mere absence from duty cannot be a ground for invoking the provisions of Rule 16.2 nor can it be considered as a gravest act of misconduct. He, thus, contends that the appeal preferred by the State deserves dismissal.

5. I have considered the submissions made by the learned counsel for the parties and with their assistance, have gone through the pleadings, impugned judgments as well as the evidence which has been led by the parties.

6. There can be no doubt that in case the principles of natural justice having not been complied with or the Statutory Rules governing the service, especially in a departmental enquiry which has been held against an employee, having been violated or not complied with, interference by the Civil Court in an order of punishment imposed by the punishing authority can be made. But for coming to this finding, not only the pleadings and the Statutory Rules are to be looked at but the evidence, which has been led by the parties, also need to be duly considered and appreciated. In these circumstances, it is the responsibility of the Court to properly appreciate these aspects while coming to a conclusion with regard to the aspect as to whether the restrictive jurisdiction, which a Civil Court exercises, need to be so exercised or not.

7. Briefly, the facts are that the respondent-plaintiff was working as a Constable with the appellant No. 2 i.e. the Superintendent of Police, Sirsa. He proceeded on casual leave for 10 days on 14.03.1991 and was

required to report back on duty on 25.03.1991 forenoon but did not turn up. Charge-sheet was duly served upon the respondent which has been duly received by him as is apparent from the records Ex. D-16 which is dated 12.10.1991 and has been received by the respondent-plaintiff on 15.10.1991. In response thereto, neither the respondent-plaintiff joined back his duty nor did he filed any response. Enquiry Officer was appointed by the Superintendent of Police and thereafter, notices were issued to the respondent-plaintiff for joining the proceedings on 13.10.1991, which were duly served upon the respondent-plaintiff, who received the same personally on 15.10.1991 and then again on 22.10.1991, which were again received by him on 29.10.1991 but he chose not to participate in the enquiry proceedings. When the respondent-plaintiff did not participate in the enquiry proceedings, the Enquiry Officer sought orders from the punishing authority for proceeding against the respondent-plaintiff ex-parte. The said order was approved by the competent authority i.e. the Superintendent of Police. The Enquiry Officer concluded his enquiry and submitted his report dated 03.11.1991 Ex. D-17 holding the respondent-plaintiff guilty of absence from duty. Not only did the respondent-plaintiff remained absent after the expiry period of his casual leave but continued absent from duty thereafter as well till the submission of the enquiry report.

8. On receipt of the enquiry report, the punishing authority i.e. the Superintendent of Police came to a conclusion that the report of the Enquiry Officer deserves acceptance and that provisionally, he was of the opinion that as to why penalty of dismissal be not imposed upon the respondent/plaintiff and a show cause notice dated 29.11.1991 was issued to him along with the enquiry report for giving him an opportunity to make

representation in writing within 15 days of receipt of the notice. This show cause notice Ex. D2 has been personally received by Bharat Singh-respondent. Despite that, the respondent-plaintiff chose neither to file any response to the show cause notice or to appear in person before the punishing authority. It is under these circumstances that the Superintendent of Police proceeded to pass an order of dismissal on 19.12.1991 Ex. P-1 accepting the report of the Enquiry Officer and holding him guilty of charges levelled against him for absence from duty and thereafter, proceeding to hold that the conduct of the respondent-plaintiff was the gravest act of misconduct which would prove him incorrigible and completely unfit for service in the Police Department. It was also concluded that no punishment other than dismissal from service will meet the ends of justice. Since he had been absenting from duty, the order was sent at his home address.

9. The above facts are based upon the pleadings and the evidence which have been brought on record which leaves no manner of doubt that the provisions, as contained under the Punjab Police Rules, have been duly complied with and the principles of natural justice have not been violated in any manner whatsoever as the respondent-plaintiff has, on each stage of hearing, been duly served what to say through others but personally. It appears that the Courts below have not appreciated the documentary evidence which has been led by the parties but have reached their conclusions on conjectures and surmises basing the judgments on the statements of the witnesses alone and that too selectively, leading to the miscarriage of the justice.

10. As regards that submission of the learned counsel for the

respondent that the respondent-plaintiff has not been properly served in the enquiry proceedings, suffice it to say from the above paragraph where facts have been detailed based upon the documentary evidence on record, that at each stage of the enquiry, the respondent-plaintiff has been served personally but despite that, he chose neither to respond in writing to the notices whether it was issuance of the charge-sheet or the show cause notice nor for appearance before the Enquiry Officer. Even the order of proceeding against him ex-parte was conveyed to him personally but still, he did not participate in the enquiry proceedings or move a representation to the punishing authority for permitting him to participate in the enquiry proceedings. Not only does it prove beyond any manner of doubt that he had been properly served at each stage of the enquiry proceedings but he had chosen to remain absent from duty even during the enquiry proceedings.

11. After issuance of the show cause notice also, the respondent-plaintiff has chosen not to file reply to the show cause notice, which was served upon him along with the enquiry report nor did he appear in person before the punishing authority despite given an opportunity to do so where the proposed punishment was known to him but he chose not to do so. Under these circumstances, what else could have the punishing authority i.e. the Superintendent of Police conclude with regard to an employee of a disciplined force except for coming to a conclusion that the said official was incorrigible and completely unfit for service in the Police Department. His unwillingness as a worker is apparent from his absence from duty for such a long period, which comes to 268 days from the date of his absence till the date of his dismissal from service.

12. As regards the contention of the learned counsel for the

respondent with regard to the absence from duty being not a grave misconduct which cannot be said to be a gravest act of misconduct, the said aspect has been dealt with by this Court in its judgment passed in CWP No. 3682 of 2012 titled as **Kuldeep Singh vs. State of Haryana and others**, decided on 28.02.2012, where a Constable has absented himself for a period of 55 days, 7 hours and 15 minutes and after holding a departmental enquiry, a show cause notice was issued and after taking into consideration the reply thereto, the punishing authority had dismissed him from service. A plea was, therefore, raised that an act of absence from duty had not been declared as a gravest act of misconduct and, therefore, on the basis of the said misconduct, order of dismissal could not have been passed. This Court while dealing with Rule 16.2 of the Punjab Police Rules, 1934, held as follows:-

“ As per this Rule, punishment of dismissal shall be awarded for the gravest acts of misconduct or as the cumulative effect of continued misconduct of a police official proving incorrigibility and complete unfitness for police service. Apart from the general definition, which has been given in this part of the Rule, explanation has been added, wherein word 'inter alia' attains significance which indicates that the explanation only is a descriptive one and is not an exhaustive one, which identifies some of the misconducts which if proved would itself be gravest acts of misconduct which have been listed therein. In case any of these misconducts is found during an enquiry, the same has to be treated as a gravest act of misconduct, which would, in itself, be enough for dismissal as that would not

require any further qualification thereto.

In any case, this explanation does not exclude other acts to be treated as gravest act of misconduct in itself. The punishing authority in the given facts and circumstances of the case can come to a conclusion that such an act of misconduct or the cumulative effect of continued acts of misconduct would fulfil the mandate of the rule and can be taken as a ground for passing an order of dismissal on a police official.

. In the present case, petitioner had absented from duty for 55 days 7 hours and 15 minutes without informing the department. A perusal of the impugned order further indicates that after his enrollment in the year 2003, he had, on earlier occasions, remained absent 35 times, which further shows that the petitioner is habitual of absenting himself from duty. This needs no further elaboration that the act and conduct of the petitioner is a gravest act of misconduct, which has been rightly accepted by the punishing authority to be one and has imposed the punishment of dismissal. The Supreme Court in the case of **State of U.P. vs. Ashok Kumar and another, AIR 1996 SC 736**, has held that absence from duty is a gravest act of misconduct and an employee of a disciplined uniformed force cannot be permitted to take a plea of it being not a gravest act of misconduct. Further, the petitioner in this era of advanced communicational facilitates and options such as mobile phone, fax apart from the time tested phone,

telegram and letter, had not even taken care to inform the department about the reason of his absence from duty. This further shows the irresponsibility with which the petitioner had been serving the respondent-department.

. Finding no merit in the present writ petition, the same stands dismissed.”

13. In view of the above, the present appeal is allowed. The impugned judgment as passed by the trial Court dated 26.11.1998 and the judgment passed by the appellate Court dated 03.03.2001 cannot sustain and are, hereby, set aside and the civil suit preferred by the respondent-plaintiff stands dismissed with costs.

May 03, 2019

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No