

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

**CWP No.23174 of 2016
Date of decision: 30.04.2019**

Ex-Head Constable Vikram Singh

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. R.K. Malik, Senior Advocate,
with Mr. Sandeep Dhull, Advocate,
for the petitioner.

Mr. Kiran Pal Singh, A.A.G., Haryana.

Ritu Bahri, J.

Petitioner is seeking quashing of the order dated 27.08.2016 (Annexure P-4), whereby he has been dismissed from service w.e.f. 15.01.1992.

Petitioner was enrolled as Constable in Haryana Police in the month of January, 1981. Thereafter, he was promoted as Head Constable. Later on, he was dismissed from service by the Commandant, 3rd Bn., HAP, Hisar on 14.01.1992. Against the said order, he filed a civil suit, which was decreed vide judgment dated 11.08.2001 (Annexure P-1) passed by the Civil Judge (Junior Division), Hisar. Appeal against the said judgment was dismissed by the first Appellate Court on 07.06.2002 (Annexure P-2). However, liberty was granted to the respondent-department to pass fresh order in respect of treating the absence period. State of Haryana filed RSA No.4911 of 2002, which was dismissed vide judgment dated 23.12.2015 (Annexure P-3) passed by this Court. Although dismissal order had been set

aside upto this Court, but vide order dated 27.08.2016 (Annexure P-4)

passed by the Commandant, 3rd Bn., HAP, Hisar, petitioner was again dismissed w.e.f. 15.01.1992. Petitioner is now challenging the impugned order dated 27.08.2016 (Annexure P-4).

Learned counsel for the petitioner has argued that the impugned order dated 27.08.2016 (Annexure P-4) is liable to be set aside on a short ground that the petitioner has been dismissed from service w.e.f. 15.01.1992 and no dismissal order can be passed from retrospective effect. Reference has been made to the judgment passed by this Court in **Punjab State Electricity Board vs. Presiding Officer, Labour Court, Bathinda**, 1991 (3) SCT 279.

He has further argued that during the pendency of this litigation, petitioner has attained the age of superannuation on 30.06.2015 and after attaining the age of superannuation, he cannot be dismissed from service. Date of birth of the petitioner is 08.06.1957 and he attained the age of superannuation on 30.06.2015. The dismissal order was set aside keeping in view that as per Rule 16.2 of the Punjab Police Rules, length of service and the claim to pension has to be taken into consideration while dismissing an employee from service. Since Rule 16.2 of the Punjab Police Rules has not been considered, impugned order had been rightly set aside by the trial Court as well as first appellate Court. Learned counsel has referred to the judgment passed by a Division Bench of this Court in **Dhan Singh vs. State of Haryana and others**, 2008 (3) SCT 816, where the petitioner had served the department for 11 years & 09 months when his services were terminated. The said punishment was awarded without considering the provisions of Rule 16.2 of the Punjab Police Rules. Ultimately, the impugned order was set aside by this Court. The aforesaid judgment has

been followed by a Co-ordinate Bench of this Court in **Om Parkash vs. State of Haryana and others**, CWP No.702 of 1994 (decided on 20.07.2012) and by this Court in **Haryana State and others vs. Rishal Singh**, RSA No.1065 of 2001 (decided on 21.04.2015).

On the other hand, learned counsel for the respondents has argued that the petitioner was appointed as Constable in the year 1981 and was promoted as Head Constable in the year 1984. He had remained wilfully absent from duty for a period of 426 days. This kind of absence, which the petitioner has demonstrated in service tenure, only reveals his lack of discipline and incorrigibility. It has to be considered as an act of gravest misconduct. He was rightly dismissed from service. Learned counsel for respondents has referred to the judgment passed by this Court in **Ghanshayam vs. State of Haryana and others**, CWP No.5419 of 2011 (decided on 22.12.2011). Further reliance has been placed on a verdict given by Hon'ble the Supreme Court in **Union of India and others vs. Diler Singh**, Civil Appeal No.1133 of 2016, wherein termination of police officer on account of absent from duty for a period of 346 days was upheld.

Heard, counsel for the parties.

The petitioner, after being dismissed from service vide order dated 14.01.1992 passed by the Commandant, 3rd Bn. HAP, Hisar, had filed a civil suit, which was decreed vide judgment dated 11.08.2001 (Annexure P-1) and the order of dismissal was set aside. He was held entitled to all the pay and allowances. On appeal filed by respondent-State, the Court of Additional District Judge, Hisar vide judgment dated 07.06.2002 (Annexure P-2), upheld the judgment of the trial Court by observing that the order of dismissal was not sustainable in the eyes of law. However, liberty was

granted to the applicant-defendants (respondents herein) to pass appropriate order as to how to treat the absence period. Relevant part of the order is reproduced as under:-

“23.On the other hand, it is further directed that the impugned order of dismissal dated 14.01.1992 and the order passed by the DIG, HAP in appeal are illegal, null and void and have been rightly set aside. However, it will be open to the defendants/appellants to pass the punishment against the plaintiff according to law. The defendants/appellants shall be at liberty to pass appropriate order as to how to treat the absence period. There shall be no order as to costs. Decree sheet be prepared accordingly. Lower court record be sent back with a copy of this judgment. Appeal file be consigned to the record room after due compliance.”

The above said order/judgment is very clear that dismissal order dated 14.01.1992 was held to be illegal, null and void. Liberty was only granted to pass a fresh order as to how to treat the period of absence. Against the above said judgment, respondent-State filed RSA No.4911 of 2002, which was dismissed by this Court on 23.12.2015 (Annexure P-3). Hence, the finding that dismissal order dated 14.01.1992 was illegal, null and void has attained finality after dismissal of the RSA. The only liberty granted to the respondents was to pass a fresh order as to how to treat the period of absence. This is an independent order, which is required to be passed under Rule 7.3 and 7.5 of the Punjab Police Rules, Volume-I, Part-I. Liberty was not granted to the authorities to re-examine the punishment order dated 14.01.1992. However, in the present case, instead of passing an order under Rule 7.3 of the above Rules, the respondent-authorities proceeded to examine the case afresh and held that total absence period of 426 days was without any justification. The petitioner was found to be unfit for police services. This order could not be passed once the judgments of

dismissal of RSA No.4911 of 2002 (Annexure P-3). While dismissing the said RSA, it has been observed that liberty was granted to the authorities to only pass an order with regard to the period of absence. This Court in **Punjab State Electricity Board's** case (supra) (Annexure P-5) has considered this aspect and observed as under:-

“10. As far as the dismissal order with retrospective effect is concerned, the same cannot stand. The dismissal order cannot be passed with retrospective effect as held by the Supreme Court in ***R. Jeevaratnam v. State of Madras, AIR 1966 Supreme Court 951***. However, the order of effective from the date it is passed. Consequently, the order of dismissal would take effect from the date on which, it was passed, i.e. 14th September, 1978. Under Regulation 4 (2) (b) of the Regulations, the period after conviction till an order of punishment is passed, is to be treated under suspension. Consequently, respondent-workman will be treated under suspension from 6th January, 1978 to 13th September, 1978, and would be entitled to the subsistence allowance or any other allowance permissible under the Rules.

In view of the above discussion and the law laid down in the aforesaid judgment, this Court is of the view that the impugned order dated 27.08.2016 (Annexure P-4) could not be passed with retrospective effect i.e. 15.01.1992.

Resultantly, the impugned order dated 27.08.2016 (Annexure P-4) is set aside and the petitioner is held entitled for salary and allowances with effect from the date of decree passed by the trial Court i.e. 11.08.2001 (Annexure P-1). Respondents are also saddled with costs of Rs.1,00,000/- to be paid to the petitioner.

Allowed accordingly.

30.04.2019
ajp

(RITU BAHRI)
JUDGE

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