

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

RSA 1282 of 1994 (O&M)

Date of Decision: February 09, 2022

The State of Punjab and others ...Petitioners

Versus

Gulzar Singh

... Respondent

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Ms. Anju Sharma Kaushik, DAG, Punjab.

Mr. Manu K. Bhandari, Advocate
for the respondent.

FATEH DEEP SINGH, J. (Oral)

The matter has been taken up through Video conferencing on account of outbreak of pandemic COVID-19.

Gulzar Singh respondent initially plaintiff before the Court of learned Sub-Judge Patiala who at the relevant time was appointed as a constable and has joined his duties on 07.02.81 and was allocated constabulary No. 1537. It is subsequent thereto during the course of his duties he was charge sheeted on 26.07.87 for being absent from duty w.e.f.

06.08.85 to 24.05.87. After due adoption of the process of holding of inquiry he was dismissed from service vide order No. 26727/31/2 dated 07.12.87. It is this very order which is subject matter of his suit for declaration whereby he has sought setting aside of the same. The primary grounds are that the inquiry officer did not afford him adequate opportunity nor was heard and the orders had been passed are illegal and liable to be set-aside.

The defendants took the plea of the suit being not maintainable claiming that during the course of his service, the plaintiff was charge-sheeted and full opportunity of hearing was afforded to him and, thereafter, the orders of dismissal were passed.

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

1. Whether plaintiff is entitled to declaration prayed for?
OPP.
2. Whether suit is bad for non-joinder of necessary parties? OPD.

3. Whether notice was invalid? OPD.

4. Relief.

In his testimony the plaintiff examined himself as PW1 and reiterated his case and the defendants only tendered inquiry report Ex.D1 and closed the evidence.

It is through the judgment and decree dated 02.05.91, the Court of learned Sub-Judge 1st Class Patiala decreed the suit of the plaintiff. The State filed an appeal against the order before the Court of learned Additional District Judge Patiala who through impugned findings dated 06.09.93 dismissed the appeal of the State who have come up before this Court in instant regular second appeal.

In the light of admitted legal proposition as has been laid down in '**Kirodi (since deceased) through his L.R. Vs. Ram Parkash and others**' Civil Appeal No. 4988 of 2019; SLP(C) No. 11527 of 2019 decided on 10.05.2019, the Court is not supposed to frame substantial question of law in view of the provisions enshrined under Section 41 of the Punjab Courts Act, 1918 which has its application to the States of Punjab and

Haryana.

Heard Ms. Manju Sharma Kaushik, DAG, Punjab and Mr. Manu K. Bhandari, Advocate for the respondent.

The prima facie allegations against the delinquent official is his unauthorized and illegal absence from duty from 06.08.85 to 24.05.87. Thereafter, the plaintiff was issued show cause notice and which was followed by a regular inquiry. The premise that no opportunity of cross-examination has been afforded to the plaintiff during the inquiry or the inquiry officer did not supply any copy of the documents and or allowed him to inspect the inquiry file has not been substantiated by any evidence on the record.

It is the own stand of the plaintiff that he has been served with a charge sheet to which he has submitted his reply which was found unsatisfactory. It is there in the findings of the Court below that S.P. Headquarter Patiala has served a show cause notice upon the plaintiff why a proposed punishment of dismissal be not served upon him to which he has filed a written

reply. The sole ground on the basis of which the order of dismissal has been set aside is that the Superintendent of Police could not inflict punishment of dismissal from service as he was lower in rank to the Senior Superintendent of Police who was the appointing authority and there was violation of the Punjab Police Rules in this regard. Though much reliance has sought to be placed on **State of Punjab and others Vs. Gursewak Singh** 2006(1) S.C.T. 402 to interpret the Rule 16.24 of Punjab Police Rules. However, it needs to be clarified here neither in the Punjab Police Rules 1934 nor in the Criminal Procedure Code there is distinction as to the ranks of Superintendent of Police and the Senior Superintendent of Police. The only word that is found mentioned in these provisions is that of Superintendent of Police, who ordered the dismissal of the plaintiff was junior in rank than the Senior Superintendent of Police and which to the mind of this Court is only administrative segregation. No doubt unauthorized absence from duty without leave and that too for a long period

of time tantamounts to gravest misconduct especially in disciplined uniformed force like the police. More so, keeping in view the period of service rendered by the plaintiff Gulzar Singh which is less than 06 years and order of dismissal certainly cannot be termed to be inappropriate and is commensurate with the gravity of the charges. Rule 16.1 which lays down authorized punishments so as to safeguard against departmental punishments and in the light of which it has been given that a police official of which rank can be ordered to be dismissed by officer of which rank and under column No. 6 Superintendent of Police, Deputy Superintendent of Police (Administrative) can order dismissal of a constable and it is well settled preposition of law any minor mistake during the course of inquiry proceedings does not comes in the way of Courts to set aside the same and such errors are not fatal for the inquiry proceedings. Since in the present case the order of dismissal under challenge has been passed by the police officer of the rank of Superintendent of Police who under the Punjab Police

Rules is the appointing authority and as such the contentions of the counsel for the plaintiff that the dismissing authority is lower and below the rank of the appointing authority and in both the cases it is none but the Superintendent of Police.

This Court seeks support from **Union of India Vs. Jagjit Singh** 1970 AIR 122 a full bench view of Apex Court and over rules law laid down in **State of Punjab and others Vs. Gursewak Singh** 2006(1) S.C.T. 402 where interpreting the provisions of Rule 12.1 of the Punjab Police Rules, it has been held that appointment of constable is by Senior Superintendent of Police and Superintendent of Police would be competent to order dismissal of a constable.

Since the entire departmental proceedings have been conducted against the plaintiff by an officer superior in rank to him so it cannot be accepted that the departmental proceedings were contrary to the spirit of the Punjab Police Rules. The findings of the two Courts on issue No. 1 which was the axis contrary to the entire case of the parties reflects that the

learned Additional District Judge Patiala in the impugned judgment has come to a conclusion that he was satisfied to the extent that procedure adopted in the departmental inquiry of the respondents was broadly in conformity with the Punjab Police Rules 16.24 which is well illustrative in concluding lines of para 10 of the said judgment.

Thus, in the light of the same, both the two Courts below have wrongly held that the punishment of dismissal so awarded by a Superintendent of Police which was below the rank of the Senior Superintendent of Police.

Thus, in view of the erroneous approach which was there in the judgments of the two Courts below needs to be set aside upholding the order of dismissal by the defendants and thereby allowing the appeal with no order as to costs.

February 09, 2022
amit rana

(FATEH DEEP SINGH)
JUDGE

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