

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

(207)

RSA-2485-2003 (O&M)

Date of Decision : March 29, 2023

Mahender Singh**.. Appellant****Versus****State of Haryana****.. Respondent****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Puneet Gupta, Advocate, for the appellant.

Ms. Vibha Tewari, Assistant Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

Present Regular Second Appeal has been filed by the appellant-plaintiff challenging the judgment and decree of the trial Court dated 30.08.1999 by which, the suit filed by him challenging the orders dated 31.10.1990, 02.02.1993 and 20.05.1994 by which, the appellant-plaintiff was dismissed from service, department appeal filed by him was dismissed by the Appellate Authority and the revision petition filed was dismissed by the Revisional Authority respectively, were held to be valid/just and proper and the suit filed by the appellant-plaintiff was dismissed, as well as the judgment of the lower Appellate Court dated 29.08.2002 by which, the judgment and decree of the trial Court dated 30.08.1999 was upheld.

Certain facts may be noticed for the correct appreciation of the

controversy in question.

The appellant-plaintiff was appointed in Railway Police, Haryana as Constable in the 1977. In the year 1989, he was charge sheeted for absence from duty wherein, it was mentioned that starting from 21.04.1989 onwards till July, 1989, the appellant had remained absent from duty on different occasions for a period of 74 days. The appellant-plaintiff chose not to file reply to the said charge sheet and ultimately, disciplinary proceedings were initiated against him by the appointment of the Enquiry Officer. The appellant did not produce himself before the Enquiry Officer during the enquiry proceedings except for producing a private doctor in his support to prove that keeping in view a problem in his liver, he was advised rest.

The Enquiry Officer, keeping in view the evidence which came on record, proved the allegation and a show cause notice was issued by the punishing authority along with report of the Enquiry Officer for the comments of the appellant-plaintiff. It is a conceded position that no reply was filed to the said show cause notice and ultimately vide order dated 31.10.1990, the appellant-plaintiff was dismissed from service on the basis of the allegation which stood proved against him during the departmental enquiry.

Against the order of dismissal, the appellant-plaintiff preferred an appeal to the appellate authority, which came to be dismissed on 02.02.1993. Against the said order of dismissal of appeal, the appellant-plaintiff preferred a revision petition before the Director General of Police, Haryana. The said revision petition was also dismissed by the Director General of Police, Haryana on 20.05.1994, which orders were challenged by the appellant-plaintiff before the Civil Court by filing a civil suit.

Keeping in view the evidence which came on record, by interpreting the same, the trial Court held that as the allegations of absence have been proved and the Civil Court is not to sit in an appeal over the decision of the Department especially when no discrepancy in the departmental proceedings has been pointed out, the suit filed by the appellant-plaintiff was dismissed by the trial Court vide judgment and decree dated 30.08.1999.

Feeling aggrieved against the said judgment and decree of the trial Court, the appellant-plaintiff preferred an appeal before the lower Appellate Court, which also came to be dismissed vide judgment and decree dated 29.08.2002. Hence, the present Regular Second Appeal.

Learned counsel for the appellant argues that in the present case, there was no charge of wilful absence of the appellant and the only charge against him was absence from duty, hence, in the absence of any charge of wilful absence, no action could have been taken especially in regards to imposing the punishment of dismissal.

It may be noticed that the appellant-plaintiff chose not to respond to the charge sheet wherein, allegations were alleged. In the absence of any justification extended for the alleged allegation in the departmental proceedings, at the stage of second appeal, the appellant-plaintiff cannot be allowed to say that there was no charge of wilful absence.

Even otherwise, once the appellant-plaintiff has not been able to show a justifiable cause before the authorities concerned for the absence, the absence has to be treated as wilful absence. Therefore, the argument being raised by the learned counsel for the appellant that the absence was

not wilful, cannot be accepted in the facts and circumstances of the case.

Learned counsel for the appellant submits that though there is no written justification given before the authorities concerned qua the absence but a private doctor was produced before the Enquiry Officer so as to present that the appellant-plaintiff was not well and was advised to take rest by the said doctor.

Qua the said argument, the disciplinary authorities, in the fitness of things, keeping in view the fact that the appellant is a Government servant and requires a medical certificate from the Government Hospital for availing leave on medical grounds, demanded a medical certificate from Government Hospital. No such certificate was ever presented so as to substantiate the claim that the ailment was of such nature, due to which the appellant-plaintiff could not attend the duties.

Learned counsel for the appellant has not been able to point out any evidence qua ailment, benefit of which has been claimed. In the absence of any such evidence before the departmental proceedings that ailment was such that it forced the appellant to be absent from service, it cannot be termed that the decision of the Department in not accepting the recommendation/observation of a private practitioner can be treated as arbitrary or illegal.

Learned counsel for the appellant further submits that while passing the order of dismissal, the earlier punishment imposed has been taken into account, which itself vitiates the proceedings/order passed by the respondents dismissing the appellant-plaintiff from service.

It may be noticed that as per conceded facts, the show cause notice which was issued to the appellant-plaintiff after the allegations were

proved in the enquiry proceedings, the Department brought to the notice of the appellant that the action will be taken keeping in view his earlier conduct wherein, he has remained absent and has been imposed punishment. The appellant chose not to submit a reply to the said show cause notice. That being so, once the decision of the Department to take into consideration the earlier punishment, was brought to the notice of the appellant-plaintiff even before imposing the punishment and the appellant-plaintiff did not submit any reply to the same, hence, the appellant-plaintiff cannot be allowed to raise a grievance at this stage that the punishments imposed earlier in his service career have been taken into consideration which vitiate the departmental proceedings.

Learned counsel for the appellant further submits that even otherwise, 74 days of absence is not such a grave misconduct so as to dismiss an employee who is having 12 years of service to his credit.

It may be noticed here that it was only in the year 1989 itself, the appellant-plaintiff was absent in an unauthorized way for a period of 74 days and that too on different occasion. It is also a conceded position before this Court that there were allegations of absence on earlier occasions also for which the appellant-plaintiff had already been punished. That being so, the appellant-plaintiff was a habitual offender qua unauthorized absence, hence, keeping in view the facts and circumstances of the present case where, it has already come that the appellant-plaintiff has been absenting himself from service in an unauthorized manner and his conduct was not as such to be retained in a disciplined force, the imposition of punishment of dismissal cannot be treated as harsh or disproportionate to the charges

alleged.

The Hon'ble Supreme Court of India in ***Civil Appeal No.9997 of 1995 titled as State of U.P. vs. Ashok Kumar Singh, decided on 10.11.1995***, has held that absence from duty in respect of a police official, who is a member of disciplined force, is to be treated as grievous act of misconduct and the punishment of dismissal cannot be treated as disproportionate. The relevant paragraph 8 of the said judgment is as under:-

“8. We are clearly of the opinion that the High Court has exceeded its jurisdiction in modifying the punishment while concurring with the findings of the Tribunal on facts. The High Court failed to bear in mind that the first respondent was a police constable and was serving in a disciplined force demanding strict adherence to the rules and procedures more than any other department. Having noticed the fact that the first respondent has absented himself from duty without leave on several occasions, we are unable to appreciate the High Court's observation that his absence from duty would not amount to such a grave charge. Even otherwise on the facts of this case, there was no justification for the High Court to interfere with the punishment holding that the punishment does not commensurate with the gravity of the charge especially when the High Court concurred with the findings of the Tribunal on facts. No case for interference with the punishment is made out.”

As the appellant-plaintiff is a habitual absentee, the punishment of dismissal imposed upon him cannot be treated disproportionate to the charges alleged and proved.

As per the judgment of the Hon'ble Supreme Court of India in ***Civil Appeal No.4212 of 1997 titled as State of Punjab vs. Bakhshish Singh, decided on 05.05.1997***, the imposition of punishment is the

prerogative of the punishing authority and the Court cannot substitute its own view with that of the disciplinary authority unless and until the punishment imposed is too shocking, hence, no ground is made out for intervention of this Court qua the same argument.

Learned counsel for the appellant cites judgments in *Civil Appeal No.2106 of 2012 titled as Krushnakant B. Parmar vs. Union of India and another, decided on 15.02.2012*, *RSA No.2438 of 1982 titled as Jawant Singh vs. State of Punjab, decided on 18.07.1996*, *CWP No.13608 of 1989 titled as Paramjit Singh, Ex-Head Constable vs. State of Punjab, decided on 02.11.1995*, *Civil Appeal No.1621 of 1986 titled as Ram Chander vs. Union of India and others, decided on 02.05.1986*, *RSA No.1159 of 1986 titled as State of Punjab and another vs. Ram Singh, decided on 10.03.1989*, *CWP No.6001 of 1989 titled as Mahipat vs. State of Haryana, decided on 17.03.1994* and *Civil Appeal No.496 of 1965 titled as Management of the Northern Railway Co-operative Credit Society Ltd. Jodhpur vs. Industrial Tribunal, Rajasthan-Jaipur and another, decided on 27.01.1967*.

Law being cited by the learned counsel for the appellant-plaintiff noticed hereinbefore are not applicable in the facts and circumstances of the present case. Law is to be applied as per the facts and circumstances of the case and hence, no benefit of the judgments cited above can be given in favour of the appellant being not applicable.

Keeping in view the above, no ground is made out for any interference by this Court in the present Regular Second Appeal and the same is accordingly dismissed.

CM-6712-C-2003

As the main appeal has been dismissed, present application also stands disposed of.

March 29, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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