

**103 IN THE HIGH COURT OF PUNJAB & HARYANA,
CHANDIGARH**

CWP No.6074 of 2019

Date of decision : April 24, 2023

Ex.C.Satnam Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. Tahf Bains, Advocate
for the petitioner (Amicus Curiae).

PANKAJ JAIN, J. (ORAL)

1. Present writ petition has been filed under Article 226/227 of the Constitution of India by the petitioners seeking issuance of writ in the nature of mandamus directing the respondents to grant pension to the petitioner and the other terminal benefits as admissible under Rule 6.12 and 6.16 of the Punjab Civil Services Rules.

2. The petitioner was enrolled as a Constable on 27.3.1956 and was dismissed from service on 8.3.1991. He preferred CWP-13797 of 1994 against the aforesaid order of dismissal which was disposed off by this Court directing the respondents to initiate fresh departmental proceedings against the petitioner and the period spent out of duty from 8.3.1991 i.e. the order of dismissal was ordered to be treated as leave of the kind due. However, on 15.02.1996 the petitioner again absented himself. The departmental proceedings

were initiated on the aforesaid fresh mis-conduct which finally culminated in the order of dismissal dated 08.08.1997. The petitioner claims to have reported for duty on 15.06.1996. However, he was informed that departmental enquiry has been initiated against him. Admittedly, the petitioner did not make any attempt to find out about the enquiry proceedings initiated. There is no application/representation on record.

3. Be that as it may, the petitioner preferred statutory appeal against the order of dismissal which was dismissed vide order dated 12.10.2000. No remedy was availed by the petitioner against the said order of dismissal and the order passed by the appellate authority affirming the order of dismissal. However, it was only on 19.08.2016 that the petitioner preferred one civil suit claiming parity with one Constable Surjit Singh who is stated to have been granted terminal benefits in the same set of circumstances. The civil suit was partly decreed in favour of the petitioner and a mandate was issued to the respondents to decide the case of the petitioner for terminal benefits viz-a-viz his claim qua parity with aforesaid Surjit Singh. Pursuant to such mandate the impugned order dated 22.9.2016 has been passed whereby the claim of the petitioner stands rejected and the authority has recorded that in the case of Surjit Singh the willful absence on the part of the petitioner was 45 days 13 hours and 30 minutes whereas in the case of the present petitioner it was more than 337 days.

4. Learned Amicus curiae representing the petitioner has referred to

Rule 16.2 of the Punjab Police Rules, 1934 and submits that in view thereof the authority was under obligation to consider the case of the petitioner considering his service for pensionary benefits. However, the said consideration having not been adhered to, the petitioner is entitled for the relief as claimed. Reliance has been placed upon the judgments in Ganga Bishan Vs. State of Haryana 1995 (1) SCT 699, State of Punjab Vs. Surjit Singh 2002 (1) SCT 404, Ex. H.C.Hari Krishan Vs. State of Haryana 2000 (1) SCT 1112, Shri M. L. Patil (Dead) through L.RS Vs. State of Goa and another 2022 (3) SCT 113, State of Punjab Vs. Surjan Singh 1996 (4) SCT 771 and Surinder Singh Vs. State of Punjab and others 2008 (4) SCT 72.

5. Per contra, learned counsel for the State submits that in case the petitioner intends to invoke Rule 16.2. there has to be a challenge to the order of dismissal dated 8.8.1997. In the present writ petition the petitioner is only seeking writ of mandamus. Leave aside the order dated 8.8.1997, even order dated 22.9.2016 has not been challenged.

6. I have heard learned amicus and have gone through the record of the case.

7. Indeed the petitioner absented himself from 15.02.1996 and thereafter never reported for duty. Though, he had tried to aver before the civil court that he did approach the authorities for joining on 15.06.1996 and he was informed that there is a departmental enquiry initiated against him. However, there is no

averment as to what transpired thereafter. The petitioner never tried to find out the nature of charges levelled against him. He never made any attempt to join the departmental enquiry. Even after the order of dismissal was passed on 08.08.1997 and was affirmed further in appeal vide order dated 07.09.2000 he remained dormant for more than ten years and filed civil suit only on 19.08.2010.

8. Pursuant to the mandate issued by civil court, order dated 22.09.2016 was passed by the competent authority rejecting the claim of the petitioner. Again even in the present writ petition there is neither any challenge to the order dated 8.9.1997/12.10.2000 nor there is any challenge to the order dated 22.09.2016.

9. So far as the plea raised by the learned amicus regarding non-observance of Rule 16.2 is concerned, the issue stands well settled in the case of **State of Punjab Vs. Ram Singh (Ex-Constable) reported as 1992 (4) SCC 54** wherein the Apex Court held as under:

1. Rule 16.2(1) consists of two parts. The first part is referable to gravest acts of misconduct which entails awarding an order of dismissal. Undoubtedly there is distinction between gravest misconduct and grave misconduct. Before awarding an order of dismissal it shall be mandatory that dismissal order should be made only when there are gravest acts of misconduct, that too when it impinges the pensionary rights of the delinquent after putting long length of service. As stated the first part relates to gravest acts of misconduct. Under general clauses Act singular includes plural, act includes acts. The contention that there must be plurality of acts of misconduct to award dismissal is fastidious. The word "acts" would

include singular "act" as well. It is not the repetition of the acts complained of but its quality, insidious effect and gravity of situation that ensues from the offending 'act'. The colour of the gravest act must be gathered from the surrounding or attending circumstances. Take for instance the delinquent that put in 29 years of continuous length of service and had unblemished record; in 30th year he commits defalcation of public money or fabricates false records to conceal misappropriation. He only committed once. Does it mean that he should not be inflicted with the punishment of dismissal but be allowed to continue in service for that year to enable him to get his full pension. The answer is obviously no. Therefore, a single act of corruption is sufficient to award an order of dismissal under the rule as gravest act of misconduct.

8. The second part of the rule connotes the cumulative effect of continued misconduct proving incorrigibility and complete unfitness of police service and that the length of service of the offender and his claim for pension should be taken into account in an appropriate case. The contention that both parts must be read together appears to us to be illogical. Second part is referable to a misconduct of minor in character which does not by itself warrant an order of dismissal but due to continued acts of misconduct would have insidious cumulative effect on service morale may be a ground to take lenient view of giving an opportunity to reform. Despite giving such opportunities if the delinquent officer proved to be incorrigible and found completely unfit to remain in service then to maintain discipline in the service, instead of dismissing the delinquent officer, a lesser punishment of compulsory retirement or demotion to a lower grade or rank or removal from service without affecting his future

chances of re-employment, if any, may meet the ends of justice. Take for instance the delinquent officer is habitually absent from duty when required. Despite giving an opportunity to reform himself he continues to remain absent from duty off and on. He proved himself to be incorrigible and thereby unfit to continue in service. Therefore taking into account his long length of service and his claim for pension he may be compulsorily retired from service so as to enable him to earn proportionate pension. The second part of the rule operates in that area. It may also be made clear that the very order of dismissal from service for gravest misconduct may entail forfeiture of all pensionary benefits. Therefore, the word "or" cannot be read as "and". It must be disjunctive and independent. The common link that connects both clauses is "the gravest act/acts of misconduct."

10. In view of the above, this Court cannot issue any writ in the nature of mandamus as prayed for.

11. Accordingly, the writ petition is dismissed.

(PANKAJ JAIN)
JUDGE

April 24, 2023
archana

Whether speaking/reasoned	Yes
Whether Reportable :	No