

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

102

RSA-1495-1992
Date of decision: 15.12.2023

STATE OF PUNJAB ..Appellant

Versus

BALBIR SINGH ..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikas Arora, AAG, Punjab.

Mr. Krishan Singh Dadwal, Advocate
for the respondent.

ANIL KSHETARPAL, J(Oral)

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh, is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in **Pankajakshi (Dead) through LRs Vs. Chandrika and others, (2016) 6 SCC 157.**
2. In this regular second appeal, the State of Punjab challenges the correctness of the judgment and decree passed by the First Appellate Court. The trial Court dismissed the respondent's suit for grant of decree of declaration, however, the First Appellate Court has reversed the same.
3. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.
4. The respondent was enrolled as a constable in the Punjab Police on 01.06.1978. In the year 1984, he was found absent for a period of 95 days from duty without prior any intimation. Departmental inquiry was held and the charges against the petitioner were proved. Ultimately, a show cause

notice was issued to the respondent, however, he never filed any reply nor appeared before the disciplinary authority despite the opportunity. The disciplinary authority dismissed the services of respondent on 09.04.1986, which was affirmed in appeal by Deputy Inspector General of Police on 14.08.1986. The Inspector General of Police also dismissed the respondent's revision petition. He filed a civil suit for grant of decree of declaration to the effect that the order dated 09.04.1986, and subsequent orders passed by the Deputy Inspector General of Police and Inspector General of Police were illegal, null and void. The trial Court as already noticed, dismissed the suit filed by the respondent, however, the First Appellate Court reversed the judgment and decree primarily on the following two points:-

- i. Absence for a period of 95 days is not a grave act of misconduct; and
- ii. The previous record of the respondent has been taken into consideration by the disciplinary authority although in the final show cause notice, the attention of the respondent was not drawn to the aforesaid fact.

5. Against the judgment of the First Appellate Court, this appeal was filed and it was admitted for regular hearing, however, no interim order was granted. Ultimately, the respondent joined the service on 22.04.1993, and has retired on attaining the age of superannuation on 31.03.2017.

6. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

7. The learned counsel representing the appellant contends that the First Appellate Court has erred in observing that absence for a period of 95

from the reading of the order passed by the Superintendent of Police on 09.04.1986, it is evident that there is only a passing reference with respect to the absence of the respondent from service on as many as four occasions but that is not the only reason which weighed substantially in his mind. He further submits that the impugned order is not based only on his previous conduct.

8. On the other hand, the learned counsel representing the respondent contends that the disciplinary authority was required to seek explanation from the respondent regarding his past conduct if the past conduct of the delinquent employee was to be taken into consideration.

9. The scope of interference by the Civil Court against the order of punishment passed by the disciplinary authority is extremely limited and narrow. This Court does not sit in appeal against the judgments passed by the disciplinary authority unless there is a substantive error in the procedure followed by the disciplinary authority or there is a clear violation of principles of natural justice, which has resulted in causing prejudice to the employee. Unless the aforementioned circumstances exist, the Court is not expected to interfere. In this case, the respondent was absent for continuous period of 95 days and this was not the first incident when he remained absent from his duty. The police force is a law enforcement agency. If the police officials, who are responsible for maintenance of law and order himself are continuously absent from duty, then the consequences can be very serious.

10. Now, the position is that the respondent has continued to serve the police force i.e. the State. The question that arises for adjudication is

with regard to the payment of wages/salary/benefits for a period of 7 years.

The learned counsel representing the appellant submits that under Rule 16.2 of the Punjab Police Rules, 1934, the disciplinary authority is entitled to take into consideration the previous record to come to a conclusion with regard to the misconduct being the grave misconduct. He relies upon the judgment passed in **Narinder Singh Vs. State of Punjab, 2013(3) PLR 430.**

11. On the other hand, the learned counsel representing the respondent relies upon the judgment passed by a Larger Bench of the Supreme Court in **Union of India Vs. T.R. Verma, AIR 1957 (Supreme Court) 882.**

12. The Supreme Court in **T.R. Verma's case (supra)** has not interpreted the Punjab Police Rules, 1934. This judgment only discusses the principles of natural justice succinctly.

13. The learned counsel representing the respondent also relies upon a judgment passed by the Division Bench in **Dhan Singh Vs. State of Haryana and others, 2008(3) SCT 816.** This Court has carefully read the aforesaid judgment. The division Bench after taking into account the fact that the absence of the delinquent employee was for a period of 22 days and 108 days and he was not given an opportunity to explain his misconduct, passed the judgment. Moreover, with highest respect, the Hon'ble Division Bench overlooked the expression 'inter alia' used in explanation to Rule 16.2 of the Punjab Police Rules, 1934. The expression 'inter alia' denotes that the list of grave acts of misconduct in the explanation is not exhaustive and the disciplinary authority while passing the order shall form the opinion on the basis of the grave acts of misconduct. However, as already noticed in this case, the respondent despite opportunity neither furnished any

hearing by the disciplinary authority. Hence, this judgment is not applicable to the facts of the present case.

14. This Court has considered the submissions of the learned counsel representing the parties.

15. In the case at hand, the order passed by the disciplinary authority has been read in the open Court. It is evident that the disciplinary authority has considered all aspects of the matter including the absence of the appellant on four previous occasions, however, that is not the only basis on which the adverse order was passed. Undoubtedly, this aspect has been taken into consideration by the disciplinary authority. It is evident that the respondent was given a show cause notice along with the inquiry report, however, he neither filed the reply nor came up for hearing despite an opportunity. The respondent has also failed to show any prejudice caused to him. If the respondent had appeared before the disciplinary authority, then he could have claimed that he has been prejudiced on the ground that the fact of his absence on previous occasions was not brought to his notice. Once he has not furnished any sufficient explanation, in the facts of this case, no prejudice has been caused to him with respect to the grave act of misconduct, it shall be noticed that the view taken by the disciplinary authority was confirmed in appeal as well as in the revision petition by the superior authorities.

16. Keeping in view the aforesaid facts and discussion, the appeal is allowed, however, the State of Punjab shall not recover any amount from the respondent.

17. Since, the respondent has continued to serve the police force till his superannuation, therefore, it will not effect his entitlement to pensionary benefits.

18. All the pending miscellaneous applications, if any, are also disposed of.

December 15th, 2023

(ANIL KSHETARPAL)
JUDGE

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