

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

RSA-957-1992 (O&M)

Date of decision: 12.09.2023

Gurwinder Singh

..Appellant

Versus

Punjab State and another

.Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. K.S.Sidhu, Advocate for the appellant

Mr. Vikas Arora, AAG, Punjab

ANIL KSHETARPAL, J (Oral)

1. The correctness of the concurrent findings of fact arrived at by the courts below is challenged by the plaintiff in this Regular Second Appeal. His suit, for grant of decree of declaration to the effect that the order dated 07.01.1988, passed by the Commandant while dismissing him from service is illegal, null and void, has been dismissed by the courts below.

2. The appellant remained absent from 31.10.1986 to 10.12.1986. He was a member of the disciplined force i.e the Punjab Police. During the departmental inquiry, charges against the petitioner were proved and the disciplinary authority ordered his dismissal from the service. In the civil suit also, the appellant failed not only before the trial court but also before the First Appellate Court.

3. Learned counsel representing the appellant, while relying upon the judgment passed by the Supreme Court in **State of Punjab and others vs. Bakshish Singh 1999 AIR (SC) 2626** submits that the

punishing authority himself converted the period of absence into the leave without pay and as such the charge of absence does not survive. He submits that in view of the aforesaid judgment, the appeal deserves to be allowed.

4. On the other hand, the learned counsel representing the respondents-State submits that in case titled as '**State of Punjab and others vs. Charanjit Singh 2003 (8) SCC 458**, the Supreme Court, after considering the judgment passed in **Bakshish Singh's case (supra)** has explained that the order sanctioning the leave is passed in order to regularize the leave and it does not amount to condoning the misconduct. He relies upon para 5 of the judgment which is extracted as under:-

“5. In the State of Punjab and ors vs. Bakshish Singh JT 1998 (7) SC 142 : [1998 (5) SLR 625 (SC)] which was relied upon by the courts below in holding that the misconduct stood condoned, was explained in Maan Singh (supra). No law has been laid down in Bakshish Singh (supra) to the effect that only in the event, leave without pay is directed to be granted while passing an order of punishment, the leave having been regularized the order of punishment also becomes bad in law and void ab initio. While deciding Bakshish Singh (supra), this Court had not taken into consideration an earlier binding precedent in State of Madhya Pradesh vs. Harihar Gopal, 1969 SLR 274 (SC) wherein it has clearly been stated that such order is passed only for the purpose of regularizing the leave and thereby the effect of punishment is not wiped out.

In Maan Singh (supra), it was held that the period of absence when treated as leave without pay, was with a view to regularize the leave and not for condonation of misconduct.”

5. He also submits that a co-ordinate Bench of this Court in RSA-141-1988 titled as ‘**Bharpur Singh vs. State of Punjab**’ decided on 16.01.2017 has followed the Supreme Court.

6. On a careful reading of the judgment passed in **Charanjit Singh’s case (supra)**, it is evident that the Supreme Court relied upon its previous judgment in **State of Madhya Pradesh vs. Harihar Gopal 1969 SLR 274 (SC)**, it was held that in **Bakshish Singh (supra)** there was no declaration of law that subsequent sanction of leave without pay amounts to condonation of the mis-conduct.

6. Keeping in view the aforesaid binding precedent, no ground to interfere is made out.

7. Hence, dismissed.

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

12.09.2023

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE