

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

(101)

CM No.4052-C of 2023 in/  
and  
RSA No.990 of 1997 (O&M)  
Date of Decision : 30.05.2023

State of Haryana through Collector Gurgaon and others

...Appellants

Versus

Rajinder Singh Ex-Constable No.1118/Faridabad

...Respondent

***CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI***

Present: Ms. Vibha Tewari, Assistant Advocate General  
for the non-applicant/appellants.

Dr. Mohinder Singh Mann, Advocate  
for the applicant-respondent.

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**Harsimran Singh Sethi J. (Oral)**

**CM No.4052-C of 2023**

The present application has been filed for an early hearing of  
the present Regular Second Appeal, which is fixed for 25.09.2023.

Notice of the application to the counsel opposite.

Ms. Vibha Tewari, Assistant Advocate General, Haryana, who  
is present in the Court accepts notice and raises no objection for the grant of  
the prayer as raised in the present application.

Keeping in view the facts mentioned in the application, the same is allowed. Main case is preponed from 25.09.2023 to today.

**RSA No.990 of 1997**

1. The present Regular Second Appeal has been filed against the judgments and decrees of the Courts below by which, the suit filed by the respondent-plaintiff challenging the order of dismissal dated 10.04.1990 was allowed as well as order by which appeal against the order of dismissal was dismissed vide order dated 03.04.1991.

2. Certain facts needs to be noticed for the correct appreciation of the issue in hand.

3. While the respondent-plaintiff was working with the Haryana Police in the year 1988, he was selected for bigular course. He was asked to appear for medical examination in Civil Hospital, Gurgaon on 29.08.1988 rather than appearing for the said examination, he got himself admitted in the hospital but on 07.09.1988, it was found that he had left the hospital premises without any permission and information to the authorities concerned. The respondent-plaintiff remained absent for a period of 100 days starting from 03.09.1988 till he joined the duty on 16.12.1988.

4. Keeping in view the said allegation of unauthorized absence, the departmental proceedings were initiated against the respondent-plaintiff. After holding an enquiry into the allegations of unauthorized absence, the Enquiry Officer proved the allegation of voluntary unauthorized absence on the part of the respondent-plaintiff.

5. Keeping in view the said findings recorded, after giving due show cause notice to the respondent-plaintiff, an order was passed by the competent Court on 10.04.1990 dismissing the appellant from service on

account of unauthorized absence. An appeal was preferred against the order of punishment dated 10.04.1990, which also came to be dismissed by the Appellate Authority on 03.04.1991.

6. Feeling aggrieved against the impugned order of punishment and dismissal of appeal, the respondent-plaintiff filed a Civil Suit challenging both the orders.

7. Keeping in view the evidence which came on record, the trial Court held that though the respondent-plaintiff remained absent from duty but as the punishment of dismissal can only be awarded for the gravest act of misconduct and nothing has been mentioned in the order dismissing him from service that absence in the present case amounted to any gravest act of misconduct, the punishment of dismissal could not have been passed.

8. It was further held by the trial Court that while awarding the punishment, the length of service rendered should have been taken into account and as in the present case the respondent-plaintiff had 12 years of service to his credit, he should not have been dismissed from service. The suit filed by the respondent-plaintiff was allowed and the impugned orders of punishment were set aside by the trial Court.

9. Feeling aggrieved against the judgment of the trial Court dated 30.09.1992, an appeal was preferred by the State of Haryana which also came to be decided on 02.01.1997 and the judgment and decree of the trial Court was upheld.

10. Hence, the present Regular Second Appeal.

11. Learned State counsel argues that in the present case, the ground which has been taken by the Courts below for setting aside the order of punishment was that the Punishing Authority did not mention that

unauthorized absence is a gravest act of misconduct hence, the punishment of dismissal from service could not have been imposed, is incorrect as it is settled principle of law that unauthorized absence is a gravest act of misconduct especially qua the member of disciplined force hence, the findings which have been recorded by the Courts below are contrary to the settled principles of law.

12. Learned counsel for the appellant further submits that in the present case the total service of respondent-plaintiff is 7-1/2 years hence, it cannot be said that he had become entitled for any benefits upto the date when the impugned order was passed hence, ground taken by the Courts below that length of service has not been taken into account while passing the impugned order is not available in the present case, hence the judgments and decrees of the Courts below are liable to be set aside.

13. Learned counsel for the respondent-plaintiff on the other hand submits that in the present case, keeping in view the amendment to the Punjab Police Rules as extended by the Government of Haryana vide notification dated 21.03.1985, wherein certain misconducts were to be treated as gravest act of misconduct, the absence from duty is not one of the grave misconduct mentioned in the notification for which punishment of dismissal could be awarded, therefore, the judgments of the Courts below are perfectly valid and legal.

14. Learned counsel for the respondent submits that the argument of learned State counsel that the respondent-plaintiff had 7-1/2 years of service to his credit at the time when the punishment was imposed is incorrect as the appellant had more than 12 years of service to his credit at the time when he was dismissed from service, therefore the said Rule

16.2(1) of the Punjab Police Rules should have been taken into account while awarding the punishment.

15. Learned counsel for the respondent further submits that in the present case there was only one default on the part of the respondent with regard to absence, hence, for the said default ignoring 10 years of his service so as to impose the punishment of dismissal was total arbitrary and illegal.

16. I have heard learned counsel for the parties and have gone through the record of the case with their able assistance.

17. A bare perusal of the order passed by the trial Court shows that one of the reason given for setting aside the punishment is that while passing the order, the Authorities concerned have not mentioned that unauthorized absence from duty is a gravest act of misconduct, hence the punishment of dismissal could not have been passed.

18. In this regard, it may be noticed that once as per the settled principles of law, unauthorized absence from duty is held to be a gravest act of misconduct, whether it is mentioned in the order or not that unauthorized absence from duty is a grave misconduct, said omission in the order of punishment will not be a ground to treat the said order of punishment as arbitrary or illegal. It is a conceded position that keeping in view the judgment of Hon'ble Supreme Court in Civil Appeal No.9997 of 1995 decided on 10.11.1995, titled as **State of U.P. Vs. Ashok Kumar Singh**, the absence from duty is a gravest act of misconduct if the officer employed is a member of a disciplined force and for the said misconduct, the punishment of dismissal can be imposed. The relevant para of the 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.”

19. Hence, once it is a settled principle of law that unauthorized absence is a gravest act of misconduct for a member of disciplinary force, the respondent-plaintiff who was a member of disciplinary force, is also covered by the said judgment hence, once action has been taken for unauthorized absence from duty, it is clear in unequivocal terms that the said action was taken for the gravest act of misconduct. Hence interpretation being given to the impugned order of punishment by the Courts below is contrary to the settled principles of law and cannot be sustained in the eyes of law.

20. Further, it has been held by the Courts below that Rule 16.2(1) of the Punjab Police Rules has not been taken into account while imposing the punishment as the respondent-plaintiff had more than 10 years of service to his credit.

21. It may be noticed that merely an employee has 10 years of service to his credit is not entitled for any lenient punishment once the

charge alleged against him is of a grave misconduct. Once as per the settled

principles of law for a gravest act of misconduct, the punishment of dismissal can be imposed and merely that employee had 10 years of service to his credit at the time of committing the said gravest act of misconduct will not entitle him for any lenient punishment. Hence, the reason given by the Courts below for setting aside the order of punishment is contrary to the Rules as well as the settled principles of law settled in **Ashok Kumar Singh's case(supra)**.

22. Learned counsel for the respondent further submits that in the present case while passing the order, the detailed reasons as to why the Punishing Authority has accepted the findings of Enquiry Officer have not been mentioned hence, order passed by the Punishing Authority imposing the punishment of dismissal from service is liable to be set aside.

23. Qua the said argument, it may be noticed that the said argument is contrary to the settled principles of law settled by Hon'ble Supreme Court of India in Civil Appeal No.4394 of 2010 decided on 08.02.2021 titled as **Boloram Bordoloi Vs. Lakhimi Gaolia Bank and others** wherein Hon'ble Supreme Court has held that once the enquiry has been held where due opportunity has been given to the employee concerned to present his case and finding of guilt has been recorded by the Enquiry Officer by giving due reasons, hence once the Punishing Authority accepts these reasons there is no need to again detail the said reasons while passing the order of punishment. The relevant para 7 of the judgment is as under:

7. The appellant was working as a Manager of the respondent-bank. A perusal of the charges, which are held to be proved by the Enquiry Officer, reveal that he has sanctioned and disbursed loans without following the due procedure contemplated under law and also there are allegations of misappropriation, disbursing loans irregularly in some instances to (a) units

without any shop/business; (b) more than one loan to members of same family etc. The Enquiry Officer, after considering oral and documentary evidence on record, has held that all the charges are proved. Based on the findings recorded C.A.No.4394 of 2010 by Enquiry Officer, the disciplinary authority has tentatively decided to impose punishment of compulsory retirement. Disciplinary authority has issued show cause notice dated 30.07.2005 by enclosing a copy of the enquiry report. In response to the show cause notice, the appellant has submitted his comments vide letter dated 16.08.2005 indicating that due to work pressure some operational lapses have occurred. Further he has also pleaded that if the bank has sustained any loss due to his fault, he is ready to bear such loss from his own source. After filing the response to the show cause notice, order is passed by disciplinary authority imposing punishment of compulsory retirement. After Enquiry Officer records his findings, it is always open for the disciplinary authority to arrive at tentative conclusion of proposed punishment and it can indicate to the delinquent employee by enclosing a copy of the enquiry report. Though the learned counsel for the appellant has argued that even before tentative conclusion is arrived at by the disciplinary authority, the enquiry report has to be served upon him, but there is no such proposition laid down in the judgment of this C.A.No.4394 of 2010 Court in the case of Managing Director, ECIL, Hyderabad (supra). In the aforesaid judgment of this Court it is held that delinquent employee is entitled to a copy of the enquiry report of the enquiry officer before the disciplinary authority takes a decision on the question of guilt of the delinquent. Merely because a show cause notice is issued by indicating the proposed punishment it cannot be said that disciplinary authority has taken a decision. A perusal of the show cause notice dated 30.07.2005 itself makes it clear that along with the show cause notice itself enquiry report was also enclosed. As such, it cannot be said that the procedure prescribed under the rules was not followed by respondent-bank. We are of the view that the judgment of this Court in the case of Managing Director, ECIL, Hyderabad (supra) is not helpful to the case of the appellant. Further, it is well settled that if the disciplinary authority accepts the findings recorded by the Enquiry Officer and passes an order, no detailed reasons are required to be recorded in the order imposing punishment. The punishment is imposed based on the findings recorded in the enquiry report, as such, no further C.A.No.4394 of 2010 elaborate reasons are required to be given by the disciplinary

authority. As the departmental appeal was considered by the Board of Directors in the meeting held on 10.12.2005, the Board's decision is communicated vide order dated 21.12.2005 in Ref. No.LGB/I&V/Appeal/31/02/2005-06. In that view of the matter, we do not find any merit in the submission of the learned counsel for the appellant that orders impugned are devoid of reasons.”

24. Hence, the said argument raised by learned counsel for the respondent-plaintiff cannot be accepted keeping in view the settled principles of law.

25. Learned counsel for the respondent-plaintiff at this stage submits that keeping in view the facts and circumstances, punishment of dismissal of service imposed upon the respondent-plaintiff was not proportionate to the charges alleged and proved against him and therefore, the same needs to be modified. The said argument cannot be accepted for the reason that order of punishment has been passed keeping in view the gravest act of misconduct. Once the act of misconduct attributed to the respondent-plaintiff is gravest in nature, no leniency can be shown. Further as per settled principles of law, the adequacy of the punishment can only be adjudicated by the Courts in case punishment imposed is totally disproportionate and shocking to the charges alleged and proved. In the present case, the situation is not such so as to accept the plea that the order of punishment should be modified to that of compulsory retirement.

26. Keeping in view the above, the judgments of the Courts below in the facts and circumstances of the case are perverse to the facts as well as settled principles of law and cannot be sustained in the eyes of law and are

accordingly set aside. The appeal filed by the appellant-State is allowed and  
the suit filed by the respondent-plaintiff is dismissed.

May 30, 2023  
*jt*

(HARSIMRAN SINGH SETHI)  
JUDGE

*Whether speaking/reasoned : Yes/No*

*Whether reportable : Yes/No*