

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(105+207)

RSA-1614-1998 (O&M)

Date of Decision : 20.03.2023

State of Punjab and others

...Appellants

Versus

Gurdev Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Gurvinder Singh, Assistant Advocate General, Punjab
for the appellants.

Mr. Amandeep S. Jawanda, Advocate for the respondent.

Harsimran Singh Sethi J. (Oral)

CM-2225-C-2023

Present application has been filed for placing on record the
documents as Annexures A-1 to A-6.

Application is allowed and documents as Annexures A-1 to A-6
are taken on record.

RSA-1614-1998

In the present regular second appeal, the judgment and decree
impugned is of the lower appellate court dated 27.11.1997 by which, the
judgment and decree of the trial court dated 26.08.1995 has been set-aside
and the suit filed by the respondent-plaintiff has been allowed.

Certain facts need to be mentioned for the correct appreciation

of the controversy in hand.

The respondent-plaintiff was appointed as a Constable with the Punjab Police on 11.07.1977. A charge-sheet was served upon the respondent-plaintiff for remaining absent from duty from 08.09.1988 to 20.10.1988. Keeping in view the said absence, the disciplinary proceedings were initiated against the respondent-plaintiff and after the charges of unauthorised absence was proved, the order was passed by the competent authorities on 29.06.1989 by which, the respondent-plaintiff was dismissed from service. Against the order of punishment, an appeal was preferred by the respondent-plaintiff, which also came to be rejected by the appellate authority on 23.04.1991.

The orders imposing the punishment dated 29.06.1989 as well as the order passed by the appellate authority rejecting the appeal dated 23.04.1991 were challenged by the respondent-plaintiff by filing a civil suit. Keeping in view the facts and the evidence, which came on record, the trial court dismissed the suit holding that the charges alleged against the respondent-plaintiff of unauthorized absence was proved and infirmity alleged in the procedure adopted during the disciplinary proceedings could be substantiated coupled with the settled principle of law that Civil Court is not appellate authority, no interference was called for by the civil court.

Aggrieved against the judgment of the trial court dated 26.08.1995, an appeal was preferred by the respondent-plaintiff, which came to be decided by the lower appellate court vide judgment and decree dated 27.11.1997.

The lower appellate court came to the conclusion that the

absence from duty is not a grave misconduct for which an employee's service can be terminated, hence, the order passed against the respondent-plaintiff by treating the said absence to be grave act of misconduct, was contrary to the rules hence, the order terminating the services of the respondent-plaintiff cannot be sustained in the eyes of law. Another reason given in the judgment and decree by the Lower Appellate Court is that as in the impugned order dismissing the respondent-plaintiff, the period of absence has been treated as a leave of the kind due, the said absence stood condoned for all intents and purposes, therefore, the punishment order imposing the punishment of dismissal was bad in law. Judgment/decreed of the trial Court dated 26.08.1995 was set aside and the suit filed by the respondent-plaintiff was decreed.

The said judgment of the lower appellate court dated 27.11.1997 is impugned in the present regular second appeal.

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

Learned counsel for the appellants-defendants argues that the reasons, which have been given by the lower appellate court to set-aside the judgment and decree of the trial court dated 26.08.1995 so as to allow the suit filed by the respondent-plaintiff are incorrect and contrary to the rules governing the service as well as the settled principle of law hence, cannot be sustained in the eyes of law. Learned counsel for the appellants-defendants argues that the allegations proved against the respondent-plaintiff for remaining unauthorizedly absent from duty are grave in nature as the member of a disciplined force cannot remain absent in an unauthorized way

and in case, said allegations are proved, punishment of dismissal can be imposed, hence treating unauthorized absence as not a grave misconduct, court has transposed itself to the position of punishing authority, which is not permissible.

Learned counsel for the respondent-plaintiff argues that the unauthorized absence is not a grave misconduct as held by the lower appellate court hence, even if the said misconduct is proved, the punishment of dismissal could not have been imposed.

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

The question which arises in the present regular second appeal is whether the unauthorized absence by a member of a disciplined force is to be treated as a grave misconduct so as to invite the punishment of dismissal or not.

The said question is settled by the judgment of the Hon'ble Supreme Court of India Civil Appeal No. 9997 of 1995 titled as ***State of U.P. Vs. Ashok Kumar Singh***, decided on 10.11.1995. 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."

Learned counsel for the appellants-defendants also relies upon the judgment of a Division Bench of this Court in CWP No. 13517 of 1992 titled as ***Ex. Constable Jagan Singh Vs. Director General of Police, Haryana etc.***, decided on 16.09.2008, wherein the Division Bench by placing reliance upon the judgment of the Hon'ble Supreme Court of India in ***State of Punjab and others Vs. Dharam Singh***, 1997(4) SCT 410 : 1996(6) SLR 361, which also dealt with the same rule i.e 16.21 of the Punjab Police Rules, 1934 held that the absence from duty is a mis-conduct justifying the punishment of dismissal. The relevant paragraph 13 of the said judgment is as under :-

"13. The Hon'ble Supreme Court in the case of State of Punjab and others v. Dharam Singh, 1997(4) SCT 410 : 1996(6) SLR 361 while dealing with the Rule 16.21 of the Punjab Police Rules, 1934, which is pari materia to Rule 16.21 of the Punjab Police Rules, 1934 as applicable to Haryana has held as under :

"4. A reading of it would clearly indicate that even during the period of suspension the police officer is required to attend to roll call and be available to the authorities. The payment of subsistence allowance, as ordered, under the suspension rule is one facet of it and his duty to be present is

another. Non-payment of subsistence allowance does not entitle a delinquent officer to be absent from duty. It is his duty to claim subsistence allowance, go to the office and collect subsistence allowances and if it is not paid, necessary representation to the higher authorities and, if the grievance is not redressed, to the appropriate forum seeking payment, may be made. But that does not mean that the delinquent officer, in the face of the express rule, can absent himself from duty. Under these circumstances, the conclusion reached by the disciplinary authority that he was wilfully absent from duty is well justified."

Similarly, while deciding RSA No. 2248 of 2014 titled as ***Swaran Singh Vs. The State of Punjab and another***, decided on 08.09.2015, a Co-ordinate Bench of this Court held that in a disciplined force, even a day's absence without intimation cannot be ignored and the same is to be treated as a misconduct. Learned counsel for the respondent-plaintiff has not been able to differentiate the judgment in ***Swaran Singh's case (supra)*** as well as in ***Ex. Constable Jagan Singh 's case (supra)***, not to be applicable upon the case of the respondent-plaintiff so as to hold that the judgment and decree of the court below dated 27.11.1997 is perverse being contrary to the settled principle of law.

Keeping in view the settled principle of law cited hereinbefore, the unauthorized absence by a member of a disciplined force is to be treated as a grave misconduct. Learned counsel for the respondent-plaintiff has not been able to rebut the principle of law cited hereinbefore so as to be made applicable upon the respondent-plaintiff as well.

Learned counsel for the respondent-plaintiff relies upon the judgment of the Hon'ble Supreme Court of India in SLP(C) No. 19501 of 1991 titled as ***State of Punjab Vs. Prakash Chand***, decided on 05.01.1996 as well as the judgment of Hon'ble Supreme Court of India in Civil Appeal No. 928 of 2007 titled as ***Harjit Singh and another Vs. The State of Punjab and another***, decided on 23.02.2007, to contend that in the present case, the absence cannot be treated as a grievous act of misconduct.

The judgments being cited by the learned counsel for the respondent-plaintiff to support his claim, are not applicable in the facts and circumstances of the present case. In ***Harjit Singh and another (supra)***, as the absence due to which ***Harjit Singh and another (supra)***, was dismissed, were only for a few hours, whereas in the present case, the absence is of months and that too repeated unauthorized absence as the respondent-plaintiff was a habitual absentee.

Similarly, in ***Prakash Chand (supra)***, the benefit was extended in favour of ***Prakash Chand (supra)*** as, the punishing authority itself was of an opinion that the said act of absence was not gravest act of misconduct keeping in view the fact of the said case. In the present case, learned counsel for the respondent-plaintiff has not been able to point out that the facts are similar as in the case of ***Prakash Chand (supra)***.

Even otherwise, the present unauthorized absence on the part of the respondent-plaintiff was not a single incident as he remained absent on earlier occasions also for which he was punished. Hence, the judgments being relied upon cannot come to the rescue of the respondent-plaintiff to mean that the unauthorized absence by an Officer of a disciplined force is

not a gravest act of misconduct, especially, in view of the settled principle of law on the aspect as settled in *Ashok Kumar Singh's case (supra)* qua habitual absentees.

The facts and circumstances in the cases being relied upon by the learned counsel for the respondent-plaintiff are not applicable in the facts and circumstances of the present case. Here, the respondent-plaintiff was an habitual absentee for which he had already been punished thrice and in the facts and circumstances, where an employee is repeating the same offence despite being punished, cannot be treated at par with the first offence, which was the fact in the cases being relied upon by the learned counsel for the respondent-plaintiff.

Further, it may be noticed that in the present case, prior to the imposition of punishment, which was impugned in the civil suit by which, the respondent-plaintiff was dismissed from service, he was already punished thrice on the ground of absence only. The said fact is conceded keeping in view the evidence, which had come on record. Once, on an earlier occasion also, the respondent-plaintiff remained unauthorized absent for which he was punished, it can be seen that he was an habitual absentee. The repeated misconduct and that too of absence by a member of a discipline force, cannot be said to be a minor misconduct. The findings, which have been recorded by the lower appellate court, are contrary to the settled principle of law and that too by ignoring the facts of the present case, which had already come on record. The findings of the lower appellate court that the absence in the present case is not a grievous act of misconduct so as to invite punishment of dismissal, is perverse and cannot be allowed to

be sustained and the same is accordingly set-aside.

Learned counsel for the respondent-plaintiff submits that even if it is assumed for the sake of argument that the absence in the facts and circumstances of the present case was a grievous act of misconduct but the same already stood condoned keeping in view the order passed, wherein, the period of absence has been treated as a leave of kind due. Learned counsel argues that by treating the period of absence as a leave of the kind due, no charge subsist against the respondent-plaintiff so as to impose punishment.

The said argument is fallacious and is contrary to the settled principle of law. The decision of the authorities as to how the period of absence is to be treated is only to streamline the service period of the respondent-plaintiff for which he remained unauthorizedly absent. The said decision of the authorities does not in any manner reflects so as to condone the un-authorised absence.

Moreover, the said question of law, on the similar facts, is already settled by the competent court of law in Civil Appeal No. 4969 of 2008 titled as ***State of Punjab Vs. Dr. P.L. Singla***, decided on 31.07.2008. In the said judgment, the Hon'ble Court has held that treating period of absence in a particular manner does not intend that the act of misconduct has been condoned but the same only relates to the fact as to how the same is to be treated for evaluating the service career of a delinquent. The relevant paragraph 11 of the said judgment is as under :-

“11. In this case, the punishment was imposed by order dated 16.9.1999/11.10.1999. That order was not cancelled, revoked or withdrawn. The subsequent order dated 25.1.2001 merely accorded extraordinary leave in regard to the period of

absence, but did not condone the unauthorized absence nor wipe out the punishment already imposed. The said order was only consequential to the imposition of punishment. Its effect was to maintain continuity of service of the respondent, but deny salary for the period of absence and not to count the period of absence as qualifying service for the purposes of pension. Its effect is certainly not to exonerate the respondent from the charge of unauthorised absence nor to wipe out the punishment. If the intention was to revoke the punishment, the order dated 25.1.2001 would have clearly stated so. But it did not.”

Keeping in view the settled principle of law noticed hereinbefore, the arguments raised by learned counsel for the respondent-plaintiff cannot be accepted.

The last argument, which has been raised by the learned counsel for the respondent-plaintiff in his support that the punishment imposed is totally disproportionate to the charges alleged as he was only charged with an absence of 42 days. Though, on the face of it, the said argument is attractive but the same cannot be accepted in the facts and circumstances of the present case. Once, it is a conceded position that the respondent-plaintiff was already punished for the same offence twice before the passing of the present impugned order, it can be safely said that the respondent-plaintiff did not adhere to the rules and regulations of service so as to improve his conduct qua the same allegation. Once, the respondent-plaintiff is a habitual absentee and despite the fact that on earlier occasions also punishment for the same offence has been imposed upon him, still he committed the same offence again, this shows the attitude of the respondent-plaintiff. Once, the respondent-plaintiff is an habitual absentee, he cannot

be allowed to continue in service in a disciplined force hence, in the facts and circumstances of the present case, it cannot be said that the punishment imposed upon the respondent-plaintiff for the dismissal of service was excessive in any manner keeping in view the charges alleged against him.

Keeping in view the above, as the findings recorded by the lower appellate court in the judgment and decree dated 27.11.1997 are perverse to the facts of law, the appeal filed by the appellants-defendants is allowed. The judgment and decree of the lower appellate court dated 27.11.1997 is set-aside and the judgment and decree of the trial court dated 26.08.1995 is reinstated. Decree sheet be prepared accordingly.

CM-3013-C-1998

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

March 20, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No