

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(104)

CM-8053-C-2022 in/and
RSA-3477-1998
Date of Decision : 23.03.2023

Rakesh Kumar

...Appellant

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Inderjit Sharma, Advocate for the appellant.

Mr. Gurvinder Singh, Assistant Advocate General, Punjab.

Harsimran Singh Sethi J. (Oral)

CM-8053-C-2022

Present application has been filed for fixing the RSA No. 3477 of 1998 to an early actual date of hearing.

Notice of the application to the counsel opposite.

Mr. Gurvinder Singh, learned Assistant Advocate General, Punjab, who is present in court, accepts notice on behalf of appellants-State and raises no objection for the grant of prayer as made in the present application.

Keeping in view the above, application is allowed and the RSA No. 3477 of 1998 is taken up for hearing today.

RSA-3477-1998

In the present regular second appeal, the judgment of the lower appellate court dated 24.04.1998 is under challenge.

Certain facts need to be mentioned for the correct appreciation of the controversy in hand.

The appellant-plaintiff joined the service on 09.05.1989 as a Constable. In the year 1992, it was alleged that the appellant-plaintiff became ill on 28.04.1992 and he sought two days leave, which was granted to him but as he could not recover, he could not join the duties upto 14.08.1992. On 15.08.1992, the appellant-plaintiff reported in the Police Line, Gurdaspur but again, he absented himself from 13.09.1992 and remained absent from duty upto 25.09.1992. For the unauthorized absence, the appellant-plaintiff was charge-sheeted. In reply to the allegations, the appellant-plaintiff took a stand that as he was ill and he was advised to take complete bed rest, he could not attend the duty for the period of absence hence, as the absence was beyond the control of the appellant-plaintiff, the same may kindly be condoned.

Not being satisfied with the reply filed by the appellant-plaintiff, enquiry proceedings were conducted in which it was proved that the appellant-plaintiff remained absent without any authorization for the period in question. The enquiry report was given to the appellant-plaintiff for his comments and after taking into account the objection raised, the order was passed by the punishing authority on 17.12.1993 dismissing the appellant-plaintiff from service. Against the order of punishment dated 17.12.1993, the appellant-plaintiff filed an appeal, which was also

dismissed by the appellate authority and ultimately, the appellant-plaintiff filed a civil suit challenging the order of dismissal dated 17.12.1993 with the further declaration that the appellant-plaintiff be reinstated in service from the date of dismissal with further consequential benefits.

Keeping in view the evidence, which came on record, the trial court by interpreting the same held that as while passing the impugned order dated 17.12.1993, the competent authority mentioned that the period of absence will be treated as a leave of kind due hence, the said period cannot be treated as unauthorized absence once the same has been treated as a leave of the kind due and basis of the allegation has been knocked out, dismissal of the appellant-plaintiff on the ground of absence, was not permissible. The suit filed by the appellant-plaintiff was decreed in his favour by the trial court vide judgment and decree dated 15.03.1997.

Feeling aggrieved against the judgment and decree of the trial court dated 15.03.1997, the respondents-defendants filed an appeal before the lower appellate court, which came to be decided on 24.04.1998. The lower appellate court came to the conclusion that as per the evidence, which has already come on record, the appellant-plaintiff had remained absent on many occasion after joining the service and further for the period for which the order of punishment dated 17.12.1993 has been passed, which was proved in the enquiry proceedings hence, the findings recorded by the trial court that the absence stood washed out keeping in view the order passed by the authorities concerned cannot be sustained and Issue No. 1 was decided against the appellant-plaintiff and the judgment and decree of the trial court was set-aside and consequently, the suit filed by the appellant-plaintiff was

dismissed. Hence, 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 appearing on behalf of the appellant-plaintiff argues that while deciding Issue No. 1, the trial court had recorded a finding that once while imposing the punishment of dismissal, the punishing authority had treated the period of unauthorized absence of the appellant-plaintiff as a leave of the kind due and the same stood regularized, due to which no action could have been taken against the appellant-plaintiff, but this fact has not at all been discussed by the lower appellate court while reversing the finding on Issue No. 1 hence, the judgment and decree of the lower appellate court is liable to be set-aside.

Though, a bare perusal of the findings recorded by the lower appellate court shows that the said finding of the trial court has not been discussed but merely that the same has not been discussed, does not mean that the ultimate finding recorded by the lower appellate court needs to be set-aside, especially when, the finding of the trial court on the said Issue is not in accordance with law. It may be noticed that the trial court only allowed the benefit in favour of the appellant-plaintiff on the ground that the period of unauthorized absence was treated as a leave of the kind due hence, the charge against the appellant-plaintiff stood washed out. This finding is contrary to the settled principle of law settled by the Hon'ble Supreme Court of India in Civil Appeal No. 4969 of 2008 titled as ***State of Punjab Vs. Dr. P.L. Singla***, decided on 31.07.2008. In ***Dr. P.L. Singla's case (supra)*** also while imposing the punishment, the unauthorized absence

from duty was treated as a leave of the kind due and the argument was raised that once the unauthorized absence has been treated as a leave of the kind due, the absence stood condoned. The said argument was not accepted by the Hon'ble Supreme Court of India that merely the absence period was decided to be treated in a particular manner does not wipe out the punishment imposed. The relevant paragraph 11 of the 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 findings recorded by the trial court qua Issue No. 1 is contrary to the settled principle of law and could not be sustained. Though, the lower appellate court was also required to decide the said Issue by giving adequate reasons but as the findings of the trial court on the said Issue was contrary to the settled principle of law, the judgment/decreed of the

lower appellate court cannot be set-aside so as to maintain the findings of the trial court despite the same being contrary to the settled principle of law.

The second argument, which has been raised by the learned counsel for the appellant-plaintiff is that in the present case though, prior to the year 1990, the appellant-plaintiff absented himself from duty for which, appropriate action was also taken by the department and no pay was accorded to him for the period of absence but qua the absence of 33 months 28 days and 18 hours, the said period of absence is not a grievous misconduct hence, no major punishment could have been imposed upon the appellant-plaintiff. The said argument cannot be accepted keeping in view the settled principle of law settled by the 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, it has been held that the absence is a grievous misconduct and the order of dismissal passed due to unauthorized absence by an employee of a disciplined force needs no interference by the court. The relevant paragraphs 17 and 19 of the said judgment are as under :-

“17. A perusal of order of dismissal dated 4.12.1991 would show that the punishing authority has given its thoughtful consideration to this aspect and has also taken into account the earlier service record of the petitioner. While doing so, he has scanned the service record of the petitioner and has pointed out the other irregularities and defaults which the petitioner had committed during his career as a Police official, according to which, his one annual increment was temporarily stopped for absence in the year 1982; for 102 days of absence in 1985 punishment of censure was imposed and in the present case,

the petitioner was absent from duty for three years and 51 days. Finding no justification or reason for giving the petitioner a mild punishment, the Punishing Authority came to the conclusion that the absence of the petitioner for such a long time wilfully and without any plausible reason is gravest misconduct and therefore, ordered punishment of dismissal from service.

18. xxx xxx xxx xxx xxx xxx xxx xxx

19. It is a settled proposition of law that the Courts should not generally interfere in the quantum of punishment and should only interfere where the punishment is disproportionate to the misconduct proved against the delinquent employee. In this case, we are satisfied that the order of dismissal passed against the petitioner, by the Punishing Authority is justified and in accordance with law and thus, calls for no interference by this Court.”

The same question also came up for consideration before a Co-ordinate Bench in RSA No. 2248 of 2014 titled as ***Swaran Singh Vs. The State of Punjab and another***, decided on 08.09.2015, wherein, the Co-ordinate Bench held that in a disciplined force, even a day's absence without intimation cannot be ignored and the quantum of punishment of dismissal cannot be said to be disproportionate to the misconduct. The relevant paragraph 7 of the said judgment is as under :-

“7. An argument has been raised that the appellant-plaintiff has worked for 17 years with the respondents and, therefore, a lenient view should have been taken while taking disciplinary action against him but this contention also cannot be accepted in the light of the fact that he has remained absent from duty for more than one year and in a disciplined force, even a day's absence without intimation cannot be ignored. The quantum of

punishment thus cannot be said to be disproportionate to the misconduct attributed to him.”

Keeping in view the said settled principle of law noticed hereinbefore, it cannot be said that the imposition of punishment of dismissal could not have been imposed once the allegation of unauthorized absence was proved.

The third argument, which has been raised by learned counsel for the appellant-plaintiff is that punishment imposed is disproportionate to the charges alleged and proved. In this regard, it may be noticed that a member of a disciplined force remains absent without any valid justification and that too unauthorizedly, has to be treated as serious misconduct. It is also a conceded fact that this is not a solitary case of absence in the career of the appellant-plaintiff as on earlier occasion also, he remained unauthorized absent for which, the action had already been taken. Keeping in view the fact that the appellant-plaintiff was a habitual absentee, the imposition of punishment of dismissal, in the facts and circumstances of the present case, is not disproportionate to the charges alleged and proved. Hence, on this account also, no interference is called for by this Court.

Learned counsel for the appellant-plaintiff has cited the judgment of the Co-ordinate Bench of this Court in CWP No. 11458 of 2001 (O&M) titled as ***Ex. Constable Malkiat Singh Vs. State of Punjab and others***, decided on 11.07.2012, the judgment of the Division Bench in CWP No. 1309 of 2008 titled as ***Dhan Singh Vs. State of Haryana and others***, decided on 26.05.2008, the judgment by the Co-ordinate Bench in CWP No. 19322 of 1996 titled as ***Satish Kumar Vs. State of Haryana,***

decided on 17.01.2002, the judgment by the Co-ordinate Bench in RSA No. 3914 of 1997 titled as ***Punjab State through the Sect. Vs. Gurmukh Singh***, decided on 01.04.1999, the judgment of the Co-ordinate Bench in CWP No. 12406 of 1995 titled as ***Ex. Constable Balwant Singh No. 739/KNL Vs. State of Haryana***, decided on 07.12.1998, the judgment of the Co-ordinate Bench in RSA No. 2438 of 1982 titled as ***Jaswant Singh Vs. State of Punjab***, decided on 18.07.1996, to contend that mere absence cannot be treated as an act of grave misconduct and the punishment of dismissal can only be imposed where the police officer is unfit to remain in service.

The judgments being relied upon by the learned counsel for the appellant-plaintiff are not applicable in the facts and circumstances of the present case. Reliance upon judgment in ***Ex. Constable Malkiat Singh's case (supra)***, cannot be accepted in view of the judgment of the Division Bench in ***Ex. Constable Jagan Singh's case (supra)***, according to which, for unauthorized absence, punishment of dismissal can be imposed. The judgment being cited in ***Dhan Singh's case (supra)***, cannot be made applicable in the facts and circumstances of the present case for the reason that once it has already come on record that the appellant-plaintiff was an habitual absentee, he was not fit to be retained in service. In respect of the judgment in ***Satish Kumar's case (supra)***, the same is not applicable for the reason that the same deals with the appointment of an Enquiry Officer, which is not the case in hand. The judgment being cited in ***Gurmukh Singh's case (supra)***, is also not applicable as in ***Gurmukh Singh's case (supra)***, the dismissal from service was without permission or holding an

enquiry, which is not the case in hand. The judgment in *Ex. Constable Balwant Singh's case (supra)*, is also not applicable as in *Balwant Singh's case (supra)*, before the Enquiry Officer, the admission in the hospital for undergoing operation for Ulcer was proved, whereas the contention being raised that the appellant-plaintiff remained ill, was not be proved in the facts and circumstances of the present case. The judgment in *Jaswant Singh's case (supra)*, is not applicable as the period of absence was much less as compared to the present case.

Keeping in view the above, no ground is made out for interference by this Court with the findings recorded by the lower appellate court in the appeal filed by the appellant-plaintiff.

Accordingly, the present regular second appeal is dismissed.

March 23, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No