

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

**(101) CM-8102-C-2022 and
CM-8104-C-2022 in/and
RSA-4732-1999
Date of Decision : February 27, 2023**

Fateh Singh .. Appellant

Versus

State of Haryana and others .. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sanjay Mittal, Advocate, for the applicant-appellant.

Ms. Vibha Tewari, Assistant Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-8102-C-2022

Present application has been filed for impleading legal representatives of appellant Fateh Singh, who unfortunately died on 21.04.2021, during the pendency of the present appeal.

Notice of the application to the counsel opposite.

Ms. Vibha Tewari, learned Assistant Advocate General, Haryana, who is present in the Court, accepts notice on behalf of the respondents-State. She raises no objection for the grant of prayer as raised in the present application.

Keeping in view the averments made in the application, which are duly supported by an affidavit, present application is allowed. Legal heirs of the appellant-Fateh Singh, the details of whom are given in para 4 of the application, are allowed to be impleaded in the present appeal and the

amended memo of parties attached with the present application is taken on record.

CM-8104-C-2022

Present application has been filed for fixing the actual date of hearing of the main appeal.

Notice of the application to the counsel opposite.

Ms. Vibha Tewari, learned Assistant Advocate General, Haryana, who is present in the Court, accepts notice on behalf of the respondents-State.

As the present RSA relates to the year 1999, learned State counsel raises no objection for the grant of prayer as raised in the present application.

Keeping in view the joint request of learned counsel for the parties, the application is allowed and the main RSA is taken up for hearing today.

RSA-4732-1999

In the present Regular Second Appeal, the challenge is to the judgment and decree of the trial Court dated 13.02.1992 as well as to the judgment of the lower Appellate Court dated 19.08.1999 by which, the suit filed by the appellant-plaintiff challenging the order of dismissal was dismissed and the appeal filed against the said decision has also been dismissed.

Certain facts needs to be mentioned for the appreciation of facts in correct perspective.

The appellant was appointed as a Constable in the un-divided

Punjab Police on 25.11.1962. After the creation of the State of Haryana, the appellant was allocated in the State of Haryana. In the year 1979, an FIR was registered against the appellant under Section 409 and 506 of the IPC and keeping in view the said FIR, the appellant was placed under suspension. While on suspension, the appellant applied for leave on 22.04.1983 on account of marriage of his daughter which permission was granted to him. Unfortunately, the marriage could not take place as the bridegroom who was in Army, could not get leave sanctioned and the marriage was re-scheduled to be held after few days. Keeping in view the re-scheduling of marriage of his daughter, the appellant applied for extension of leave for another ten days but no intimation was received by him of the non-acceptance of the said extension and appellant was treated as absent from duty and a charge-sheet was issued to him on 17.03.1983 in which charge-sheet, the only allegation was that appellant remained absent from the duty without authority for a period of 49 days.

The enquiry proceedings were initiated against the appellant-plaintiff and ultimately on proving of the charge of 49 days absence from duty, the appellant-plaintiff was dismissed from service vide order dated 30.08.1983 i.e. after 21 years of service. The said order of dismissal was challenged by the appellant before the Civil Court, which suit was dismissed vide order dated 13.02.1992 on the ground that once there was a charge of absence from duty, which has been duly proved, the Civil Court has no right to go into the punishment awarded despite the fact that it was noticed that in 21 years of service of the appellant-plaintiff, there was no other blemish except the said absence of 49 days.

Feeling aggrieved against the decision of the trial Court, the appellant approached the lower Appellate Court by filing an appeal, which also came to be dismissed on 19.08.1999, hence, the Present Regular Second Appeal.

Learned counsel for the appellant-plaintiff argues that in the present case, the appellant had 21 years of service to his credit and there was no other allegation of any misconduct apart from allegation of 49 days absence and that too while he was under suspension due to a criminal case pending against him in which criminal proceedings, the appellant had already been acquitted, passing an order of dismissal without considering 21 years of service to the credit so as to take away even the pensionary benefits for which the appellant had become entitled for, is not at all commensurate to the charge alleged and proved, hence, the judgments of the Courts below which have been passed dismissing the suit as well as the appeal filed by the appellant-plaintiff, are perverse and not in consonance with the settled principle of law, has not been taken into account as a valid argument while passing the judgments and decrees respectively.

Learned counsel for the respondents, on the other hand, submits that keeping in view the settled principle of law settled by the Coordinate Bench of this Court in ***RSA No.2248 of 2014 titled as Swaran Singh vs. State of Punjab and another, decided on 08.09.2015***, once an Officer has remained absent for a period of one year, the misconduct relating to absence is good enough to dismiss the employee from the service.

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

The fact which needs to be noticed before answering the question of law raised in the present appeal is that at the time when the appellant sought leave, he was already under suspension and it was the Department who had kept the appellant-plaintiff away from discharging the active duties at the relevant time. Hence, the absence of the appellant is to be adjudged keeping in view the facts and circumstances at the relevant point of time and whether the said absence will amount to such a grave misconduct so as to impose a punishment of dismissal so as to even take away the pensionary benefits.

It is a settled principle of law that while on suspension, an employee does not discharge the active duties and he/she only was to mark his/her presence at the headquarter concerned. It is also a conceded position that keeping in view the registration of an FIR, the appellant was under suspension and it was during the said suspension period in order to do the preparation with regard to the marriage of his daughter, the appellant had sought leave, which was allowed. Unfortunately, as the marriage could not be solemnized as fixed, the appellant-plaintiff sought further extension of leave, which was neither declined nor accepted. Keeping in view the fact whether, an employee, he was under suspension and not discharging the active duties at the relevant time, , the prayer for extension of leave and that too relating to the marriage of his daughter, will be treated as intentional absence from duty without any valid justification so as to entail the extreme punishment of dismissal from service.

In view of the fact that the appellant was not discharging the active duty at the relevant time, it cannot be said that 49 days absence which

had only occurred while under suspension due to the non-acceptance of extension in leave, cannot be treated as gravest act of misconduct so as to entail the punishment of dismissal from service.

Further, it is a conceded position that the application seeking extension in leave, though not accepted but was also not declined. In the said circumstances when the appellant was already under suspension and was availing leave and had applied for extension of leave, treating the appellant absent from duty so as to entail the punishment of dismissal, is too much to ask for. It was upon the respondents also to decline the request for extension in leave, which concededly was not done. In the facts and circumstances of the present case, non-extending the leave which was already granted by the appellant, cannot be treated as gravest act of misconduct in the facts and circumstances of the present case.

Further, question arises is whether in the facts and circumstances of the present case, the punishment imposed keeping in view the charges alleged and proved, is shocking or not so as to need the judicial intervention. It is a settled principle of law that the imposition of the punishment is the job of the employer but the Court can intervene but only in case the punishment imposed is too shocking keeping in view the facts and circumstances of a particular case.

In the present case, concededly at the time of dismissal of service, appellant had 21 years of service to his credit and was entitled for the pensionary benefits. It is also a conceded position that in entire 21 years of service, there was no blemish upon the conduct of the appellant. The said absence in question, that too while under suspension, keeping in view the

registration of an FIR, in which FIR ultimately the appellant was acquitted, whether the imposition of punishment of dismissal so as to even take away the pensionary benefits, will be a shocking and will be disproportionate to the charges alleged and proved. In case, the respondents were of the view that the appellant, keeping in view the allegations alleged and proved, is not a fit person to be retained in service, he could have been compulsorily retired so that he could have got the pensionary benefits for the unblemished service which he had already rendered with the respondents.

For the said view, a reliance can be placed upon the judgment of the Coordinate Bench of this Court in ***CWP No.11500 of 1997 titled as Satbir Singh Vs. The Director General of Police, Haryana and others, decided on 11.01.2013*** wherein, settled principle of law with regard to the jurisdiction of the Court to intervene qua the quantum of service was discussed and held that where, an employee had 13 years of service to his credit at the time of dismissal and where it was found that employee concerned was not a habitual absentee, the punishment of dismissal was modified to that of compulsorily retirement.

Reliance can also be placed upon the Coordinate Bench of this Court in ***CWP No.6211 of 1995 titled as Rameshwar Dayal vs. State of Haryana, decided on 17.08.1999*** wherein, the length of service of an employee not taken into account while passing the order of dismissal was held to bad in law.

The judgments being relied upon by the respondents-State in ***Swaran Singh's case (supra)***, the same cannot be made applicable in the facts and circumstances of the present case.

The distinction can be made out between the case of *Swaran Singh's case (supra)* and the appellant herein that the appellant was already under suspension and kept away from discharging the active duties by the respondents themselves at the relevant time when he was dismissed from service, hence, he was not discharging the active duties so as to create indiscipline with regard to the absence and that too when he had already sought extension of already granted leave for the marriage of his daughter, which was not declined.

The facts in *Swaran Singh's case (supra)* are entirely different as compared to the case of the appellant, so as to apply the same in the present case.

Keeping in the view the above, the judgment of the trial Court dated 13.02.1992 as well as judgment of the lower Appellate Court dated 19.08.1999 are set aside being perverse to the settled principle of law by ignoring the length of service of the appellant while examining the impugned order of dismissal.

Though, this Court would have remanded back the matter to the State authorities to pass a fresh order so as to impose appropriate punishment upon the appellant keeping in view the gravity of offence and number of years of service to his credit but unfortunately, the appellant has already died during the pendency of the present Regular Second Appeal. Once, the appellant has already died, no justifiable reason comes to the mind for remanding the case back and it will be a fit case that this Court, in the exceptional facts and circumstances of the present case, modify the punishment imposed so that the same is commensurate to the allegations

alleged and proved.

Keeping in view the fact that there was only 49 days absence against the appellant and that too when he was under suspension and was not under active duty coupled with the fact that at the time of the said absence, the appellant has already been granted approved leave, extension of which was availed without any approval and there is no other blemish in the entire service career of the appellant, the punishment of dismissal is modified with that of compulsorily retirement from the date of passing of the order of dismissal dated 30.08.1983. The appellant is held entitled for the benefits for the service already rendered in accordance with law/rules governing the service.

The respondents are directed to compute the pensionary benefits, the appellant will be entitled for upon imposition of punishment of compulsorily retirement. Let the benefits be computed and be extended to the legal heirs as per service law. The appellant will also be entitled for the arrears of the pensionary benefits and family pension for which the appellant and his legal heirs will be entitled for.

The present Regular Second Appeal is allowed in above terms.

In view the facts and circumstances of the present case, as the order of dismissal has been modified now by this Court, the prayer of the appellant seeking the grant of interest is not found feasible to be extended and the same is declined.

February 27, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes