

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(256)

RSA-3722-2019 (O&M)

Date of Decision : March 23, 2023

Ex. Constable Surender Singh

.. Appellant

Versus

Haryana State and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Surinder Kumar Daaria, Advocate, for the appellant.

Mr. Krishan K. Chahal, Addl. A.G., Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

Present Regular Second Appeal has been filed against the judgment and decree of the Court below by which, the order passed by the State dated 20.08.2007 dismissing the appellant-plaintiff from service, has been upheld and the civil suit filed by the appellant-plaintiff has been dismissed by the trial Court vide judgment and decree dated 17.01.2018 and even the appeal preferred by the appellant-plaintiff has also been dismissed by the lower Appellate Court on 24.01.2019.

Learned counsel for the appellant raised a plea that his 23 years of service has not been kept in mind by the authorities concerned while imposing the punishment of dismissal and the said argument raised before the Courts below has not been appreciated in a manner required, hence, the

impugned order dated 20.08.2007 dismissing the appellant-plaintiff from service along with the judgment and decrees of the Courts below are liable to be set aside.

In this regard, it may be noticed that the appellant is a member of disciplined force. The allegation of absence from service for more than 11 months and that too without any valid justification, cannot be treated as such kind of misconduct so as to entail lesser punishment than the one imposed by the impugned order dated 20.08.2007.

The Hon'ble Supreme Court of India in ***Civil Appeal No.9997 of 1995 titled as State of U.P. vs. Ashok Kumar Singh, decided on 10.11.1995***, has held that if a member of disciplined force absents himself from duty without the grant of sanctioned leave, it will amount to grave misconduct. 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.”

Qua the said argument, it may be noticed that 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, it has been held that the absence is a grievous misconduct and the order of dismissal 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

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, 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 from service and that too unauthorizedly. 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 absence 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 disproportionate to the charges alleged and proved. Hence, on this account also, no interference is called for by this Court.

No other argument was raised.

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.

CM-10107-C-2019

As the main appeal has been dismissed, present application also stands dismissed.

March 23, 2023*harsha***(HARSIMRAN SINGH SETHI)****JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No