

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(102+285)

CM-4133-C-2023 in/and
RSA-3661-2001 (O&M)
Date of Decision : May 30, 2023

State of Punjab and others

.. Appellants

Versus

Jaskaran Singh

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Gurpreet Singh, Additional Advocate General, Punjab,
for the appellants.

Mr. Mahir Sood, Advocate, for the respondent.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-4133-C-2023

As prayed for, the application is allowed.

Annexures A-1 to A-6/T are taken on record.

RSA-3661-2001

1. In the present Regular Second Appeal, the challenge is to the order dated 27.02.2001 passed by the lower Appellate Court by which, the judgment and decree of the trial Court dated 11.05.1999 has been set aside and the suit filed by the respondent-plaintiff has been allowed.

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

3. The respondent-plaintiff was working as a Constable in the Punjab Police and was posted in Police Lines, Majitha. There was a criminal case which was registered against him while being posted in Amritsar and he was suspended from service on 04.10.1995.

4. It may be noticed that prior to the order of suspension, the respondent-plaintiff was not performing his duties properly and remained absent without authority starting from 22.02.1995. Keeping in view the unauthorized absence of the respondent-plaintiff, disciplinary proceedings were initiated and ultimately, after the allegation of unauthorized absence was proved against the respondent-plaintiff, an order dated 06.12.1995 was passed dismissing him from service. Departmental appeal was preferred against the said order of punishment, which was also dismissed by the appellate authority vide order dated 23.07.1996 and ultimately, the respondent-plaintiff filed a civil suit challenging the order of punishment as well as order passed in appeal.

5. The trial Court keeping in view the facts and evidence which came on record, dismissed the suit of the respondent-plaintiff vide order dated 11.05.1999. Feeling aggrieved against the said order of the trial Court, the respondent-plaintiff filed an appeal before the lower Appellate Court and the lower Appellate Court has set aside the judgment and decree of the trial Court and allowed the suit filed by the respondent-plaintiff vide judgment and decree dated 27.02.2001 by placing reliance upon the judgement of this Court in ***Munshi Ram vs. The State of Haryana and others, 1991 (2) RSJ 345***. Hence, the present Regular Second Appeal.

6. It may be noticed that present Regular Second Appeal was

decided on merits by the Coordinate Bench of this Court vide order dated 10.10.2007, which decision was challenged by the respondent-plaintiff before the Hon'ble Supreme Court of India in Civil Appeal No.5071 of 2009 titled as Jaskaran Singh vs. State of Punjab, decided on 04.08.2009 and the judgment of this Court dated 10.10.2007 was set aside on the ground that before passing the order on merit, substantial question of law was not framed, which is must as per law.

7. Learned counsel for the appellants-State submits that in the present appeal, substantial question of law which arise is whether, the respondent-plaintiff is bound to remain present in the police lines during the period of suspension keeping in view of provisions of Rule 16.21 of Punjab Police Rules, 1934, Vol.II and whether or not absence from duty during the period of suspension is a grave act of misconduct in view of the law laid down in 1998 (2) SCT 30.

8. Learned counsel for the respondent-plaintiff agrees to the submission made above by the learned counsel for the appellants-State.

9. Both the question of law which have been framed hereinbefore, are being decided jointly.

10. Learned counsel for the appellants-State argues that the lower Appellate Court while setting aside the judgment of the trial Court ignored the settled principle of law, as settled by the Division Bench of this Court in ***RSA No.273 of 1996 titled as The State of Punjab and another vs. Constable Daljit Singh, decided on 21.01.1998.*** Learned counsel for the appellants-State further argues that after considering the judgment in ***Munshi Ram's case (supra)***, the Division Bench while deciding RSA

No.273 of 1996 held that the relevant provisions were not brought to the notice of the Court when the *Munshi Ram's case (supra)* was decided hence, even when a member of disciplined force is suspended, he is required to attend the office and the absence during the period of suspension is to be treated as unauthorized absence for which the punishment can be imposed by treating the said absence to be gravest act of misconduct, hence, the finding recorded by the Lower Appellate Court is contrary to the settled principle of law, as settled in *Constable Daljit Singh's case (supra)*, hence, is liable to be set aside.

11. Learned counsel for the respondent-plaintiff, on the other hand, submits that once the respondent-plaintiff had already been suspended, he was not required to attend the office hence, treating the said absence of the respondent especially in view the fact that he was not required to perform the duties during the period of suspension, same cannot be treated as gravest act of misconduct hence, the judgment and decree of the lower Appellate Court dated 27.02.2001 is perfectly valid and legal and is liable to be upheld.

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

13. The only question which arise in the present case is whether the respondent-plaintiff was under obligation to attend the duties even under the suspension period or not and absence from duty during suspension can be treated as gravest misconduct so as to impose punishment of dismissal.

14. It may be noticed that the lower Appellate Court has passed the order dated 27.02.2001 only by relying upon the judgment in *Munshi*

Ram's case (supra) according to which judgment, it was held that during the suspension period, the employee was not under obligation to perform the duties and therefore, no allegation of unauthorized absence can be alleged against the said employee.

15. Further, the judgment was passed by the lower Appellate Court on 27.02.2001 by placing reliance upon the judgment in **Munshi Ram's case (supra)** whereas on the said date, the Division Bench of this Court in **Daljit Singh's case (supra)** had already considered the said judgment in **Munshi Ram's case (supra)** and over ruled the same by holding that law settled in **Munshi Ram's case (supra)**, is without going through the actual provisions of the Punjab Police Rules including Rule 16.21. The Division Bench of this Court has already held that even while under suspension, an employee remains on active service and is being paid subsistence allowance and hence, he/she is liable to attend the police lines and cannot absent himself/herself. The relevant paragraph of the judgment in **Daljit Singh's case (supra)** is as under:-

6. It is apt to notice the relevant provisions of the rule. Clauses (1) and (2) may be usefully re-produced. These provide as under :-

(1) A police officer shall not by reason of being suspended from office cease to be a police officer. During the term of such suspension the powers functions and privileges vested in him as a police officer shall be in abeyance, but he shall continue to be subject to the same responsibilities, discipline and penalties and to the same authorities, as if he had not been suspended.

(2) A police officer under suspension shall be transferred to the lines, if not already posted there. He shall attend all roll

calls and shall be required to perform such duties and to attend such parades as the Superintendent may direct; provided that he shall not perform guard duty or any other duty entailing the exercise of the powers or functions of a police officer; shall not be placed on any duty involving the exercise of responsibility, and shall not be issued with ammunition, A police officer under suspension shall ordinarily be confined to lines when off duty, but shall be allowed reasonable facilities for the preparation of his defence. When transferred to the lines under this rule Lower Subordinates shall deposit their belts and Upper Subordinates their revolvers, belts and swords with the Lines Officer."

7.7. A perusal of the above provisions shows that even on suspension a police officer does not cease to be "a police officer". Only his powers, functions and privileges are held in abeyance. He continues to be subjected to the same "responsibilities, discipline and penalties.....as if he had not been suspended." Still further, Clause (2) makes it incumbent on the police officer "to attend all roll calls and perform such duties and to attend such parades as the Superintendent may direct." He has to be ordinarily "confined to lines when off duty.....When transferred to the lines.....Lower Subordinates shall deposit their belts....." The rule is clear and categorical. It requires a constable to remain present in the lines. He has to attend to roll calls and to perform such duties as may be assigned to him. He is required to attend parades. The purpose of this provision is obvious. A member of the disciplined force is required to abide by the discipline of the service. He has to remain physically fit. With this purpose in view, the rule making authority has categorically made a provision to ensure that he does not get lethargic by sitting at his house. He must remain present and continue to follow the normal routine. In case the constable does not abide by the

discipline of the force as contemplated under the provisions of Rule 16.21, he is liable to be treated as absent from duty. In this situation, the contention raised on behalf of the plaintiff-respondent that during the period of suspension he was not bound to remain present in the lines and as such could not have been treated as absent from duty, cannot be sustained.

8. XXXX XXXX XXXX

9. XXXX XXXX XXXX

10. In view of the above, it is clear that according to the provisions of Rule 16.21, the respondent was required to be present in the police lines. He did not abide by the mandate of the rule. Consequently, the charge of misconduct was fully proved against him.”

16. Learned counsel for the respondent-plaintiff has not been able to rebut that the reliance being placed by the lower Appellate Court in ***Munshi Ram's case (supra)*** was not well founded keeping in view the fact that the said judgment had already been clarified by another Division Bench while passing order in ***Daljit Singh's case (supra)*** hence, the basis on which the lower Appellate Court allowed the civil suit of the respondent-plaintiff by setting aside the judgment and decree of the trial Court, is perverse to the settled principle of law settled by the Division Bench in ***Daljit Singh's case (supra)***.

17. Not only this, even subsequent to the order passed by the Division Bench of this Court in ***Daljit Singh's case (supra)***, another Division Bench of this Court while passing order in ***CWP No.13517 of 1992 titled as Ex. Constable Jagan Singh vs. Director General of Police, Haryana, decided on 16.09.2008***, held that an employee who is under suspension and has been transferred to the police lines, is obliged to attend

roll calls and perform such duties and such parades as Superintendent may direct and the judgment in ***Munshi Ram's case (supra)*** cannot hold the field keeping in view the various judgments of Hon'ble Supreme Court of India. Law settled in ***Jagan Singh's case (supra)***, clearly covers the case against the respondent-plaintiff. The relevant paragraphs of the judgment in ***Jagan Singh's case (supra)*** is as under:

“11. A perusal of the above Rule would show that the Police Officer during suspension shall be subject to the same responsibility, discipline and penalties and to the same authorities as any other Police Officer. However, the powers, functions and privileges vested in him as a Police Officer shall be held in abeyance. On suspension, he shall be transferred to the Lines and is obliged to attend all roll calls and perform such duties and to attend such parades as the Superintendent may direct but he is not to be assigned guard duty or any other duty entailing the exercise of the powers or functions of a police officer. He shall not be issued with ammunition nor placed on any duty involving the exercise of responsibility and shall ordinarily be confined to Lines. All this goes to show that a police officer when put under suspension, is under the control and discipline of the authority under whom he is placed. He is required to be confined to lines and cannot move about without any intimation.

12. Physical fitness is an essential requirement for a police officer with special emphasis on discipline. The Rules governing the service while providing for them itself emphasised the importance attached to this aspect as well. A police officer under suspension is, thus, required to attend the parades as this instills in him the basic requirement of discipline and ensures physical fitness. The Rules do state that apart from attending the roll calls and parades, the suspended

officer is required to perform such duties as may be assigned to him except for the nature of duties specified in the Rules itself. A Police Officer under suspension is paid subsistence allowance during the period of suspension as an interim measure and may be granted full salary and allowances normally paid to him in case of exoneration. The suspended employee cannot merely because full wages are not paid during the period of suspension claim that he cannot be called upon to attend the roll call, parade or perform such duties as may be assigned to him. The intent and purpose of Rule 16.21 is in consonance with the requirement of service and therefore, cannot be said to be ultra vires,

13. XXXX XXXX XXXX XXXX

14. *The Hon'ble Supreme Court having held what has been reproduced above, the two Division Bench judgments of this Court in HC Munshi Ram's case (supra) and Om Parkash's case (supra), cannot hold the field and the contention of the counsel for the petitioner that the absence from duty during the period of suspension does not amount to misconduct cannot be sustained.*

15. *In the light of the judgment of the Hon'ble Supreme Court in Dharam Singh's case (supra), there is no room for any doubt that the suspended Police Officer is required to attend the roll call and be available to the authorities to perform such duties as he may be required to discharges, including attending all parades etc. meaning thereby that an employee cannot abstain from duty merely on account of the fact that he is under suspension. The absence from duty even during the period of suspension amounts to misconduct and therefore, justifies an appropriate punishment under the 1934 Rules. The questions as formulated above are answered accordingly.*

18. Keeping in view the above, the substantial question of law

raised in the present appeal is answered in the favour of the appellants-State and against the respondent-plaintiff so as to declare that even during the period of suspension, the respondent-plaintiff was under obligation to attend the duties in the police lines and remaining absent from duty amounts to misconduct for which misconduct, the appellants-State was well within its jurisdiction to take disciplinary action after proving the allegations.

19. In view of the above, the judgment and decree of the lower Appellate Court dated 27.02.2001 is set aside being perverse to the settled principle of law noticed hereinbefore. The judgment and decree of the trial Court dated 11.05.1999 is restored and the suit filed by the respondent-plaintiff is dismissed.

20. The present Regular Second Appeal is allowed in above terms.

CM-852-C-2013

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

Any other civil miscellaneous application, if pending, is disposed of as such.

May 30, 2023

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No