

CM-3585-C-2023 in/&
RSA-3627-2006 (O&M)

2023:PHHC:055844

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-3585-C-2023 in/&
RSA-3627-2006 (O&M)
Date of Decision :20.04.2023

Haryana State through Collector Gurgaon
District Gurgaon and others

..Appellants

Versus

Sukhbir Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Vibha Tewari, AAG, Haryana for the appellants-State.

Mr. Aditya Yadav, Advocate for the respondent.

* * *

Harsimran Singh Sethi, J. (Oral)

CM-3585-C-2023

Present application has been filed by the applicant-respondent for fixing the main regular second appeal at an actual date of hearing.

Keeping in view the averments made in the application, the application is allowed. Main regular second appeal is taken up for hearing today itself.

CM-9112-C-2006

The present application has been filed for condonation of delay of 128 days in filing the present appeal.

Notice of the application was issued to the respondents.

No reply to the application has been filed.

Keeping in view the averments made in the application, which are duly supported by an affidavit, the application is allowed. Delay of 128

days in filing the present appeal is condoned.

RSA-3627-2006

Present regular second appeal has been filed by the appellant-State challenging the judgment and decree dated 07.02.2006 passed by the lower Appellate Court by which, the judgment and decree dated 29.04.2005 passed by the trial Court has been set aside and the suit filed by the respondent-plaintiff has been allowed.

Certain facts need to be noticed for the correct appreciation of the issue in hand.

Respondent-plaintiff joined the department of Haryana Police in the year 1988. While performing the duties on the post of constable, it has already come on record that on various occasions, the respondent-plaintiff remained absent from duty without authorization and has also been punished for the said misconduct of unauthorized absence.

On 30.09.1999, respondent-plaintiff was transferred from Police Station, Kosli to Police Station, Rewari and was also relieved but he did not join his duty at Police Station Rewari and remained absent willfully. He reported to the Police lines on 26.10.1999 after a period of 25 days and 14 hours. Thereafter again, he absented himself from duty on 02.11.1999 and reported back only on 13.11.1999 but again absented himself immediately upon joining back and remained absent for a continuous period of 108 days up to March, 2000.

Keeping in view the total period of absence of 160 days, the competent authority decided to hold departmental proceedings against the respondent-plaintiff vide order dated 31.05.2000. Keeping in view the departmental proceedings being initiated, summary of the allegations was

sent to the respondent-plaintiff at his place of residence on 12.07.2000 but despite receiving the summary of allegations, no reply was filed by him and he did not join the departmental proceeding being conducted against him.

As respondent-plaintiff failed to associate himself in the departmental proceedings, an exparte proceedings were ordered to be conducted against him. Once again, the next date of proceeding were conveyed to him at his home on 27.11.2000 with a request to join the departmental proceedings on 29.11.2000 so as to present his defence but the said opportunity was also not availed by the respondent-plaintiff. Thereafter again, an another notice was sent to the respondent-plaintiff on 06.12.2000 so as to present his defence before the Enquiry Officer, which opportunity was also not availed by the respondent-plaintiff.

In order to give another opportunity to the respondent-plaintiff, again a request letter was sent to him on 09.12.2000 at his home that in case he wishes to submit any written defence, the same should be submitted for consideration of the Enquiry Officer, which request was though, received by the respondent-plaintiff but the said opportunity was again not availed by him.

As, despite the various opportunities respondent-plaintiff did not join the departmental proceedings, an exparte proceedings were conducted. Keeping in view the evidence which had come on record, the Enquiry Officer vide his enquiry report held the respondent-plaintiff guilty of allegations of unauthorized absence alleged against him.

Thereafter, a show cause notice was issued to the respondent-plaintiff, which was delivered at his home on 23.01.2001 so as to file the reply but no reply to the said show cause notice was submitted by the

respondent-plaintiff. Thereafter, on 09.02.2001, a letter was sent at his home to appear in person in case he has anything to say, which opportunity was also not availed by the respondent-plaintiff. It has also come on record that thereafter, certain other letters were also written to the respondent-plaintiff so as to come forward and give his defence, which opportunities were never availed by the respondent-plaintiff till he appeared before the authorities on 20.02.2001 and only requested that lenient view be taken against him.

Keeping in view the facts and circumstances of the present case as well as the allegations of absence proved against the respondent-plaintiff, punishment of dismissal from service was imposed upon him vide order dated 03.03.2001.

Against the said order, respondent-plaintiff filed an appeal before the authorities concerned, which was dismissed on 25.06.2002 and thereafter, a mercy petition was filed by him, which was also dismissed on 18.12.2002.

Order dated 03.03.2001 imposing the punishment of dismissal from service as well as order dated 25.06.2002 and 18.12.2002 rejecting his appeal as well as mercy petition along with enquiry proceedings were challenged by the respondent-plaintiff before the civil Court.

Keeping in view the evidence which had come on record, trial Court vide judgment and decree dated 29.04.2005 dismissed the suit holding that the enquiry proceedings were conducted in a manner required under rules especially, when despite grant of various opportunities, respondent-plaintiff failed to associate himself in the disciplinary proceedings especially keeping in view the settled principle of law Civil Court is not to sit in appeal as Appellate authority so as to reevaluate the evidence, which had come on

record before the enquiry officer.

Feeling aggrieved against the judgment and decree of the trial Court date 29.04.2005, respondent-plaintiff preferred an appeal before the lower Appellate Court, which appeal came to be decided on 07.02.2006. The lower Appellate Court also held that the charges alleged against the respondent-plaintiff were proved as per the evidence on record but converted the punishment of dismissal from service to that of compulsory retirement on the ground that punishment of dismissal was disproportionate keeping in view the allegation of absence from duty. Hence, the present regular second appeal by the appellant-State.

Learned counsel for the appellant-State argues that in the present case, once the punishing authority has applied his mind keeping in view the entire record of the respondent-plaintiff where he had remained absent from duty on various occasions, punishment of dismissal from service was proportionate to the charges alleged as in the disciplined forces even an unauthorized absence of one day can be treated as grievous act of misconduct.

Learned counsel for the appellant-State further submits that in the charge sheet itself it was mentioned that respondent-plaintiff remained absent from duty on various occasions and the enquiry was conducted in regards to the total absence of the respondent-plaintiff hence, the findings recorded by the lower Appellate Court that the absence from duty on all the occasions have been taken into account and that too without any valid justification, is factually incorrect as total absence period was alleged in the charge sheet hence, judgement and decree of the Appellate Court is based upon incorrect facts and is liable to be set aside.

Learned counsel for the respondent-plaintiff submits that in the present case, respondent-plaintiff had more than 10 years of service to his credit which is good enough for the grant of pensionary benefits hence, keeping in view the fact that by the time, allegations in regards to absence came into being, respondent-plaintiff had already acquired the right to claim pension, the modification of the punishment of dismissal from service to that of compulsory retirement by the lower Appellate Court is perfectly valid and legal as absence from duty cannot be treated as grievous act of misconduct in view of the Rule 16.2 of the Punjab Police Rules, 1934, which governs the aspect in question in the present case.

Learned counsel for the respondent-plaintiff further submits that Rule 16.2 of the Punjab Police Rules, 1934 has not been taken into account while passing the impugned order dismissing the plaintiff from service which act itself rendered the said order bad keeping in view the settled principle of law. Learned counsel for the respondent-plaintiff relies upon the judgment of the Division Bench of this Court in CWP-1309-2008 titled as **Dhan Singh vs, State of Haryana and others** decided on 26.05.2008 as well as CWP-9776-1994 titled as **Surinder Singh vs. State of Punjab and others** decided on 23.07.2008. Reliance is also being placed upon the judgment of the Single Bench of this Court in CWP-18916-2012 titled as **Virender Singh vs. State of Haryana and others** decided on 03.10.2013.

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

The first question which arises for determination in the present appeal is whether the lower Appellate Court could have modified the order of punishment. It is a settled principle of law that punishment which has

been imposed by the department can only be looked into by the Court in case the punishment imposed is shockingly disproportionate to the charges alleged and proved. In the present case, the charges alleged was of unauthorized absence from duty by the member of disciplined force.

Whether intermittent absence of 163 days can be treated as such which would not warrant the punishment of dismissal from service. Law on this aspect is clear. A Division Bench of this Court in CWP-8175-2005 titled as *Rajesh Kumar vs. State of Haryana and others* decided on 23.05.2005 after taking into consideration Rule 16.2 of Punjab Police Rules, 1934 held that absence for 120 days by a policeman is grievous act of misconduct hence, imposing punishment of dismissal from service for the said gravest misconduct cannot be treated to be shockingly disproportionate. Findings which have been recorded by the lower Appellate Court in the impugned order is contrary to the law settled by the Division Bench of this Court in *Rajesh Kumar (supra)*.

Further, qua the judgment of the Division Bench of this Court in *Dhan Singh (supra)* as well as *Surinder Singh (supra)* which have been relied upon by the learned counsel for the respondent-plaintiff, it may be noticed that in both the judgments, the settled principle of law settled by the Division Bench of this Court in *Rajesh Kumar (supra)* has not been taken into account. Once, a law was already settled by the Division Bench of this Court in the year 2005 that absence from duty by a policeman is a gravest misconduct and that too by considering the rule 16.2 of the Punjab Police Rules, 1934, subsequent judgments on the same aspect without considering the said law, cannot come to the rescue of the respondent/plaintiff.

Learned counsel for the respondent-plaintiff has further argues

that the claim of pension should have been considered by the authorities concerned keeping in view Rule 16.2 of the Punjab Police Rules, 1934 while passing impugned order.

It may be noticed that where a misconduct is grave in nature, service rendered by an employee even if, the same is for more than 10 years, cannot be come to the rescue so as to seek lenient punishment. Punishment has to be imposed on the basis of the gravity of the misconduct. Once the gravity of misconduct is grave, then there will be no applicability of Rule 16.2 of the Punjab Police Rules, 1934 as held by the Division Bench of this Court in Rajesh Kumar (supra) even if, the said employee has rendered 10 years of service.

The lower Appellate Court has modified the punishment imposed upon the respondent-plaintiff by the authorities concerned on the ground that the respondent-plaintiff had rendered 10 years of service, which makes him entitle for pension.

It may be noticed that as per the rules governing the service, an employee at the time of his/her retirement should have at least 10 years of service to his/her credit in order to get pension. Lower Appellate Court has gone on the assumption that as the respondent-plaintiff was having 10 years of service to his credit on the date punishment was imposed, punishment of dismissal from service has taken away his right to get pension. The said opinion of the lower Appellate Court is contrary to the rules governing the service hence, cannot be sustained.

The argument which has been raised by the learned counsel for the respondent-plaintiff that keeping in view the fact that respondent-

plaintiff had more than 10 years of service to his credit hence, a lenient view should have been taken while imposing the punishment, cannot be accepted for more than one reasons.

First of all, once there is a grave misconduct by an employee, the employer is well within its jurisdiction to impose the proportionate punishment. Merely that an employee has 10 years of service to his/her credit cannot be taken into account so as to reduce the punishment. Punishment is to be imposed keeping in view the gravity of the misconduct and not the service rendered by an employee.

Secondly, acceptance of the said argument will result in indiscipline as an honest employee working with the department but for one or the other reason could not continue in service after rendering 10 years of service and has to resign and the resignation means forfeiture of service already rendered by him/her and the said employee is not entitled for any pensionary benefits whereas, in case argument of the learned counsel for the respondent-plaintiff is accepted that lenient view should be taken while imposing punishment upon the respondent-plaintiff because he had 10 years of service to his credit will be putting an honest employee at a lower pedestal than the one who has misconducted himself/herself so as to get the pensionary benefits. This is not envisaged under the rules that an honest employee who had to resign should suffer forfeiture of his service, whereas an employee who has misconducted himself/herself should get lenient punishment so as to get all the benefits. The net result of the acceptance of the argument of the learned counsel for the respondent-plaintiff will be that no employee will like to resign from service rather will intend to commit a misconduct after rendering 10 years of service so as to make him/her eligible

for pensionary benefits, which view will be contrary to the rules framed so as to maintain discipline hence, the said argument cannot be accepted and is accordingly rejected.

Learned counsel for the respondent-plaintiff further submits that there was a reason as to why the lower appellate Court modified the punishment as the plea of the respondent-plaintiff that wife of the respondent-plaintiff was not mentally sound and needed care at the hand of the respondent-plaintiff has been accepted by the lower Appellate Court.

It may be noticed that various opportunities were given to the respondent-plaintiff by the respondent-department to come forward and explain his misconduct of absence but the respondent-plaintiff chose not to do so. Once, the respondent-plaintiff chose not to bring out certain facts during the conduct of disciplinary proceedings, the lower Appellate Court could not have taken into account the fact which was not before the authorities concerned especially to modify the punishment imposed.

Keeping in view the above, present regular second appeal is allowed. Judgement and decree dated 07.02.2006 passed by the lower Appellate Court is set aside, Judgement and decree of the trial Court dated 29.04.2005 is restored and the suit filed by the respondent-plaintiff is dismissed.

CM-9113-C-2006

Application is disposed of.

Civil miscellaneous application pending if any, is also disposed of.

April 20, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No