

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

(237)

RSA-1092-2018 (O&M)

Date of Decision : May 19, 2023

Sarabhjit Singh

.. Appellant

Versus

Punjab State and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sandeep Arora, Advocate, for the appellant.

Mr. Gurpreet Singh, Addl. Advocate General, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

1. Present Regular Second Appeal has been filed challenging the judgment and decrees of the Courts below by which, the suit filed by the appellant-plaintiff challenging the order imposing punishment dated 03.06.2006 as well as the order passed in the appeal, was dismissed by the trial Court vide judgment and decree dated 22.07.2016, which order of trial Court has been upheld by the lower Appellate Court vide judgment and decree dated 25.07.2017.

2. Certain facts may be noticed for the correct appreciation of the issue in hand.

3. The appellant-plaintiff was recruited in the Punjab Police in the year 1992. While in service, he was posted in security duty to one Baba

Ajit Singh Phulla. From the said posting, the appellant-plaintiff was

transferred to police line Tarn Taran on 11.05.2005. Despite the said order of transfer, the appellant-plaintiff did not join the duties at Police Lines Tarn Taran and he remained absent for a period of three months and twelve days. After the joining, the disciplinary proceedings were initiated against appellant-plaintiff with regard to the un-authorized absence and after conducting the disciplinary proceedings, keeping in view the fact that the allegation of unauthorized absence were proved in the enquiry, he was dismissed from service by the punishing authority on 03.06.2006.

4. Thereafter, he filed an appeal before the Deputy Inspector General of Police, Border Range, Amritsar, who set aside the dismissal order vide order dated 22.07.2006 but the Inspector General of Police issued him a show cause notice by exercising power under Rule 16.2 of the Punjab Police Rules as to why, the order passed by the Deputy Inspector General of Police, Border Range, Amritsar dated 22.07.2006 be not set aside. Ultimately, the order passed by the Deputy Inspector General of Police Border Range, Amritsar dated 22.07.2006 was set aside by the Inspector General of Police and the order passed by the punishing authority dismissing him from service was maintained.

5. Feeling aggrieved against the imposition of punishment of dismissal from service, the appellant-plaintiff filed a civil suit challenging the order passed by the punishing authority as well as by the Inspector General of Police.

6. Keeping in view the evidence, which came on record, the trial Court held that once the appellant-plaintiff has conceded the fact that the disciplinary proceedings were conducted in a manner envisaged under the

Rules, the trial Court cannot sit in an appeal over the decision of the

departmental authorities, hence, the order of punishment imposed upon appellant-plaintiff cannot be interfered with and the suit filed by the appellant-plaintiff was dismissed.

7. Feeling aggrieved against the decision of the trial Court in dismissing the suit vide judgment and decree dated 22.07.2016, the appellant-plaintiff filed an appeal and the appeal filed was also dismissed by the lower Appellate Court on 25.07.2017. Hence, the present Regular Second Appeal.

8. Learned counsel for the appellant has only raised one argument that in the present case, the appellant-plaintiff had 13 years of service to his credit upto the date when he was dismissed from service by the punishing authority on the ground of absence, hence, the said punishment is not proportionate to the charges alleged and therefore, the same is liable to be set aside.

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

10. It may be noticed that the jurisdiction to interfere with the punishment is only where the punishment imposed is totally disproportionate to the allegations alleged and the punishment imposed proved and the punishment imposed is infact shocking to the conscious of the Court.

11. In the present case, it is a conceded fact that for a period of almost three and half months, the appellant-plaintiff remained unauthorizedly absent from service and he did not join the duties after being transferred to Tarn Taran.

12. As per the settled principle of law, the un-authorized absence

from duty without leave amount to grave act of misconduct especially in respect of the member of the disciplined force.

13. As per the judgment of the Hon'ble Supreme Court of India, for the misconduct of unauthorized absence, the punishment of dismissal of service can be awarded. The reliance can be placed upon the judgment of 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***. 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."

14. Hence, once a gravest act of misconduct has been proved against the appellant, it cannot be said that the imposition of punishment of dismissal from service is disproportionate in the facts and circumstances of the present case so as to warrant any interference by this Court.

15. Further, learned counsel for the appellant submits that once the appellant had more than 13 years of service to his credit on the day when he was dismissed, he should have been compulsorily retired so that he could have become eligible for the grant of pensionary benefits.

16. 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.

17. 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 13 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 appellant-plaintiff is accepted that lenient view should be taken while imposing punishment upon the appellant-plaintiff because he had 13 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 appellant-plaintiff will be that no employee will like to resign from service rather will intend to commit a

misconduct in case he/she has rendered more than 10 years of service so as to make him/her eligible for pensionary benefits, which view will not only be contrary to the rules framed but will also create indiscipline hence, the said argument cannot be accepted and is accordingly rejected.

18. No other point was raised.

19. Keeping in view the above, no perversity in the judgments and decrees of the Courts below have been pointed out so as to warrant any interference by this Court.

20. Dismissed.

May 19, 2023

harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes