

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 5525 of 2003 (O&M)

Reserved On: 15.11.2023
Pronounced On: 05.01.2024

The State of Punjab and Others
... Appellant(s)

Versus

Sat Pal
... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Vikas Arora, Assistant Advocate General,
Punjab, for the appellant(s).

Mr. Harsh Chopra and Mr. Manoj R. Sharma, Advocates
for the respondent.

Anil Kshetarpal, J.

CM-13901-C-2003

1. For the reasons stated in the application, the same is allowed and delay of four days in filing the appeal is condoned.

RSA-5525-2003

2. The Regular Second Appeal in the States of Punjab and Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.

3. This is defendants' appeal against the concurrent findings of facts arrived at by both the Courts below while decreeing the plaintiff's suit

for the grant of decree of declaration to the effect that the order whereby he was dismissed from service and deprived him of full pay and allowances during the period of suspension by the Senior Superintendent of Police, Gurdaspur, on 09.07.1996 is illegal, invalid, erroneous, unlawful and against equity and fair play. The correctness of order passed on 25.09.1997 by the Appellate Authority was also questioned.

4. On a careful perusal of the judgment passed by both the Courts below, it is evident that the respondent was already suspended from service. He remained absent from duty without applying for leave w.e.f. 26.12.1994 (8.00 a.m.) to 14.03.1995 i.e. for a period of two months, 17 days and seven hours. After serving the charge sheet and holding a departmental inquiry with respect to the misconduct, the Disciplinary Authority ordered the respondent's dismissal from service. The First Appellate Court, while dismissing the appeal, has recorded the following findings:-

- I) Despite the repeated opportunities, the respondent did not participate in the departmental inquiry except producing the medical certificate issued by Dr.Bachittar Singh's Hospital, Pathankot.
- II) The respondent is not likely to become a good police officer.
- III) Persistent acts of absence even when the departmental inquiry is being conducted are proved.
- IV) There is substantial compliance of Sub Rule (ix) of Rule 16.24 of the Punjab Police Rules.

5. However, the First Appellate Court has upheld the judgment of

the trial Court on the following two counts:-

- i) There is infraction of Rule 16.2 of the Punjab Police Rules in the disciplinary proceedings.
- ii) The respondent's absence during the period of suspension from service cannot be made a basis to hold a departmental inquiry against him.

6. Heard the learned counsel representing the parties at length and with their able assistance, perused the paper-book along with the requisitioned record.

7. On 09.12.2004, the Court passed the following order:-

"Learned counsel for the appellant cites 1997(2) SCC 550 to contend that even during the suspension. the employee can be charge-sheeted for absence from duty under Rule 16.21 of the Punjab Police Rules.

In view of the above, the following question of law arises for consideration.

"Whether the services of the plaintiff were rightly terminated on account of his absence from duty during suspension period?"

Admitted.

Stay execution of the decree."

8. All this while, the respondent remained out of service. He was appointed as a temporary Constable on 04.08.1989. The First Appellate Court has found that consistently the respondent was in the habit of remaining absent.

9. The learned counsel representing the parties have also filed

their respective synopsis along with the gist of their arguments apart from addressing the oral arguments.

10. It shall be noted here that the Additional District Judge has relied upon a Division Bench judgment of this Court passed in ***Ex.HC Munshi Ram v. The State of Haryana and Others 1991(2) RSJ 345*** to hold that there is infringement of Rule 16.2 of the Punjab Police Rules as the Disciplinary Authority did not consider that the single act of absence from duty would not result in the gravest act of misconduct and his past service was not taken into consideration while ordering dismissal. In fact, the aforesaid view of the Division Bench has been explained by another Division Bench of this Court in ***State of Punjab v. Constable Daljit Singh 1998(4) Service Law Reporter 413***. After considering Rule 16.2 of the Punjab Police Rules, the Division Bench has held as under:-

“12. The respondent was a member of the disciplined force. No explanation whatsoever much less than a reasonable one for absence from duty was given. Still further, it was not the solitary act of indiscipline. It has been found that he had remained absent even earlier. In fact, it has been observed that he is a habitual absentee. Furthermore, a case under the Opium Act was registered against the respondent. He was undoubtedly given the benefit of doubt. Yet, he was not clearly exonerated of the charge. In view of these acts, the competent authority could have formed the opinion that the respondent was not a desirable person to be retained in a disciplined force. Still further, it cannot be said that if a member of the

*disciplined force remains absent from duty, he is not guilty of a grave act of misconduct. In fact, their Lordships of the Supreme Court have adversely commented on the conduct of a member of the disciplined force who had remained absent from duty. Reference in this behalf may be made to a decision of the Supreme Court in **State of U.P. and others v. Ashok Kumar Singh and another**, 1996(1) S.L.R. 291: 1996(2) SCT 139. It was inter alia observed by their Lordships that a police constable serves in a disciplined force which demands strict adherence to the rules and procedure more than any other department. Their Lordships disapproved the decision of the High Court that 'absence from duty would not amount to such a grave charge'. In view of this authoritative view of the Apex Court, we cannot accept the contention raised on behalf of the respondent that he was not guilty of a grave misconduct so as to warrant the imposition of extreme penalty of dismissal from service."*

11. This Court has also carefully gone through the judgment passed by the Supreme Court in **State of U.P. v. Ashok Kumar Singh and Another (1996) 1 SCC 302**. The Supreme Court has overruled the decision of the High Court that "absence from duty would not amount to such a grave charge".

12. In this case, the First Appellate Court has itself found that the respondent is not likely to become a good police officer.

13.

The First Appellate Court has also erred with respect to the

second reason in view of the judgment passed by the Division Bench of this Court in *Constable Daljit Singh's case (supra)*. In the aforesaid case, the judgment of the Division Bench in *Ex.HC Munshi Ram's case (supra)* has been explained and held as under:-

“6. It is apt to notice the relevant provisions of the rule. Clauses (1) and (2) may be usefully reproduced. 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."

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."

14. Another Division Bench of this Court in ***Ex. Constable Jagan Singh v. Director General of Police, Haryana Etc. 2009(3) SLR 227***, while relying upon the judgment of the Supreme Court in ***State of Punjab v. Dharam Singh (1997) 2 SCC 550***, interpreted Rule 16.21 of the Punjab Police Rules and held that a police officer, who has been suspended, is bound to attend all roll calls and to attend such parades as the Superintendent of Police may direct. The Supreme Court also interpreted Rule 16.21 of the Punjab Police Rules in the following manner:-

"4. A reading of it would clearly indicate that even during the period of suspension the police officer is required to attend to roll call and be available to the authorities. The payment of subsistence allowance, as ordered, under the suspension rule is one facet of it and his duty to be present is another. Non-payment of subsistence allowance does not entitle a delinquent officer to be absent from duty. It is his duty to claim subsistence allowance, go to the office and collect subsistence allowances and if it is not paid, necessary representation to the higher authorities and, if the grievance is not redressed, to the

appropriate forum seeking payment, may be made. But that does not mean that the delinquent officer, in the face of the express rule, can absent himself from duty. Under these circumstances, the conclusion reached by the disciplinary authority that he was willfully absent from duty is well justified."

15. In view of the aforesaid position, both the reasons assigned by the First Appellate Court are erroneous.

16. Even otherwise, it is evident that the respondent used to remain absent from duty. He led no evidence in the departmental inquiry to prove that he was admitted in Dr.Bachittar Singh's Hospital at Pathankot. Furthermore, he never applied for leave and remained absent continuously for a period of two months and 17 days. Even during the conduct of departmental inquiry, the respondent did not participate. On the basis of the inquiry report, a show cause notice was issued to the respondent to which he submitted his reply. The Disciplinary Authority took into consideration all aspects of the matter. Moreover, the respondent only remained in service for a period of merely five years as he was appointed on 04.08.1989, whereas he was suspended in the year 1994.

17. Keeping in view the aforesaid facts and discussion, the present appeal is allowed. The judgment passed by both the Courts below are not sustainable being erroneous and hence, are set aside. It is held that the services of the respondent were correctly terminated on account of his absence from duty during his suspension period.

18. The miscellaneous application(s) pending, if any, shall stand disposed of.

January 05, 2024
“DK”

(Anil Kshetarpal)
Judge

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No