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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1798-1994

Date of decision:-13.05.2024

State of Punjab

...Appellant

Versus

Piara Lal

...Respondent

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL

Present : Mr.Brijesh, AAG, Punjab
for the appellant.

None for the respondent.

SUVIR SEHGAL, J.(ORAL)

1. State – defendant is in second appeal before this Court challenging the judgment and decree passed by the First Appellate Court.

2. Pleaded case of the plaintiff – respondent, who was working as a Constable, is that he was charge-sheeted on account of absence of duty w.e.f. 05.09.1985. A departmental inquiry was held and by order dated 19.06.1986, he was dismissed from service. He filed a suit for declaration challenging the dismissal order and prayed for consequential relief.

3. Upon notice, suit was contested by the defendants by filing a written statement wherein various preliminary submissions were made. It has been submitted that the plaintiff was placed under suspension on account of absence from duty. Various notices were



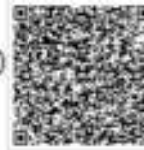
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issued to him, some of which were received by him, however, he did not come forward to submit any reply to the show-cause notices neither did he join the departmental inquiry and he was proceeded against ex-parte. It was submitted that the punishment order was passed after adhering to the service regulations. Plaintiff filed a replication reasserting the averments of the plaint. Issues were framed and after the parties led evidence, trial Court by judgment and decree dated 28.11.1991 dismissed the suit. Upon challenge by the plaintiff, the First Appellate Court reversed the findings of the trial Court and by judgment dated 08.12.1993, while setting aside the dismissal order, reduced the punishment imposed upon the plaintiff – respondent to four increments with cumulative effect from the date of the passing of the punishment order. It is in this background that the defendants are in appeal before this Court.

4. State counsel has argued that the plaintiff was enlisted as a Constable on 13.03.1972 and on account of absenteeism, he was proceeded against departmentally, which culminated in the passing of the dismissal order. While supporting the dismissal order, he has urged that the First Appellate Court has exceeded its jurisdiction in interfering in the dismissal order and quantum of a punishment.

5. I have heard the State counsel and considered his submissions, besides examining the record with his able assistance.

6. There is substance in the argument of the State counsel. It is the settled legal position that the civil court cannot substitute its own view to that of the Disciplinary Authority on the nature of punishment to



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be imposed upon the delinquent official. There is no justification for the Court to interfere with the punishment by holding that the punishment has not been imposed in compliance of the statutory rules. Reliance in this regard is placed on the judgment of the Supreme Court in *State of U.P. and others Versus Ashok Kumar Singh and another (1996) 1 SCC 302* and *State of Punjab Versus Bakshish Singh (1997) 6 SCC 381* and *Regional Manager, Rajasthan State Road Transport Corporation Versus Sohan Lal (2004) 8 SCC 218*. Impugned judgment, therefore, cannot be sustained on this short ground alone.

7. Although there is no representation on behalf of the respondent, who as per the affidavit filed by the appellants has expired on 21.08.2014, but by virtue of power vested in the Appellate Court under Order 41 Rule 33 CPC, this Court deems it imperative to examine the punishment order Ex.P5. The plaintiff – respondent has been dismissed from service under Rule 16.2 (1) of the Punjab Police Rules, 1934, (for short “the Rules”), which deserves to be noticed and is reproduced hereunder:

“16.2 Dismissal. - (1) Dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service. In making such an award regard shall be had to the length of service of the offender and his claim to pension.”

8. An examination of the above reproduced provision shows that it provides for dismissal from service for gravest acts of misconduct

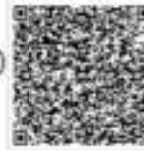


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or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service. Under the former part of the provision, gravest acts of misconduct entail dismissal, whereas under the latter part of the provision, it is the cumulative effect of continued misconduct, which invites the punishment of dismissal. In both the cases, incorrigibility of the delinquent official and complete unfitness for police service has to be established. Due regard has also to be paid to the length of service of the delinquent as well as his claim to pension.

9. This provision came up for interpretation before this Court in *Ex.Constable Malkiat Singh Versus State of Punjab and others, 2012 (4) SCT 323* and it has held that the incorrigibility of the delinquent official and complete unfitness for police service has to be established and there is a rider on the award of punishment incorporated in the rule which requires the punishing authority to take into consideration the length of service of the delinquent and his claim for pension. In *Rajinder Kumar Versus State of Haryana* (CWP-16511-1997 decided on 26.05.2009) as well as in *Virinder Kumar Versus State of Punjab and others Law Finder Doc. Id # 2037241*, this Court came to the conclusion that under Rule 16.2 (1) *ibid* a delinquent official can be dismissed from service only for the gravest act of misconduct or if there is continued misconduct proving his incorrigibility and unfitness for police service. While dismissing him, it is the duty of the authority to take into account a length of service and his claim for pension.

10. When the dismissal order dated 19.06.1986, Ex.P5 is



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examined in view of the legal position, it is evident that the disciplinary authority has neither formed any opinion nor recorded any finding that the conduct of the plaintiff – respondent constitutes grievous misconduct or continued misconduct rendering him unfit to be retained in service. No doubt, the disciplinary authority has noticed that on an earlier occasion, punishment of forfeiture of two years service with permanent effect was imposed and has come to the conclusion that he is a habitual absentee, but has failed to form any opinion under rule 16.2 (1) *ibid*. Record also shows that the plaintiff was enlisted in 1972 and had put in more than a decade of service rendering him eligible for grant of pension but his claim for pension has not been considered. As the obligatory requirement of rule 16.2 (1) of the Rules has not been complied with, this Court is of the view that the dismissal order deserves to be set aside and the matter deserves to be examined again by the disciplinary authority.

11. For the foregoing reasons, impugned judgments and decrees passed by both the Courts below are set aside. The matter is remitted to the disciplinary authority to pass a fresh order in accordance with law. This exercise be carried out within a period of four months from the date of receipt of a certified copy of this Court.

12. Appeal is disposed of.

13. Pending application (s), if any, also stand disposed of.

(SUVIR SEHGAL)
JUDGE

13.05.2024

Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No