

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

216

CWP-6036-2020

Date of Decision: 08.02.2024

Manpreet Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Ramesh Sharma, Advocate
for the petitioner.

Mr. Pawan Kumar, DAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of;

(i) order dated 27.04.2010 (Annexure P-4) whereby husband of the petitioner was dismissed from service;

(ii) order dated 30.12.2014 (Annexure P-6) and order dated 26.02.2019 (Annexure P-7) whereby appeal and revision filed by the husband of the petitioner was dismissed

2. Balbir Singh-husband of the petitioner joined Punjab Police on 17.02.1988 as Constable. An FIR No.14 dated 06.02.2007 under Section 336, 188 of Indian Penal Code and Section 25 of Arms Act at Police Station Jhuneer, District Mansa was registered against the husband of the petitioner. The said FIR was registered on account of political rivalry. These circumstances led the said employee to remain absent from duty. The said

employee remained absent from duty from 04.07.2009 to 04.02.2010. On account of absence from duty for 215 days, the respondent-department initiated an inquiry against him. The Inquiry Officer in its report found him guilty of absence from duty. The Senior Superintendent of Police, Mansa vide order dated 27.04.2010 (Annexure P-4) ordered to dismiss the said employee from service. He preferred appeal against the dismissal order which came up for consideration before the Deputy Inspector General of Police, who vide order dated 30.12.2014 (Annexure P-6) dismissed his appeal. He further unsuccessfully preferred revision before the competent authority. The husband of the petitioner passed away on 03.07.2019.

3. Mr. Ramesh Sharma, Advocate submits that respondent-department initiated proceedings against husband of the petitioner alleging absence from duty for 215 days and he was dismissed considering his past record. The inquiry proceedings were conducted *ex-parte* and order of dismissal was also passed *ex-parte*. The deceased employee was distressed on account of his false implication in the FIR, thus, he could not even present his defence in the departmental proceedings. The respondent-department has power to dismiss an employee in terms of Rule 16.2 of Punjab Police Rules, 1934 (for short '**1934 Rules**'), however, power can be exercised subject to circumstances and conditions enumerated therein. The husband of the petitioner remained in service for 19 years and respondent-department without considering length of service as well as his entitlement to pension, has passed the impugned order of dismissal from service.

4. Per contra, Mr. Pawan Kumar, learned State counsel submits that husband of the petitioner is habitual offender. On several occasions, the

petitioner remained absent from duty and he was subjected to punishments. The disciplinary authority considering past record of the deceased employee came to a conclusion that he deserves to be dismissed from service.

5. I have heard the arguments of learned counsels for both sides and perused the record with their able assistance.

6. The husband of the petitioner was dismissed from service in terms of Rule 16.2 of 1934 Rules, thus, it inevitable to look at said Rules, which is reproduced as below:-

“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.

(2) If the conduct of an enrolled police officer leads to his conviction on a criminal charge and he is sentenced to imprisonment, he shall be dismissed :

Provided that a punishing authority may, in an exceptional case involving manifestly extenuating circumstances for reasons to be recorded and with the prior approval of the next higher authority impose any punishment other than that of dismissal:

Provided further that in case the conviction of an enrolled police officer is set aside in appeal or revision, the officer empowered to appoint him shall review his case keeping in view the instructions issued by the Government from time to time in this behalf.

(3) When a police officer is convicted judicially and dismissed, or dismissed as a result of a departmental enquiry, in consequence of corrupt practices, the conviction and dismissal

and its cause shall be published in the Police Gazette. In other cases of dismissal when it is desired to ensure that the officer dismissed shall not be re-employed elsewhere, a full descriptive roll, with particulars of the punishments, shall be sent for publication in the Police Gazette.”

7. The question of interpretation of Rule 16.2 of 1934 Rules came before the Apex Court in ***State of Punjab v. Ram Singh, (1992) 4 SCC 54*** wherein it has been held that an officer may be dismissed in two situations i.e. on account of gravest misconduct or cumulative effect of continued misconduct. The Court has further held that in case of habitual absence from duty, keeping in view length of service, an officer may be compulsorily retired. The relevant extracts of the said judgment read as:

“7. Rule 16.2(1) consists of two parts. The first part is referable to gravest acts of misconduct which entails awarding an order of dismissal. Undoubtedly there is distinction between gravest misconduct and grave misconduct. Before awarding an order of dismissal it shall be mandatory that dismissal order should be made only when there are gravest acts of misconduct, since it impinges upon the pensionary rights of the delinquent after putting long length of service. As stated the first part relates to gravest acts of misconduct. Under General Clauses Act singular includes plural, “act” includes acts. The contention that there must be plurality of acts of misconduct to award dismissal is fastidious. The word “acts” would include singular “act” as well. It is not the repetition of the acts complained of but its quality, insidious effect and gravity of situation that ensues from the offending ‘act’. The colour of the gravest act must be gathered from the surrounding or attending circumstances. Take for instance the delinquent who put in 29 years of continuous length of service and had unblemished record; in thirtieth year he commits defalcation of public money or fabricates false records to conceal misappropriation. He only committed once. Does it mean that he should not be inflicted with the punishment of dismissal but be allowed to

continue in service for that year to enable him to get his full pension. The answer is obviously no. Therefore, a single act of corruption is sufficient to award an order of dismissal under the rule as gravest act of misconduct.

8. *The second part of the rule connotes the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service and that the length of service of the offender and his claim for pension should be taken into account in an appropriate case. The contention that both parts must be read together appears to us to be illogical. Second part is referable to a misconduct minor in character which does not by itself warrant an order of dismissal but due to continued acts of misconduct would have insidious cumulative effect on service morale and may be a ground to take lenient view of giving an opportunity to reform. Despite giving such opportunities if the delinquent officer proved to be incorrigible and found completely unfit to remain in service then to maintain discipline in the service, instead of dismissing the delinquent officer, a lesser punishment of compulsory retirement or demotion to a lower grade or rank or removal from service without affecting his future chances of re-employment, if any, may meet the ends of justice. Take for instance the delinquent officer who is habitually absent from duty when required. Despite giving an opportunity to reform himself he continues to remain absent from duty off and on. He proved himself to be incorrigible and thereby unfit to continue in service. Therefore, taking into account his long length of service and his claim for pension he may be compulsorily retired from service so as to enable him to earn proportionate pension. The second part of the rule operates in that area. It may also be made clear that the very order of dismissal from service for gravest misconduct may entail forfeiture of all pensionary benefits. Therefore, the word 'or' cannot be read as "and". It must be disjunctive and independent. The common link that connects both clauses is "the gravest act/acts of misconduct".*

8. A conspectus of Rule 16.2 of 1934 Rules and perusal of afore-cited judgment reveals that a police officer may be dismissed from service subject to following circumstances and conditions:

- i. If the police officer is accused of gravest misconduct; or
- ii. The cumulative effect of continued misconduct proves that police officer is incorrigible and completely unfit for the service; or
- iii. The authority passing order shall consider length of service as well as claim of pension.

9. In the case in hand, the respondent is not pleading that deceased employee was accused of gravest acts of misconduct. The case of the respondent is that deceased employee was subjected to punishment on four occasions, thus, he was incorrigible and completely unfit for police service. The deceased employee was subjected to inquiry with respect to his absence. The inquiry report indicates that gamut of the inquiry was absence from duty w.e.f. 04.07.2009 onwards, however, disciplinary authority while passing order of dismissal has considered past conduct of the deceased employee. The relevant extracts of order of dismissal are reproduced as below:

“The delinquent No.637/Mansa remained absent Hawaldar Balvir habitual because even delinquent Hawaldar of Singh being now the Balvir Singh No. 637/Mansa has been absent from duty continuously since 11.02.2010. Five years service of Hawaldar Balvir Singh No.637/Mansa have already been deducted permanently during various occasion for the charges of various absent period and four punishment of blame, two warnings and seven days punishment of drill have already been given to

him from which, it is clear that the delinquent Hawaldar is habitual of remaining absent from duties and it cannot be expected for his improvement in future. The delinquent Halwaldar has severally violated the discipline of the Police department after being remained absent continuously for long period without leave and without the permission of any competent authority, which is condemnable and punishable. So due to the charge of absent leveled against him in the departmental inquiry. while considering appropriate to punish duly proposed in the Notice No.1115/steno dated 04.04.2010, I have passed the order of dismissal from the Police department w.e.f. 27.04.2010 (A.N.) in the departmental inquiry duly completed for the charges of absent from duty continuously from the Police line i.e. 04.07.2009 to 09.08.2009 (36 days 04 hours and 30 minutes) and then again from 09.08.2009 to 04.02.2010 (179 days one hour 30 minutes) totaling to 215 days 6 hours) and his aforesaid period of absent is included/treated as non-duty period.”

10. The delinquent employee was proceeded *ex-parte*. He neither joined inquiry nor proceedings before the disciplinary authority. As per Rule 16.24(7) of 1934 Rules, a disciplinary authority may consider past service record of a delinquent employee, however, authority is bound to confront the delinquent employee with adverse service record which authority is going to rely upon. In the impugned order, it has been mentioned that a show cause notice was issued to the petitioner, however, neither the petitioner nor the respondent has placed on record said show cause notice. Both the parties have placed on record impugned order. From the perusal of impugned order, it can be culled out that past record was not considered by the Inquiry Officer. This Court cannot ignore the fact that show cause notice was never contested by deceased employee and *ex-parte* impugned order was passed. It is apt to

notice here that said employee passed away within 5 months from the date of dismissal of revision which indicates that there were all possibilities that deceased employee was either physically or mentally unfit to come forward and put forth his stand.

11. The disciplinary authority as well as appellate authority while passing impugned orders has not taken care of length of service of the deceased employee as well as his entitlement to pension. As per statement of Mr. Sharma, Advocate, made at Bar, in the Police Department an employee is entitled to pension on completion of ten years service. The deceased employee had already completed 19 years service on the date of passing impugned order thus, he has already completed qualifying service and he was eligible to pension. The respondent while passing impugned order has neither considered length of service of deceased employee nor his entitlement to pension. The authorities were bound to consider these factors while passing impugned orders because these are mandatorily required to be considered.

12. A Coordinate Bench of this Court in ***State of Punjab v. Surjit Singh, 2002(3) SLR 148***, while referring to judgment of Apex Court in ***Major G.S. Sodhi v. Union of India, 1992 (3) RSJ 502***, affirmed the order of dismissal of the petitioner therein, however, having regard to the service rendered by the petitioner, granted him liberty to make representation for the benefits which has accrued in his favour for rendering qualifying service. The relevant extracts of the judgment read as:

“9. After hearing learned counsel for the parties and perusing the case law cited, I am of the view that no interference is called for with the order of dismissal preceded by departmental inquiry wherein misconduct of absence from duty was fully proved. In the context of the Punjab Police

Rules, absence from duty could be treated as gravest act of misconduct as held by the Supreme Court in Ashok Kumar Singh's case (supra), and no doubt, it is expected and is desirable that the punishing authority expressly records a finding of this nature and also consider the past record, and also record reasons for depriving an employee of pension and reasons for imposing punishment even where the past record may be clean, the order passed by the punishing authority is not open to interference unless it can be held that the charge was not proved or the order was vitiated by mala fides or arbitrariness. The observations in the order about treating the period of absence to be leave cannot be taken to be condoning the absence but only with a view to maintain correct record. Even absence of express mention of consideration of the past record and reasons for depriving the employee of pension will not always vitiate the order nor warrant substitution of lesser punishment such as, compulsory retirement etc. by the civil Court, the scope of interference by the civil court being limited to see that the order of punishment was not passed in denial of reasonable opportunity, was not without evidence and was not mala fide or arbitrary. Where the charge was fully proved, as in the present case, order of dismissal was justified as per the law laid down by the Supreme Court in Ashok Kumar Singh's case (supra), there was no scope for interference. This being the position answer to the questions arising in this appeal have to be in favour of the appellant-State, and interference by the courts below with the order of dismissal cannot be held to be legal and valid.

10. *In Major G.S. Sodhi v. Union of India, 1992(3) R.S.J. 502 : 1994(3) SCT 335 (SC), it was observed that since the punishment of forfeiture of pension and other benefits has not been inflicted, such benefits ought to be given to the concerned employee. Following the said judgment, a Single bench of this Court in Krishan Lal v. State of Punjab, 1997(1) R.S.J. 535 observed that claim of the appellant in that case deserved to be considered sympathetically. I find that the observations made in the said case apply to the present case also.*

11. For the above reasons, this appeal is allowed, decree of the courts below is set aside and the suit filed by the respondent-plaintiff is dismissed. However, having regard to the fact that the plaintiff had rendered service of about fifteen years, he should not be deprived of pensionary and other benefits earned by him for rendering service. If the plaintiff makes a representation in this regard, the authorities will consider to grant such benefits to him and the representation, if any, made by the plaintiff will be decided within a period of three months, and benefits, if any held admissible to him shall be paid to him within three months of the disposal of the representation.

Appeal allowed.”

13. This Court deems it appropriate to notice that disciplinary authority in the impugned order has noticed previous record of the deceased employee, however, did not return finding(s) to the effect that employee was incorrigible and he was completely unfit for the police service. The deceased every time had committed offence of absence from duty. He was not involved in any criminal activity or gravest misconduct.

14. The delinquent employee has already passed away so there is no question of reinstatement. However, keeping in view the length of service rendered by the deceased employee and the fact that disciplinary authority, in the impugned order, has not taken into consideration the length of service rendered by deceased employee and his claim for pension, as mandated by Rule 16.2 of 1934 Rules, the matter is remanded to the disciplinary authority to reconsider question of entitlement of pension. It is made clear that disciplinary authority would not be swayed by the fact that by impugned orders, the deceased employee was dismissed from service.

15. It is made clear that if disciplinary authority finds that deceased employee was entitled to pension and accordingly petitioner is entitled to pension, she, as agreed, would be extended pension w.e.f. 01.01.2024.

16. Disposed of in above terms.

(JAGMOHAN BANSAL)
JUDGE

04.03.2024
anju

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>