

RSA-2448-1994

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2448-1994
Date of decision:-13.02.2024

Haryana State through the Collector, Karnal

...Appellant

Versus

Vijay Singh, Constable

...Respondent

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL

Present : Mr.Aman Bahri, Addl.A.G., Haryana
for the appellant.

Mr.Naveen Daryal, Advocate
for the respondent.

SUVIR SEHGAL, J.(ORAL)

1. State – defendant is in second appeal before this Court assailing the concurrent finding of fact recorded by both the Courts below.
2. Brief facts, may be noticed.
3. Pleaded case of Vijay Singh – plaintiff/respondent is that he was appointed as a Constable on 03.05.1974 and was placed under suspension by the order of Superintendent of Police, Karnal on

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03.03.1988. Summary of allegations was served upon him on 20.03.1989 alleging that he has remained absent from duty from 14.11.1988 to 29.11.1988. His reply was not found to be satisfactory and departmental inquiry was conducted, wherein it was found that the charge against him has been proved. On the basis of the Inquiry Report, a show cause notice, proposing punishment of stoppage of four annual increments with permanent effect was served upon him, to which he submitted reply. By order dated 29.07.1989, three annual increments payable to the plaintiff were stopped with permanent effect. Appeal filed by the plaintiff was rejected by the Deputy Inspector General of Police, Ambala Range, on 23.10.1989 and he remained unsuccessful in the revision as well as in the mercy petition. He filed a suit for declaration to the effect that the said punishment order as well as the orders passed by the appellate and revisional authorities are illegal, void, *ab initio* etc. and for restoration of all consequential reliefs. Upon being served, defendant – State filed a written statement taking various preliminary submissions. It was submitted that the respondent – plaintiff left the Headquarter without permission of the competent authority and absented himself during the suspension period. The defendant – State has submitted that the orders were passed after duly complying with the principles of natural justice and the provisions of the applicable rules.

4. After issues were framed and parties led evidence, the trial Court by judgment dated 26.10.1993 decreed the suit and set aside the orders passed by the authorities. Appeal filed by the defendant – State was dismissed by learned Additional District Judge, Karnal by judgment dated 11.05.1994, resulting in the institution of the present second

appeal by the State - defendant.

5. Mr.Aman Bahri, learned Additional Advocate General, Haryana has urged that the Courts below have erred in relying upon Rule 7.4 of CSR Vol.I, which were not applicable. He submits that the plaintiff – respondent was a Constable and his services were governed by the Punjab Police Rules and Rule 16.21, *ibid*, provides for the status and treatment of an officer under suspension. Still further, it is his contention that while decreeing the suit, the trial Court had placed reliance upon the judgment of this Court in *Ex.Head Constable Munshi Ram Versus State of Haryana and others, 1991 (6) SLR 296*, which has been distinguished by a Division Bench of this Court in *Ex. Constable Jagan Singh Versus Director General of Police, Haryana etc., 2009 (1) S.C.T. 458*.

6. On the other hand, counsel representing the plaintiff – respondent has supported the impugned judgments and decrees. It is his argument that the Rule 16.21 *ibid* requires the presence of a suspended official during a roll-call and there is nothing on record to show that that the plaintiff – respondent had absented himself at the time of roll-call.

7. I have heard counsel for the parties and considered their respective submissions.

8. The legal issue is no longer *res integra*. Rule 16.21 of Punjab Police Rules has come up for consideration before the Hon'ble Supreme Court in *State of Punjab Versus Dharam Singh, 1997 (2) SCC 550*. Noticing the rule, Apex Court has held as under:

“16.21 – Status and treatment of Officer under suspension

– (i) *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 subject to the same responsibilities, discipline and penalties and to the same authorities, as if he had not been suspended.”

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 allowance 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 wilfully absent from duty is well justified. However, on the quantum of punishment imposed, on the facts and circumstances of the case, we are of the view that instead of the removal, compulsorily retirement from service would be an appropriate punishment.”*

9. A Division Bench of this Court in *State of Punjab Versus Constable Daljit Singh, 1998 (2) S.C.T. 29* has held that the rule is clear and categorical and it requires a Constable to remain present in the lines during suspension. He has to attend the roll-call as also to perform the duties as may be assigned to him as well as attend parades. The Division Bench has categorically held that a member of a disciplined force is required to abide by the discipline of his service and he has to remain physically fit and continue to follow the normal routine. It has further been held that in case the Constable does not abide by the discipline of the force as contemplated under Rule 16.21, *ibid*, he is liable to be treated as absent from duty. In *Ex. Constable Jagan Singh's* case *supra*, another Division Bench has held that *Ex. HC Munshi Ram's* case does not hold the sanctity and turned down the argument raised on behalf of the employee that absence from duty during the period under suspension does not amount to misconduct.

10. Adverting to the facts of the present case, it has been proved by the defendant – appellant before the Inquiry Officer that the respondent – plaintiff was under suspension and during the suspension period, he had absented from duty for a period of 16 days in November, 1988. The reliance placed by the trial Court upon HC Constable Munshi Ram's case is misplaced and it stands distinguished by a Division Bench of this Court. Therefore, the findings recorded by the Trial Court and approved by the Lower Appellate Court, are liable to be reversed.

11. For the foregoing reasons, this appeal is allowed. The judgments and decrees passed by the both the Courts below are set aside and the suit filed by the plaintiff – respondent is dismissed throughout

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with no order as to costs.

(SUVIR SEHGAL)
JUDGE

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Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No