

IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH

(218)

RSA-3068-1994

Date of decision:- 22.04.2024

Ram Kumar

... Appellant

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Ajay Kumar Ghangas, Advocate for the appellant.

Mr. Sharad Aggarwal, DAG, Haryana.

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SUVIR SEHGAL, J. (ORAL)

1. Plaintiff-appellant is in second appeal before this Court challenging the judgment and decree passed by the First Appellate Court.
2. Pleaded case of plaintiff-appellant is that he joined the service as a Constable on 04.07.1976. He was served with a charge-sheet on 04.02.1987 on the allegation of wilful absence from duty and after holding an enquiry, by order dated 17.11.1987, he was dismissed from service. Appeal filed by him was dismissed by the defendants by order dated 22.04.1988. Challenging both the orders, he filed a suit for declaration, which upon notice has been contested by the defendants-respondents by filing a written statement. The stand taken by the defendants is that plaintiff remained absent from duty from 01.05.1986 to 05.08.1986 and again from 27.10.1986 to 16.11.1987. Disciplinary proceedings were initiated against

him in accordance with the rules and he was afforded a full opportunity to participate in the proceedings. On the basis of the enquiry report, penal action was taken against him. Plaintiff filed a replication re-asserting his claim. Issues were framed and after the parties led evidence, by judgment dated 27.08.1992, Trial Court decreed the suit. Appeal filed by the defendants was accepted by judgment dated 24.08.1994 and the decree passed by the Trial Court was set aside. Plaintiff-appellant is before this Court in the above background.

3. Counsel for the appellant has argued that the defendants have failed to comply with the Rule 16.2 of the Punjab Police Rules, 1934 (for short “the Rules”) as they have not considered the length of service rendered by the appellant and his claim for pension. He submits that the appellant has unfortunately expired during the pendency of the petition and his case deserves to be re-considered as he had eleven years service to his credit and an order of compulsorily retirement, instead of dismissal deserves to be passed.

4. On the other hand, State counsel has opposed the appeal and has supported the judgment passed by the First Appellate Court. He submits that the dismissal order was passed keeping in view the blemished service record of the appellant and he was found to be incorrigible and unfit for police service.

5. I have heard counsel for the parties and considered their respective submissions, besides examining the Trial Court record with their able assistance.

6. Controversy involves interpretation of Rule 16.2 (1) of the Rules (as applicable to State of Haryana) and it is reproduced as under:-

*"16.2 **Dismissal:** (1) Dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect or 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.*

*Explanation - For the purpose of sub-rule(1), the following shall, inter alia, be regarded as gravest acts of misconduct in respect of police officer, facing disciplinary action:*

- (i) Indulging in spying or smuggling activities;*
- (ii) disrupting the means of transport or of communication;*
- (iii) damaging public property;*
- (iv) causing indiscipline amongst fellow policemen.*
- (v) promoting feeling of enmity or hatred between different class of citizens of India on grounds of religion, race, caste, community or language;*
- (vi) going on strike or mass casual leave or resorting to mass absentions;*
- (vii) spreading disaffection against the Government; and*
- (viii) causing riots and the life."*

7. This rule came up for interpretation before a Division Bench of this Court in **Narinder Kumar Versus State of Haryana and others, 1995(4) S.C.T. 222**, wherein it was held as under:-

*"6. This rule can appropriately be divided into two parts. The first part consists of the cases in which the punishment of dismissal can be awarded. Such punishment can be awarded where the employee is found guilty of the gravest acts of*

*misconduct or where the cumulative effect of the continued misconduct of the employee proves his incorrigibility and complete unfitness for police service. The second part imposes a duty on the competent authority to take into consideration the length of service of the offender and his claim to pension before dismissing him. Thus, before a competent authority can exercise power under rule 16.2 of the Rules, it is imperative for such an authority to record a finding that the employee is guilty of gravest acts of misconduct or that he is guilty of continued misconduct which proves his incorrigibility and complete unfitness for police service. Absence of such a finding will lead to a conclusion that the competent authority has not applied its mind to the nature of misconduct before passing the order of punishment. It will also lead to a conclusion that the competent authority has not taken into consideration the service record of the delinquent employee before imposing the penalty.*

7 to 10.    xxxxx

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XXXXX

11. *If we examine the impugned order of punishment in the light of the principle laid down by the Supreme Court and this Court. It becomes clear that though the disciplinary authority has held the petitioner guilty of gravest act of misconduct, it has not adverted to the service record of the petitioner before imposing the extreme penalty of dismissal from service. The disciplinary authority has also not considered the question as to whether the petitioner could be awarded a lesser penalty like compulsory retirement....."*

8. In ***Dhan Singh Versus State of Haryana and others, 2008 (3) S.C.T. 816***, another Division Bench of this Court held as under:-

"7. We have carefully gone through the dismissal order dated 27.08.2003 (Annexure P- 2). The punishing authority has not dealt with the question of definition of gravest misconduct as provided under Explanation to Rule 16.2, though it has formulated an opinion that the petitioner absented twice from duty and his behaviour depicts that he is not fit to be retained in service and he is incorrigible type of employee. His length of service and right to pension has not even been taken note of. The appellate as well as the revisional authorities also rejected the appeal/revision, even without going into these two questions. It is pertinent to note that the petitioner did raise these questions in the memo of revision."

9. In ***Dhan Singh's*** case (supra), this Court further observed as under:-

““17.....However, the authorities have not applied their mind and not taken into consideration the length of service of the petitioner and his right to pension while awarding the punishment. It has been stated by the petitioner in ground(c) of this petition that he has rendered 11 years 9 months service. No rule has been brought to our notice that the petitioner is not entitled to any pensionary benefits for rendering about 12 years of service. Giving consideration to the length of service, the right to pension is inherent under Rule 16.2 itself and thus it cannot be ignored. The authorities having failed to adhere to the rule

*while awarding punishment renders the impugned order of punishment illegal and unwarranted. It is also a settled law that when a relevant provision is given a go by, it amounts to arbitrary exercise of power and such an order is not sustainable.”*

10. It is clear from the interpretation of the Rule that it provides for dismissal from service for gravest acts of misconduct or as a cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service. Under the former part of the Rule, gravest acts of misconduct entail dismissal, whereas under the latter part, it is cumulative effect of continued misconduct, which invites the punishment of dismissal from service. In both the situations, incorrigibility of the delinquent official and complete unfitness for police service has to be established. Simultaneously, the punishing authority has to take into consideration the length of service of the delinquent official and his claim for pension.

11. The punishment order, Ex. P-2, has to be examined in the light of settled position of law. After noticing the repeated instances of absence from duty, adverse reports as well as the finding of the enquiry officer, punishing authority has come to the conclusion that the appellant is unredeemable and completely unfit for disciplined force. The punishing authority has also noticed Rule 16.9 of the Rules to form the opinion that appellant deserves to be dismissed from service. However, the punishing authority has failed to consider his past service or his claim for pension. In fact, a perusal of the order shows that there is no reference at all to the length of service, rendered by the appellant, which was more than eleven

years and four months till the time the dismissal order was passed. As the obligatory requirement of the Rule has been breached, this Court is of the view that the impugned order cannot be sustained on the touchstone of Rule 16.2 (1), *ibid*. The finding recorded by the First Appellate Court that the absence of the literal words “length of service and claim for pension” in the punishment order do not cause any prejudice to the employee cannot sustained and deserves to be set aside.

12. In the afore-going reasons, appeal is allowed, judgment and decree passed by the First Appellate Court is set aside and that of the Trial Court is restored. During the pendency of the appeal, plaintiff-appellant has expired. As the authorities have failed to adhere to the mandate of the Rule, matter is remitted to the punishing authority to pass an order afresh in the light of Rule 16.2 (1) of the Rules keeping in view the settled position of law as well as subsequent developments. This exercise be carried out within a period of four months from the date of receipt of certified copy of this order.

13. Appeal is disposed of.

14. As the main appeal has been disposed of, if any miscellaneous application is pending, it will also stand disposed of.

(SUVIR SEHGAL)  
JUDGE

22.04.2024  
Kamal

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|---------------------------|--------|
| Whether Speaking/Reasoned | Yes/No |
| Whether Reportable        | Yes/No |