

RSA-2247-1995

2024:PHHC:049000

201

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

RSA No.2247 of 1995 (O&M)

Date of Decision:10.04.2024

Balbir Singh

...Appellant

Versus

State of Haryana and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Jai Vir Yadav, Senior Advocate with
Ms. Sunita Shekhawat, Advocate for the appellant.

Ms. Vibha Tiwari, AAG, Haryana.

HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present appeal, challenge is to the judgment and decree of the Lower Appellate Court dated 21.04.1995 by which, judgment and decree of the trial Court dated 26.08.1992 has been set aside and the suit filed by the appellant-plaintiff has been dismissed.

2. Certain facts may be noticed for the correct appreciation of the issue in hand.

3. The appellant-plaintiff was working with the respondent-Police Department as a Constable and while discharging his duties, the appellant-plaintiff remained unauthorizedly absent on different occasions for a total period of 202 days, 09 hours and 25 minutes during the period starting from 26.02.1986 to 12.01.1987. The disciplinary proceedings were initiated against the appellant and in the said disciplinary proceedings, the allegations were proved and on the basis of the findings recorded by the Enquiry Officer proving the allegation of unauthorized absence, an order dismissing the appellant from service was passed by the competent authority on 30.10.1987. Thereafter, departmental appeal was preferred by the appellant-

plaintiff against the said dismissal order, which also came to be dismissed by the competent authority on 25.01.1988 and thereafter, revision was preferred by the appellant-plaintiff which also came to be dismissed on 26.09.1988. All these orders were challenged by the appellant-plaintiff by filing a civil suit on 07.02.1991. The said civil suit, keeping in view the evidence which came on record, was decreed by the trial Court on 26.08.1992 holding that the order of dismissal was passed contrary to the Punjab Police Rules, 1934 and cannot sustain and the impugned orders were set aside and further, the appellant-plaintiff was directed to be reinstated with all benefits of pay and promotion.

4. Feeling aggrieved against the said judgment and decree of the trial Court, an appeal was preferred by the State before the Lower Appellate Court which came to be decided on 21.04.1995. The Lower Appellate Court held that the enquiry was conducted against the appellant-plaintiff wherein the allegations were proved and keeping in view the nature of misconduct, the order of dismissal from service is perfectly valid. The judgment and decree of the trial Court dated 26.08.1992 was set aside and the suit filed by the appellant-plaintiff was dismissed. Hence, the present regular second appeal.

5. Learned senior counsel appearing on behalf of the appellant submits that the provisions of Rule 16.2 of the Punjab Police Rules, 1934 has not been kept in mind while imposing the punishment of dismissal as on the date when the impugned order was passed i.e. 30.10.1987, the appellant-plaintiff had more than 10 years of service to his credit so as to entitle him to the pensionary benefits. Hence, the order of dismissal has been passed without considering the said aspect and the same was rightly set aside by the trial Court.

6. Learned counsel for the respondent, on the other hand, submits that keeping in view the gravity of the allegation that the appellant has remained absent on different occasions during the period starting from February, 1986 till January, 1987 and the said period was more than 200 days which amounts to grave misconduct due to which the order dismissing the appellant has been passed, which order is perfectly valid and reasoned,

and the lower Appellate Court considered the facts and evidence in correct perspective, hence, the judgment of lower Appellate Court is liable to be upheld.

7. The next argument which has been raised by the learned senior counsel appearing on behalf of the appellant is that the action has been taken against the appellant being a habitual absentee hence, as the earlier default of absence has been taken into account which was not mentioned in the show cause notice, the rules of natural justice has been violated and it is also in violation of the Punjab Police Rules, 1934 as no earlier punishment awarded can be taken into account without giving an opportunity to defend, to the delinquent official.

8. Learned counsel for the respondent submits that the action has been taken on the basis of the facts, which are already on record, hence once, it is proved that the appellant-plaintiff was guilty of a grave misconduct of unauthorized absence, the punishment imposed is commensurate to the allegation alleged against the appellant.

9. I have heard learned counsel for the parties and have gone through the records carefully.

10. The first argument which has been raised by the learned senior counsel on behalf of the appellant is that the Rule 16.2 of the Punjab Police Rules, 1934 has not been kept in mind while passing the impugned order of dismissal from service. In this regard, it may be noticed that the unauthorized absence on a part of a police official has already been treated as a grave misconduct for which, the punishment of dismissal can be imposed. The reliance can be placed upon the judgment of Hon'ble Supreme Court in case titled as ***“State of U.P. Vs. Ashok Kumar Singh” 1996(1) SCC 302*** wherein Hon'ble the Supreme Court held that once a police Officer remained absent unauthorisedly, the department is well within its jurisdiction to impose the punishment of dismissal. The relevant paragraph is as under:

“8. We are clearly of the opinion that the High Court has exceeded its jurisdiction in modifying the punishment while concurring with the findings of the Tribunal on facts. The High Court failed to bear in mind that the first respondent was a police constable and was serving in a disciplined force demanding strict adherence to the rules and procedures more than any other department. Having noticed the fact that the first respondent has absented himself from duty without leave on several occasions, we are unable to appreciate the High Court's observation that 'his absence from duty would not amount to such a grave charge'. Even otherwise on the facts of this case, there was no justification for the High Court to interfere with the punishment holding that 'the punishment does not commensurate with the gravity of the charge' especially when the High Court concurred with the findings of the Tribunal on facts. No case for interference with the punishment is made out.”

11. It may be noticed that the High Court had interfered with the quantum of punishment in the case of **Ashok Kumar (supra)**, which was held to be bad by Hon'ble Supreme Court of India keeping in view the fact that a police Officer remained unauthorizedly absent and no interference is called for when misconduct is grave in nature. Keeping in view the said judgment, once the appellant was held guilty of grave misconduct, and for the said misconduct itself, the punishment of dismissal can be imposed, the argument that the length of service of the appellant has not been kept in mind, keeping in view Rule 16.2 of Punjab Police Rules, 1934, will not come to the rescue of the appellant. Where an employee has committed a grave misconduct, action needs to be taken keeping in view the gravity of misconduct and not on the basis of length of service. Only interpretation which can be given to Rule 16.2 of Punjab Police Rules, 1934 is that when an employee is not guilty of grave misconduct, length of service will come into operation, but in case of grave misconduct proved against an employee, past service becomes immaterial, otherwise, an employee who is not interested in performing the duties, will absent himself/herself from duty to get pensionary benefit rather than resigning, as resignation from service forfeit all the benefits. Hence, the argument that due consideration should be given to length of service of the appellant i.e. 15 years of service while

imposing the punishment order keeping in view Rule 16.2 of Punjab Police Rules, 1934 cannot come to the rescue of the appellant so as to seek modification of order of punishment as awarded by the competent authority.

12. The second argument which has been raised by the learned senior counsel for the appellant is that it has been noticed in the impugned order that the appellant has been habitual absentee as he remained absent intermediatery, hence, the earlier punishment awarded has been taken into account while imposing the punishment the impugned order is bad and was rightly set aside by the trial Court.

13. I have gone through the order of dismissal. It may be noticed that though the punishing authority has mentioned that the appellant is a habitual absentee, the same is only relating to the period of absence of 202 days which was not continuous but was intermediate between the period from 26.02.1986 till 12.01.1987. Once, it has been held that the petitioner is a habitual absentee and remained absent on more than one occasion, the same only related to the allegation for which he was being proceeded against qua unauthorized absence of 202 days on different occasions from 26.02.1986 to 12.01.1987. Learned senior counsel has not been able to rebut the fact that the absence of 202 days, was not continuous but was intermediate from the period from 26.02.1986 till 12.01.1987. It was under these circumstances that the punishing authority has held that the appellant is a habitual absentee. Nothing has been shown to this Court that any earlier punishment imposed upon the appellant has been noted in the impugned order so as to cause any prejudice to the appellant.

14. Even otherwise, in the present case the appellant, did not examine even a single witness to rebut the allegation of his absence. In the absence of any evidence being brought on record to prove his absence as a *bonafide* coupled with the settled principle of law that even single day absence of a police Officer amounts to grave act of misconduct, the action taken by the department keeping in view the totality of the facts and circumstances of the present case cannot be held to be arbitrary or in violation of rules of natural justice so as to cause any prejudice to the

appellant. In the absence of any justification given for the absence in question by filing a reply to the charge sheet or by producing any witness before the disciplinary authority, raising a grievance that the process of holding the disciplinary proceedings or the orders passed on conclusion of the disciplinary proceedings were arbitrary, cannot be accepted. Not rebutting the allegation before the Enquiry Officer, means that the appellant accepted the charge but now wants to wriggle out by taking shelter behind the technicalities, which have rightly been disallowed in the lower Appellate Court.

15. It may also be noticed that even after the absence for which the action was taken, the appellant-plaintiff also remained absent thereafter, for which another charge-sheet was issued which fact also shows that the appellant-plaintiff was never interested in performing the duties.

16. No other argument has been raised by the learned senior counsel in favour of the appellant.

17. Keeping in view the above, as no perversity can be pointed out in the judgment and decree of the Lower Appellate Court, no ground is made out for any interference by this Court in the present appeal.

18. The appeal is hereby dismissed.

10th April, 2024

Sonia Puri

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/ No.