

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

201

RSA-1140-1999 (O&M)
Date of Decision :19.04.2024

State of Punjab and others

...Appellants

Versus

Baldev Raj

....Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rohit Ahuja, DAG, Punjab for the appellant-State.

Mr. Arjun Dev, Advocate for Mr. Vivek Thakur, Advocate
for the respondent.

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Harsimran Singh Sethi, J. (Oral)

1. In the present regular second appeal, challenge is to judgment and decree of the lower Appellate Court dated 18.07.1998 by which, judgment and decree of the trial Court dated 13.02.1995 by which, suit filed by the respondent-plaintiff was dismissed, has been set aside and the order of punishment imposed upon the respondent-plaintiff as well as order passed in the departmental appeal has been set aside with a direction to pass a fresh order by keeping in mind Rule 16.2 of the Punjab Police Rules, 1934.

2. Learned counsel for the appellant-State submits that in the present case respondent-plaintiff, who was a police officer remained absent from duty unauthorizedly and as per the judgment of the Hon'ble Supreme Court of India in **Civil Appeal No.9997-1995, titled as, State of UP vs. Ashok Kumar Singh decided on 10.11.1995** absence from duty qua police

officer is a grave misconduct and once, grave misconduct is committed by such police officer and proved, benefit of Section 16.2 of the Punjab Police Rules, 1934 could not have been given.

3. Learned counsel for the appellant-State submits that same question of law has already been raised before this Court in **RSA-2247 of 1995 titled as, Balbir Singh vs. State of Haryana, decided on 10.04.2024** which has been considered by this Court wherein, the said claim raised by the officer concerned has been dismissed by both the Courts below and the said claim has also been rejected by this Court and hence, question of law raised in the present regular second appeal is also covered by the decision of this Court in **Balbir Singh (supra)**. Relevant paragraph of the judgment is as under:-

“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.”

4. Learned counsel for the respondent has not been able to distinguish that as per the judgment of Hon’ble Supreme Court of India in **Ashok Kumar Singh (supra)**, absence from duty qua police official is a grave misconduct and by considering unauthorized absence from duty as grave misconduct this Court has already declined the benefit of Rule 16.2 of the Punjab Police Rule, 1934 so as to award lesser punishment by holding that punishment qua grave misconduct is to be seen keeping in view the gravity of the misconduct and not from the length of service in the case of **Balbir Singh (supra)**.

5. Hence, keeping in view the settled principle of law settled by the Hon’ble Supreme Court of India in **Ashok Kumar Singh (supra)** as well as judgment of this Court in **Balbir Singh (supra)**, judgment and decree of the lower Appellate Court dated 18.07.1998 is set aside and judgment and decree of the trial Court dated 13.02.1995 is restored and the suit filed by the respondent is dismissed.

6. Civil miscellaneous application pending, if any is also disposed of.

April 19, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

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