

RSA-1869 of 1999 (O&M)

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

RSA-1869 of 1999
Reserved on: 03.04.2024
Pronounced on: 23.04.2024

Haryana State

.....Appellant

Versus

Om Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: Mr. Saurabh Mohunta, DAG, Haryana.

None for the respondent
(proceeded against ex parte vide order dated 31.07.2001)

NAMIT KUMAR, J.

1. Instant Regular Second Appeal has been filed by the State of Haryana against the judgment and decree dated 26.02.1998, passed by the Court of learned District Judge, Hisar, whereby appeal filed by the respondent-plaintiff against the judgment and decree dated 06.02.1997 has been accepted and suit filed by him for declaration has been decreed.

2. Parties to the lis hereinafter shall be referred to by their original position in the suit. In nutshell, the facts of the case emanating from the record are that plaintiff filed a suit against the defendant seeking a decree for declaration to the effect that order dated 15.12.1992 passed by S.P. Hisar and the order dated 11.02.1994 passed DIG, Hisar Range, Hisar and the order dated 27.07.1994 rejecting his

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representation are illegal, null and void and he is entitled to wages and other consequential relief of 50 days leave by way of converting this leave as leave with wages. It is pleaded by the plaintiff that he is serving as ASI under the defendant on regular basis and has an unblemished service record. During his posting as ASI at Police Station Tohana, he proceeded on leave for two days and was to report back on duty on 30.01.1992 (forenoon) but on that day when he was standing in the bus stand at Rohtak, he had an acute and severe pain in his spinal cord and was taken to the hospital for medical treatment. He remained under the treatment of Dr.S.N.Dua for two months and sent a telegram regarding his illness. When he reported back on duty on 20.03.1992, he was charge sheeted for his absence for the period of 50 days and enquiry was conducted by DSP Fatehabad against him. On the basis of the enquiry report, he was served with show-cause notice and he submitted his reply to the same. S.P. Hisar, vide impugned order dated 15.12.1992, ordered to convert the 50 days' leave as leave without pay. It is pleaded that all impugned orders are illegal on the grounds that the enquiry officer had issued the charge-sheet as well as summary of allegations; prescribed procedure of conducting the departmental enquiry was not properly followed; no sanction was obtained from District Magistrate as required under Rule 16.38 of the Punjab Police Rules (hereinafter called as 'the Rules'); impugned orders are not speaking orders and he was not offered an opportunity of being personally heard before passing these impugned orders. It is further pleaded that he served a notice upon the defendants under Section 80

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CPC before institution of the suit but in vain.

3. The defendant, in its written statement, has contested the claim of the plaintiff, inter-alia, on the grounds that the suit is not maintainable in the present form and is pre-mature. Plaintiff is estopped from filing the same by his own act and conduct and has no *locus standi* to file it. On merits, it has been asserted that the plaintiff wilfully remained absent from duty for 50 days which amounts to a grave misconduct on his part. Impugned orders are perfectly legal because the enquiry officer was competent to issue charge sheet as well as summary of allegations. Prescribed procedure was strictly followed by the enquiry officer during the enquiry proceedings. No sanction of the District Magistrate under rule 16.38 was required to be obtained before conducting departmental enquiry in the present case. Plaintiff was given an opportunity of being personally heard by the punishing authority before passing the order dated 15.12.1992. No appeal from the above-said order was maintainable and therefore, the then DIG Hisar Range, Hisar had correctly rejected the appeal.

4. In the replication, the plaintiff has reiterated his earlier stand as taken in the plaint besides controverting the assertions of the defendant as put-forward in his written statement.

5. From the pleadings of the parties, following issues were framed: -

1. Whether the impugned orders dated 15.12.92 and 11.2.94 passed by S.P.Hisar and DIG Police (Hisar Range) respectively and the impugned order dated 27.7.94 passed by DIG (Hisar Range) regarding the rejection of representation of the plaintiff are illegal, null, void as alleged in the plaint? OPP

2. If issue no. 1 is proved, whether the plaintiff is entitled to the wages and other consequential relief of converting the 50 days leave into the leave with wages as alleged? OPP
 3. Whether the suit is not maintainable in its present form ? OPD
 - 3/4. Whether the plaintiff is estopped by his own act and conduct from filing the present suit ? OPD
 4. Whether the plaintiff has no locus standi to file the present suit? OPD
 5. Whether the suit is pre-mature? OPD
 6. Relief.
6. Both the parties led their oral as well as documentary evidence.
7. The trial Court, vide judgment and decree dated 06.02.1997 dismissed the suit of the plaintiff. Aggrieved against the judgment and decree dated 06.02.1997, respondent-plaintiff preferred an appeal before the lower Appellate Court, which was accepted and suit of the plaintiff has been decreed vide judgment and decree dated 26.02.1998.
8. Learned counsel for the appellant contended that the lower Appellate Court wrongly decreed the suit of the respondent-plaintiff by reversing the well-reasoned judgment of the trial Court. Lower Appellate Court has failed to appreciate that absence from duty by a member of the disciplined force is a gravest act of misconduct and for long absence of 50 days, respondent-plaintiff was rightly punished by the department. He further contended that judgment of the lower

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Appellate Court is erroneous based on conjectures and surmises and is the result of non-application of mind and, therefore, is liable to be set aside. He also submitted that the proper departmental enquiry was conducted in accordance with law and after following the principles of natural justice and the respondent was granted reasonable opportunity of hearing and as such the orders dated 15.12.1992 and 11.02.1994 passed by the departmental authorities are wholly legal, justified and sustainable in law. Therefore, the judgment and decree of the lower appellate Court is liable to be set aside.

9. Respondent was proceeded against ex parte vide order dated 31.07.2001.

10. I have heard learned counsel for the appellant and perused the record.

11. Hon'ble Supreme Court in ***State of U.P. and others v. Ashok Kumar Singh and another, (1996) 1 Supreme Court Cases 302*** has held 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.”

12. In ***State of Punjab v. Ram Singh Ex. Constable, AIR 1992 SC 2188***, the Hon’ble Supreme Court held to the following effect:

“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".

9. The next question is whether the single act of heavy drinking of alcohol by the respondent while on duty is a gravest misconduct. We have absolutely no doubt that the respondent, being a gunman having service revolver in his possession, it is obvious that he was on duty; while on duty he drunk alcohol heavily and became uncontrollable. Taking to drink by itself may not be a misconduct. Out of office hours one may take to drink and remain in the house. But being on duty in a disciplined service like police service, the personnel shall maintain discipline and shall not resort to drink or be in a drunken state while on duty....."

13. A Division Bench of this Court in ***State of Haryana and others v. Gurdev Singh, 1981(3) SLR 130*** observed as under:

"5.To our mind, the cases with regard to misconduct on the part of the police officers while on duty have not to be interfered with by the Courts lightly unless it is found that the action has been taken wantonly or arbitrarily."

14. This Court in ***RSA-2732 of 1997 – State of Punjab and others v. Chamkaur Singh – decided on 11.02.2015*** has held that act of absence from duty by a member of disciplined force without information shows the lack of discipline.

15. In the present case, respondent-plaintiff remained absent from duty continuously for 50 days without any reasonable cause, which amounts to mis-conduct on his part. Perusal of the record, shows that on account of wilful absence of the respondent from duty,

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charge-sheet was issued to the respondent-plaintiff; enquiry was conducted by DSP Fatehabad and on the basis of enquiry report, he was served with show-cause notice to which respondent-plaintiff submitted his reply. Thereafter, Superintendent of Police, Hisar, vide order dated 15.12.1992 ordered to convert 50 days' leave as leave without pay. Thereafter, the appeal and revision filed by the plaintiff were rejected. Respondent-plaintiff failed to show as to how the impugned orders were illegal and proper procedure was not followed by the department while punishing him inasmuch as plaintiff was given due opportunity to cross-examine the prosecution witnesses as well as examine his own witnesses in defence. Rather by taking a lenient view, his absence was treated as leave without pay by the punishing authority. The punishment awarded to the respondent i.e. leave without pay is not covered under Chapter-XVI of the Punjab Police Rules, 1934 (as applicable to the State of Haryana). Therefore, in such eventuality, the service conditions and benefits of respondent have not been affected in any manner except monetary loss caused to him for 50 days.

16. In view of the above, I find that the lower Appellate Court erred in law in interfering in the order dated 15.12.1992 and reversing the well-reasoned judgment of the trial Court. The act of absence from duty for 50 days by a member of a disciplined force is nothing but gravest act of misconduct. The term "misconduct" has to be given a wider meaning and any wrongful act or any act of delinquency would be "misconduct", and certainly so, if it is subversive of discipline. The

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order dated 15.12.1992 is neither harsh nor disproportionate to the misconduct.

17. Consequently, the appeal is allowed. The judgment and decree passed by the lower Appellate Court is set aside and the suit filed by the respondent-plaintiff is dismissed.

18. Pending applications, if any, stand disposed of accordingly.

23.04.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether Reportable

:

Yes/No