

RSA-2387-1999

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2387-1999

Date of order:-05.04.2024

Satpal, Ex.Constable (since deceased through LRs)

...Appellant

Versus

State of Punjab and others

...Respondents

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL

Present :- Mr.Gaurav Sharma, Advocate
for the appellant.

Mr.Amit Chaudhary, DAG, Punjab
for the respondents.

SUVIR SEHGAL, J.(ORAL)

1. Plaintiff - appellant has filed the instant appeal challenging the judgment and decree dated 27.03.1999 passed by the learned Additional District Judge, Gurdaspur.

2. Facts, in brief, leading to the filing of the appeal are that Satpal, plaintiff – appellant joined the Punjab Police as a Constable on 11.12.1974. He remained absent from duty from 05.04.1994 onwards and disciplinary proceedings were initiated against him. It has been pleaded that the plaintiff was getting medical treatment from his brother Dr. Rajesh Chopra, as well as from a Government Homeopathic Dispensary, Gurdaspur. On the basis of the findings recorded in the enquiry, he was dismissed from service by order dated 03.10.1994, Ex.P7 and an appeal filed by him was rejected by the Appellate

Authority on 01.11.1994, Ex.P8. Assailing both the orders, plaintiff – appellant filed a suit for declaration and for grant of all consequential service benefits. Upon notice, suit was contested by the defendants – respondents by taking various preliminary submissions. It was submitted that the plaintiff remained absent from duty without permission and has been dealt with departmentally for unauthorized absence from duty. On the basis of the pleadings of the parties, issues were framed and after they led evidence, Trial Court by judgment dated 17.04.1997 decreed the suit and declared the impugned orders as null and void and also directed reinstatement of the plaintiff – appellant along with consequential benefits. Appeal filed by the defendants – respondents was accepted, judgment and decree under challenge was set aside, resulting in the filing of the present appeal by the plaintiff – appellant.

3. Counsel for the plaintiff – appellant has argued that the impugned order has been passed in violation of the mandatory provision of Rule 16.2(1) of the Punjab Police Rules inasmuch as the Punishing Authority has failed to record that the plaintiff – appellant is guilty of “gravest misconduct” nor have the authorities considered the length of service of the plaintiff – appellant before passing of the impugned orders. Another argument raised by him is that the departmental proceedings were held behind the back of the plaintiff - appellant and he was never given an opportunity to appear in the proceedings nor afforded an opportunity of hearing.

4. *Per contra*, learned State counsel has supported the judgment of the First Appellate Court and asserts that the procedure established by law has been followed and the impugned orders, are in

conformity with the Rules.

5. I have heard counsel for the parties and considered their respective submissions as well as examined the Trial Court record with their able assistance.

6. In order to appreciate the arguments raised by the counsel, Sub-Rule (1) of Rule 16.2 of the Punjab Police Rules deserves to be noticed and is reproduced hereunder:-

“16.2 Dismissal. - (1) Dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect of 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.”

7. An examination of the above reproduced Sub - Rule shows that it provides for dismissal from service for gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service. Under the former part of the Sub - Rule, gravest acts of misconduct entail dismissal, whereas under the latter part of the Sub - Rule, it is the cumulative effect of continued misconduct, which invites the punishment of dismissal. In both the cases, incorrigibility of the delinquent official and complete unfitness for police service has to be established. Simultaneously, the Punishing Authority is required to take into consideration the length of service of the delinquent official and his claim to pension.

8. Impugned order dated 03.10.1994 (Ex.P7) passed by the

Punishing authority dismissing the plaintiff – appellant from service has been analysed. It is evident from a perusal of the succinct order, Ex.P7 that the Punishing Authority has noticed that the plaintiff – appellant had joined the service in 1974 and has been imposed punishments six times for dereliction in duty. On the basis of his past service record, the Punishing Authority came to the conclusion that he is a habitual absentee and is not fit to be retained in police service. It is, therefore, clear that not only the continued misconduct has been taken into account but also the service rendered by him has been considered by the Punishing Authority while passing the order, Ex.P7. Counsel for the plaintiff – appellant is, therefore not correct in urging that the order does not meet the mandate of Rule 16.2.(1), *ibid*.

9. Coming to the next argument of the counsel for the plaintiff – appellant, it is true that Order, Annexure P7 does not mention the expression ‘gravest misconduct’, but the Punishing Authority has considered his service record to arrive at the conclusion that there has been continued misconduct, which shows his incorrigibility and unsuitability for being kept in police service. It is not imperative for the punishing authority to use the phrase “gravest misconduct” while passing the order of dismissal. It has been held by the Supreme Court in *State of Punjab and others Versus Sukhwinder Singh (2007) 10 SCC 511* as under:

“6. That the order of dismissal did not use the “mantra” of “gravest act of misconduct” is not determinative. The substance of that conclusion is to be found in that order. When a policeman is repeatedly absent from duty, it cannot but be reasonably

concluded that there is incorrigibility in his continued misconduct”

10. In their evidence, the defendants – respondents have produced the Character Roll, Ex.D1 of the plaintiff – appellant. Besides being placed under suspension on various occasions, he has been departmentally proceeded against and following punishments have been imposed upon him:

- (i) in the year 1987, five year service was forfeited as he was found to be under the influence of liquor during duty hours;
- (ii) in the year 1994, three year service was forfeited for the same reason;
- (iii) from 17.01.1994 to 05.02.1994, plaintiff – appellant remained absent from duty and two year service was forfeited;
- (iv) again from 04.03.1994 to 31.03.1994, plaintiff – appellant was absent from duty and two year service was forfeited for remaining absent; and
- (v) plaintiff – appellant was granted 30 days leave for remaining absent from duty on different from dates.

11. The argument of the counsel for the plaintiff – appellant that he has not been given an opportunity of hearing before the passing of the impugned orders is all in vain. It is evident from the Enquiry File, Ex.D1, that plaintiff – appellant did not associate with the departmental proceedings, and he was proceeded against ex-parte, culminating in the passing of the dismissal order. Counsel for the plaintiff – appellant, therefore cannot urge that the disciplinary proceedings have been held in breach of the principles of natural justice.

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12. Plaintiff – appellant has taken a plea that he was unwell and has used his treatment as a pretext for remaining absent from duty and has produced medical certificates Mark A1 to A3. However, the three medical certificates were neither proved nor exhibited before the Trial Court. Plaintiff also failed to lead any evidence to support his version. Certificates Mark A1 to A3 show that on two occasions, he was under treatment of Dr. Rajesh Chopra, who was none other than his own brother. It is, therefore, clear that the plea taken by the plaintiff – appellant is flimsy and does not deserve any consideration. Plaintiff – appellant was a Constable in the police force and his repeated absence from duty, was unbecoming of a member of a disciplined force.

13. This Court, therefore, does not find any ground to interfere with the well-reasoned finding recorded by the First Appellate Court, which deserves to be upheld.

14. As the appeal lacks merit, it is hereby dismissed with no order as to costs.

15. Pending application (s), if any, stand disposed of.

(SUVIR SEHGAL)
JUDGE

05.04.2024

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Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No