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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of decision:-19.03.2024

THE STATE OF PUNJAB & ANR.

...APPELLANTS

VERSUS

HISHAM SINGH (SINCE DECEASED) THR. LRS ...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Amit Chaudhary, DAG, Punjab, for the appellants.

Mr. N.K. Bansal, Advocate for the respondent.

SUVIR SEHGAL, J.

1. Defendants are in second appeal before this Court challenging the concurrent finding recorded by both the Courts below.
2. Pleaded case of Hisham Singh, plaintiff-respondent is that he was appointed as a Constable on 01.02.1972. On the allegation that he remained absent from duty from 17.01.1987 to 02.03.1987 for a period of 45 days, disciplinary proceedings were held. On conclusion of enquiry, by order dated 23.10.1987, he was dismissed from service. Appeal and revision filed by him were rejected vide orders dated 16.01.1988 and 06.06.1988.

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Challenging these orders, he filed a suit for declaring them as null and void and claimed all the consequential benefits.

3. Upon notice, suit was contested by the defendants, wherein besides taking various preliminary submissions, it was submitted that the plaintiff-respondent was a habitual absentee. He was placed under suspension on various occasions on account of wilful absence from duty and punishments were also imposed upon him for wilful absence on numerous occasions. He was required to appear in an enquiry pending against him on 17.01.1987, but he remained absent and reported back for duty on 02.03.1987 without any intimation or prior permission. A stand was taken that the departmental enquiry was conducted in accordance with the provisions of law and ample opportunity was granted to the plaintiff-respondent to present his case. Plaintiff reasserted his claim by filing a replication. On the basis of pleadings, issues were framed and the plaintiff examined himself as PW-1 and closed his evidence. The defendants examined two witnesses before closing their evidence. On the basis of evidence led, Trial Court by judgment and decree dated 25.03.1996 accepted the suit and declared that the impugned orders are null and void. Liberty was granted to the competent authority to pass a fresh order by giving a specific finding as per Rule 16.2 of the Punjab Police Rules, 1934 (for short “the Rules”). Defendants preferred an appeal, which was rejected by the First Appellate Court by judgment dated 16.07.1998. Hence, the second appeal.

4. State counsel has urged that the courts below have erred in setting aside the impugned orders by failing to consider the background, in which they were passed. It is his argument that as the plaintiff-respondent

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was incorrigible, the dismissal order was passed keeping in view his repeated absence from duty as well as various punishments imposed upon him.

5. Per contra, counsel for the plaintiff-respondent has contended that the defendants have failed to comply with the provision of Rule 16.2, *ibid*, in as much as neither the punishing authority nor the appellate or revisional authority has recorded any finding to the effect that he is guilty of the gravest act of misconduct. He submits that the authorities have failed to consider the past service rendered by the plaintiff-respondent. He has placed reliance upon judicial precedents to buttress his argument.

6. Counsel for the parties have been heard and record has been perused with their able assistance.

7. Rule 16.2 (1) of the Rules as applicable to State of Punjab, deserves to be noticed and is reproduced as under:-

*“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.”*

8. This rule came up for interpretation before this Court in **Ex. Constable Malkiat Singh Versus State of Punjab and others, 2012 (4) S.C.T. 323**. After noticing the provision, it was observed as under:-

“6. Rule 16.2 sub clause (1) provides for dismissal for the "gravest acts of misconduct" or for the cumulative

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act of continued misconduct proving incorrigibility and complete unfitness for police service. Under the first part of the rule, gravest act of misconduct entails dismissal, whereas under the second part of the rule, cumulative effect of continued misconduct also invites the penalty of dismissal. However, in both the cases incorrigibility of the delinquent official and complete unfitness for police service has to be established. There is another rider on the award of punishment incorporated in the rule itself, which inter alia requires the punishing authority to take into consideration the length of service of the delinquent and his claim to pension.”

9. Upon examining the dismissal order, writ Court came to the conclusion that no finding had been recorded that the petitioner is guilty of an act of gravest misconduct or of continued misconduct proving his incorrigibility and unfitness for police service. This Court further found that the mandate of Rule 16.2 had been given complete go by inasmuch as the length of service of the petitioner had not been taken into account while passing the impugned orders.

10. In **Swaran Singh, Head Constable No. 369, TT Versus State of Punjab and others**, 2013(2) S.C.T. 373, this Court held that mere reproduction of a part of relevant rule would not suffice and the punishing authority had to consider the length of service of the petitioner in view of his clean service record. In **Man Singh Versus State of Haryana and others**, 2010(1) S.C.T. 604, **Balwinder Singh Versus State of Punjab and others**, 2013(1) PLR 323 and **State of Punjab and another Versus Waryam Singh**, RSA No.370 of 1994 decided on 25.05.2017, this Court came to a

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firm conclusion that it was obligatory on the authorities to comply with the provisions of Rule 16.2 of the Rules and the orders of dismissal passed merely on the basis of the conviction of the employee, were bad in law.

11. In *Surinder Singh Versus State of Punjab and others* (CWP-8505-2018 decided on 09.01.2023), this Court has held that order passed by an authority has to be self sustainable and no amount of reasoning can be added to support the conclusion. In *Rajender Kumar Versus State of Haryana* (CWP-16511-1997 decided on 26.05.2009) as well as in *Varinder Kumar Versus State of Punjab and others* (CWP-21201-2015 decided on 22.07.2022), this Court came to the conclusion that under Rule 16.2(1), *ibid*, a delinquent official can be dismissed only for the gravest act of misconduct or if there is continued misconduct by the delinquent proving his incorrigibility and unfitness for police service. While dismissing a delinquent employee, it is imperative for the authority to take into account the length of service of the delinquent as well as his claim to pension.

12. When dismissal order dated 23.10.1987 (Ex.P-6) is analysed in the backdrop of the interpretation of Rule 16.2 (1), *ibid*, it is evident that the disciplinary authority has neither formed any opinion nor recorded any finding that the conduct of the plaintiff-respondent constitutes grievous misconduct or continued misconduct rendering him unfit to be retained in service. It is clear that the punishment order is based merely on the absence of the plaintiff-respondent. By the time, dismissal order was passed in October, 1987, plaintiff-respondent has more than 15 years of service to his credit. It was, therefore, imperative upon the authorities to consider his service record as well as length of service, which they have failed to do. As

such the mandatory requirement of the said rule has been by-passed by the authorities. This Court is, therefore, of the view that as there has been a breach of the obligatory provision laid down in Rule 16.2 (1) of the Rules, there is no illegality or infirmity in the judgments and decrees under challenge, which do not call for any interference.

13. For the afore-going reasons, this appeal lacks merit and the impugned judgments and decrees are upheld.

14. During the pendency of the appeal, plaintiff-respondent has expired on 12.06.2017 and his legal representatives have been brought on the record. Therefore, matter is remitted to the disciplinary 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. This exercise be carried out within a period of 04 months from the date of receipt of certified copy of this order.

15. Appeal is disposed of.

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

19.03.2024

(SUVIR SEHGAL)
JUDGE

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Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No