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

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Reserved on: 13.02.2024

Pronounced on: 21.02.2024

The State of Punjab and others

.....Appellants

Versus

Ex. Constable Amarjit Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: Mr. Jai Narain, AAG, Punjab,
for the appellants.

None for the respondent.

NAMIT KUMAR, J.

1. Instant Regular Second Appeal has been filed by the State of Punjab against the judgment and decree dated 24.07.1995, passed by the Court of learned Sub Judge III Class, Jalandhar, whereby suit filed by the respondent-plaintiff for declaration was decreed as well as against the judgment and decree dated 04.09.1999, passed by the Court of learned Additional District Judge, Jalandhar, whereby appeal filed by the State against the judgment and decree dated 24.07.1995, has been dismissed.

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-Amarjit Singh filed a suit for declaration to the effect that the impugned order No.85-89 dated 27.04.1993, passed by the Comdt. 13th Bn PAF Jalandhar Cantt.

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whereby the plaintiff was dismissed from service and order dated 23.07.1993 passed by D.I.G. of Police (PAP) Jalandhar Cantt., dismissing the appeal of the plaintiff are illegal, void, capricious, arbitrary, unjust, unconstitutional, against the provisions of law & violative of the principles of natural justice and the plaintiff is entitled to re-instatement w.e.f. the date of dismissal with all other monetary benefits attached with the service. It was pleaded that plaintiff joined as Constable in PAP Jalandhar Cantt. w.e.f. 22.01.1992 and that due to his illness he had to be away from duty on two occasions and that he had submitted application for grant of leave on medical grounds. But the punishing authority-defendant No.3, instead of granting leave directed to hold ex parte departmental enquiry against the plaintiff, even without serving notice with regard to the enquiry. The Enquiry officer recorded evidence without serving any notice to the plaintiff and held the plaintiff guilty and thereafter, the Comdt. i.e. the punishing authority passed order of dismissal. The plaintiff further alleged that the ex parte proceedings could not be initiated against the plaintiff without serving any notice nor any publication was made for securing the presence of the plaintiff and that statements of witnesses were recorded without oath and as such violated Rule 16.2 of PPR. The plaintiff had produced the medical certificates regarding his illness but were ignored by defendant no.3. The plaintiff filed an appeal against the impugned order to the D.I.G. of Police, PAP Jalandhar Cantt. and appellate authority passed the order dated 23.07.1993, without giving personal hearing to the plaintiff. The plaintiff further alleged that copy of the

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findings of the Enquiry officer furnished to the plaintiff was dim and illegible which is against the mandatory provision for not supplying the fair copy of the enquiry report and all other documents. The impugned order is also against Article 311(2) of the Constitution of India.

3. Upon notice defendants appeared and filed written statement raising certain preliminary objections with regard to maintainability of the suit in the present form and being pre-mature. Validity and legality of the notice under Section 80 C.P.C. and locus standi of the plaintiff was also challenged. On merits, the defendants had admitted that the plaintiff has joined as Constable in P.A.P with effect from 24.01.1992 and he absented himself wilfully on 22.03.1992 from C.T.C. Kapurthala while he was undergoing basic training and further alleged that his absence was recorded in Roznamcha vide DDR No.6 dated 22.03.1992. The plaintiff reported back on 06.05.1992 after a period of 44 days and 23 hours. Defendants specifically denied any application by the plaintiff for medical leave. They further alleged that a notice No.3091/OSI dated 26.03.1992 was sent at his home address and directed him to join his duty immediately but the plaintiff failed to report back at his place of posting. He reported back at Battalion on 06.05.1992 after the period of absence for 44 days 23 hours. Due to his absence, a departmental enquiry was ordered against him and Sh. Dharam Singh A/C 13th Bn, was appointed as enquiry officer to conduct departmental enquiry against the plaintiff, vide office order no.5868-71/ST dated 18.06.1992, which was received by the plaintiff himself on 05.07.1992. But the plaintiff did not appear before the

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enquiry officer and failed to join the departmental enquiry proceedings. After that, the enquiry officer got the ex parte order from the Comdt. 13th Bn, on 09.07.1992 and the plaintiff was informed accordingly on 27.07.1992, the plaintiff appeared before the enquiry officer and enquiry officer served him summary of allegations, list of prosecution witnesses and list of documents free of cost which was received by the plaintiff on 27.07.1992. On completion of evidence, a charge sheet was prepared and was given to the plaintiff after getting his signatures. The plaintiff had also given in writing that he did not want to produce any evidence in his defence and the same was available in the enquiry file. The enquiry officer submitted his findings to the punishing authority. As a result of departmental enquiry a show cause notice for dismissal was prepared and sent to the plaintiff at his home address on 13.11.1992 and the same was received by his father Sh. Nasib Singh on 24.11.1992 after getting his signatures, as the plaintiff was not present at his home. The plaintiff has not submitted his reply in detail and only gave in writing that he wanted to appear before the punishing authority before any order. The reply of the plaintiff was considered and found unsatisfactory. The plaintiff was dismissed from service w.e.f 27.04.1993. The plaintiff further filed an appeal to DIG/PAP against order dated 27.04.1993. The same was considered and rejected by DIG/PAP vide order dated 23.07.1993. The defendants further denied that ex parte proceedings were held against the plaintiff. The plaintiff reported back immediately after the passing of ex parte orders against him. Defendants further denied that there is procedure of taking oath

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before recording statement/evidence. The evidence recorded in the case was according to rules and departmental enquiry was held according to Punjab Police Rules and the plaintiff was dismissed from service under Rule 16.2 of the PPR on the ground of willful absence which is grave mis-conduct in the disciplined force. The defendants further denied that opportunity of personal hearing by the appellate authority was not given to the plaintiff and also denied the copy of enquiry report being dim.

4. Replication was not filed and from the pleadings of the parties following issues were framed:-

1. Whether order No.85-89 dated 27.04.1993 passed by the Comdt. 13th En. PAP Jalandhar Cantt. and order dated 23.07.1993 dismissing the appeal of the plaintiff is illegal, void etc.? OPP
2. Whether the suit is not maintainable in the present form ? OPD
3. Whether plaintiff has no *locus standi* to file the present suit? OPD
4. Whether notice under Section 80 CPC is legal and valid? OPD
5. Whether the suit is pre-mature? OPD
6. Relief.

5. Both the parties led their oral as well as documentary evidence.

6. The trial Court, vide judgment and decree dated 24.07.1995 decreed the suit of the plaintiff. Aggrieved against the judgment and decree dated 24.07.1995, appellants-State preferred an

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appeal before the lower Appellate Court, which was dismissed vide judgment and decree dated 04.09.1999.

7. Learned counsel for the appellants contended that the Courts below have failed to appreciate that absence from duty of a member of the disciplined force is a gravest act of misconduct and for long absence of 44 days and 23 hours, respondent-plaintiff was rightly dismissed from service. He further submitted that the impugned judgments and decrees passed by the Courts below are cryptic, erroneous based on conjectures and surmises and non-application of mind and, therefore, are liable to be set aside. He also submitted that the regular 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 27.04.1993 and 23.07.1993 passed by the departmental authorities are wholly legal, justified and sustainable in law. Therefore, the judgments and decrees of the Courts below are liable to be set aside.

8. No one has chosen to cause appearance on behalf of the respondent, despite service.

9. I have heard learned counsel for the appellants and perused the record.

10. Rule 16.2 of the Punjab Police Rules reads 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.

[(2) If the conduct of an enrolled police officer leads to his conviction on a criminal charge and he is sentenced to imprisonment, he shall be dismissed:

Provided that a punishing authority may, in an exceptional case involving manifestly extenuating circumstances for reasons to be recorded and with the prior approval of the next higher authority impose any punishment other than that of dismissal:

Provided further that in case the conviction of an enrolled police officer is set aside in appeal or revision, the officer empowered to appoint him shall review his case keeping in view the instructions issued by the Government from time to time in this behalf.]

(3) When a police officer is convicted judicially and dismissed, or dismissed as a result of a departmental enquiry, in consequence of corrupt practices, the conviction and dismissal and its cause shall be published in the Police Gazette. In other cases of dismissal when it is desired to ensure that the officer dismissed shall not be re-employed elsewhere, a full descriptive roll, with particulars of the punishments, shall be sent for publication in the Police Gazette.”

11. After hearing the learned counsel for the appellants-State, following substantial question of law arises for consideration in this appeal: -

“Whether the order of dismissal passed by the competent authority after following due procedure can be interfered with, when the plaintiff has abstained from duty for 44 days and 23 hours?”

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12. Admittedly, the petitioner joined the police service on 22.01.1992. The order of dismissal was passed on 27.04.1993 though the plaintiff abstained from duty w.e.f. 22.03.1992 to 06.05.1992. Therefore, the plaintiff had worked only for two months before he abstained from duty. With the length of service of only two months, the plaintiff does not get any right of pension. The absence from duty for 44 days, while he was undergoing basic training without any leave or information only after rendering two months of service shows the lack of discipline, which is the first requirement of a disciplined force. Therefore, the plaintiff is not entitled to pension nor has such length of service, which affects his right of pension.

13. 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.”

14. 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.....”

15. 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.”

16. 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.

17. In view of the above, I find that both the Courts below have erred in law in interfering in the order of punishment. The plaintiff had worked only for less than two months and was, thus, not eligible for pension. The act of absence from duty for 44 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

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any act of delinquency would be “misconduct”, and certainly so, if it is subversive of discipline. The punishment so awarded is neither harsh nor disproportionate to the misconduct.

18. Consequently, while answering the substantial question of law, the present appeal is allowed. The judgment and decree passed by the Courts below are set aside and the suit filed by the respondent-plaintiff is dismissed.

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

21.02.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No