

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

243

CWP-13993-2020 (O&M)

Date of Decision : 18.03.2024

Gurdev Singh (since deceased) through his LRs

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Sameer Sachdeva, Advocate and
Ms. Lishika Mehta, Advocate
for the petitioner.

Mr. Pawan Kumar, DAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 10.06.2020 (Annexure P-3) whereby he was dismissed from service.

2. Gurdev Singh- petitioner joined Punjab Police on 02.08.1994 as Constable. During the pendency of present petition, he passed away on 05.06.2023. He was survived by two children and wife. The said employee, during his tenure from 02.08.1994 to 31.07.2019, remained absent from duty for 1142 days. The Senior Superintendent of Police, Moga in view of policy decision of the Government scrutinized record of the said employee and vide order dated 08.08.2019 ordered to premature retire him from service. The deceased employee filed CWP No. 21698 of 2019 before this Court. By interim order dated 19.08.2019 passed by this Court, the operation of order dated 08.08.2019 was stayed and respondents were directed to restore status

quo of said employee. The petitioner was reinstated and he repeated the same default which he had committed during the previous period i.e. absence from duty. The SSP, Moga vide order dated 10.06.2020 ordered to dismiss him. The order of dismissal was passed after conducting inquiry wherein the deceased employee was found guilty. The SSP, Moga while passing dismissal order considered previous record of the said employee in terms of Rule 16.24 (vii) of Punjab Police Rules, 1934 (for short '1934 Rules'). The deceased employee unsuccessfully preferred appeal before the Appellate Authority.

3. Learned counsel for the petitioner submits that respondent while passing impugned order has invoked Rule 16.2 read with Rule 16.24 (vii) of 1934 Rules. The respondent has neither complied with mandate of Rule 16.2 nor 16.24 (vii) of 1934 Rules. The respondent could not rely upon past record of the deceased employee without supplying at least gist of the past record and asking him to submit his explanation. The respondent has further failed to consider length of service as well as his entitlement to pension. The deceased employee remained in service for 28 years and he was entitled to pension.

4. Per contra, learned state counsel submits that out of total service of the deceased employee, by way of different punishment orders, 23 years of service had already been forfeited and deceased employee had not challenged those orders, thus, in any case, he is not entitled to pension.

5. I have heard the arguments of learned counsels for both sides and perused the record with their able assistance.

6. The husband of the petitioner was dismissed from service in terms of Rule 16.2 of 1934 Rules, thus, it inevitable to look at said Rules, which is reproduced as below:-

“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.”

7. The question of interpretation of Rule 16.2 of 1934 Rules came before the Apex Court in ***State of Punjab v. Ram Singh, (1992) 4 SCC 54*** wherein it has been held that an officer may be dismissed in two situations i.e. on account of gravest misconduct or cumulative effect of continued misconduct. The Court has further held that in case of habitual absence

from duty, keeping in view length of service, an officer may be compulsorily retired. The relevant extracts of the said judgment read as:

“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".

8. A conspectus of Rule 16.2 of 1934 Rules and perusal of afore-cited judgment reveals that a police officer may be dismissed from service subject to following circumstances and conditions:

- i. If the police officer is accused of gravest misconduct; or
- ii. The cumulative effect of continued misconduct proves that police officer is incorrigible and completely unfit for the service; or

- iii. The authority passing order shall consider length of service as well as claim of pension.

9. In the case in hand, the respondent is not pleading that deceased employee was accused of gravest acts of misconduct. The case of the respondent is that deceased employee was subjected to punishment on many occasions, thus, he was incorrigible and completely unfit for police service. The deceased employee was subjected to inquiry with respect to his absence. The inquiry report indicates that gamut of the inquiry was absence from duty from 12.11.2019 to 11.01.2020, however, disciplinary authority while passing order of dismissal has considered past conduct of the deceased employee. The relevant extracts of order of dismissal are reproduced as below:

“After the presentation of the Department Inquiry report before me for passing the final orders, I have thoroughly examined the Charge sheet and the final report of Inquiry Officer in which the charges against the delinquent of absence from duty 12.11.2019 to 11.01.2020 has been duly proved. Apart from this I have examined the previous record of the delinquent as per Rule 16.24 (7) of PPR according to which following punishments were inflicted upon him on account of remaining absence from duty.

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Considering all the circumstances, agreeing with the conclusion report of the inquiry officer, I am of the considered opinion as to why he should not be dismissed from the police department for the said negligence and absent period/suspension be counted as no duty no salary period regarding which a show cause notice was issued vide No. 2337 / Steno, dated 01-05-2020 and he received the copy of the conclusion report under his signature on

18-05-2020 and has filed his written reply in which he wrote that "On 12-11-2019 I was on duty at Sultanpur Lodhi for the 550th birth anniversary of Guru Nanak Dev ji. I was getting ready to reach at my duty, suddenly I felt unconscious and fell down, my family took me to the doctor in the village and he told that it looks like fits attack. I was feeling very weak after coming in senses after taking some medicines and injections. The next day my condition got worse and I was not in a position to arrive on duty. My son called the police line, Moga on phone. Munshi said that inform the officers of Sultanpur Lodhi with whom my duty was fixed. I don't know under which officer my duty was fixed. My condition was getting worse. My family members understood that it was all due to some strange thing and they kept taking me to Reply different elders and after taking Dera Wadbhag Singh in Himachal, my condition got worse after I feel good for some time and I used to have seizures and I was not in condition to report on my duty. Then my indigenous treatment was started and when I was completely cured I made my presence at the police line, Moga. I am now taking regular indigenous medicine. Please look at my family situation and have mercy for me and show cause notice be withdrawn. "I have read and considered his written reply which I do not agree with. I consider it fit to punish the head constable for charges as prescribed in the notice. By remaining absent for so long he has given proof of departmental negligence which cannot be tolerated at any cost, from which it is clear that he is not willing to do the job himself. Keeping such an employee in the department has a detrimental effect on other employees as well. Therefore, I do not consider it appropriate to be lenient with him and consider the punishment prescribed in the notice be given as per the charges levelled against him. Therefore, I, as a competent officer under rule 16.2 of the PPR, dismiss Gurdev Singh,

head constable. No. 60/Moga with immediate effect and his period of absence and suspension is counted as non-duty period. Therefore he shall not be entitled to receive benefit of that period. A copy of the order be distributed to him free of cost.”

10. As per Rule 16.24(vii) of 1934 Rules, a disciplinary authority may consider past service record of a delinquent employee, however, authority is bound to confront the delinquent employee with adverse service record which authority is going to rely upon. Rule 16.24(vii) of 1934 Rules is reproduced as below:-

(vii) The enquiring officer shall be proceed to pass orders of acquittal or punishment, if empowered to do so, or to forward the case with his finding and recommendations to an officer having the necessary powers. Whenever the officer passing the orders of punishment proposes to take into consideration the adverse entries on the previous record of the accused police officer, he shall provide reasonable opportunity to the defaulter to defend himself; and a copy or at least a gist of those entries shall be conveyed to the defaulter and he shall be asked to give such explanation as he may deem fit. The explanation furnished by the defaulter shall be taken into account by the officer before passing orders in the case.

11. In the impugned order, it has been mentioned that a show cause notice was issued to the petitioner, however, neither the petitioner nor the respondent has placed on record said show cause notice. Both the parties have placed on record impugned order. From the perusal of impugned order, it can be culled out that past record was not considered by the Inquiry Officer. The respondent-disciplinary authority while passing order dated 10.06.2020

considered past record of the deceased employee in terms of Rule 16.24 (vii) of 1934 Rules, however, neither past record nor gist of the record was supplied to deceased employee. In the absence of compliance of procedure prescribed under Rule 16.24(vii) of 1934 Rules, the respondent could not rely upon past record. The respondent without compliance of procedure prescribed under Rule 16.24 of 1934 Rules relied upon past record of the petitioner, thus, there was non-compliance of mandate of Rule 16.24(vii) of the Rules.

12. The petitioner, in his reply, specifically submitted that he could not attend duty because he suddenly felt unconscious and fell down. His family took him away to a doctor in the village. The said employee during the pendency of present petition has passed away and as per record, he was less than 50 years old at the time of his death. The employee passed away within 5 months from the date of dismissal of revision petition which indicates that there were all possibilities that deceased employee was physically unfit which led to his absence from duty.

13. The disciplinary authority as well as appellate authority while passing impugned orders has not taken care of length of service of the deceased employee as well as his entitlement to pension. As per statement of Mr. Sachdeva, Advocate, made at Bar, in the Police Department an employee is entitled to pension on completion of ten years service. The deceased employee had already completed 28 years of service on the date of passing impugned order thus, he had already completed qualifying service and was eligible to pension. The respondent while passing impugned order has neither considered length of service of deceased employee nor his entitlement to

pension. The authorities were bound to consider these factors while passing impugned orders because these are mandatorily required to be considered.

14. A Coordinate Bench of this Court in ***State of Punjab v. Surjit Singh, 2002(3) SLR 148***, while referring to judgment of Apex Court in ***Major G.S. Sodhi v. Union of India, 1992 (3) RSJ 502***, affirmed the order of dismissal of the petitioner therein, however, having regard to the service rendered by the petitioner, granted him liberty to make representation for the benefits which has accrued in his favour for rendering qualifying service. The relevant extracts of the judgment read as:

“9. After hearing learned counsel for the parties and perusing the case law cited, I am of the view that no interference is called for with the order of dismissal preceded by departmental inquiry wherein misconduct of absence from duty was fully proved. In the context of the Punjab Police Rules, absence from duty could be treated as gravest act of misconduct as held by the Supreme Court in Ashok Kumar Singh's case (supra), and no doubt, it is expected and is desirable that the punishing authority expressly records a finding of this nature and also consider the past record, and also record reasons for depriving an employee of pension and reasons for imposing punishment even where the past record may be clean, the order passed by the punishing authority is not open to interference unless it can be held that the charge was not proved or the order was vitiated by mala fides or arbitrariness. The observations in the order about treating the period of absence to be leave cannot be taken to be condoning the absence but only with a view to maintain correct record. Even absence of express mention of consideration of the past record and reasons for depriving the employee of pension will not always vitiate the order nor warrant substitution of lesser punishment such as, compulsory retirement etc. by the civil Court, the scope of interference by the civil court being limited

to see that the order of punishment was not passed in denial of reasonable opportunity, was not without evidence and was not mala fide or arbitrary. Where the charge was fully proved, as in the present case, order of dismissal was justified as per the law laid down by the Supreme Court in Ashok Kumar Singh's case (supra), there was no scope for interference. This being the position answer to the questions arising in this appeal have to be in favour of the appellant-State, and interference by the courts below with the order of dismissal cannot be held to be legal and valid.

10. In Major G.S. Sodhi v. Union of India, 1992(3) R.S.J. 502 : 1994(3) SCT 335 (SC), it was observed that since the punishment of forfeiture of pension and other benefits has not been inflicted, such benefits ought to be given to the concerned employee. Following the said judgment, a Single bench of this Court in Krishan Lal v. State of Punjab, 1997(1) R.S.J. 535 observed that claim of the appellant in that case deserved to be considered sympathetically. I find that the observations made in the said case apply to the present case also.

11. For the above reasons, this appeal is allowed, decree of the courts below is set aside and the suit filed by the respondent-plaintiff is dismissed. However, having regard to the fact that the plaintiff had rendered service of about fifteen years, he should not be deprived of pensionary and other benefits earned by him for rendering service. If the plaintiff makes a representation in this regard, the authorities will consider to grant such benefits to him and the representation, if any, made by the plaintiff will be decided within a period of three months, and benefits, if any held admissible to him shall be paid to him within three months of the disposal of the representation.

Appeal allowed."

15. The disciplinary authority in the impugned order has noticed previous record of the deceased employee, however, did not return finding(s) to the effect that employee was incorrigible and he was completely unfit for

the police service. The deceased every time had committed offence of absence from duty. He was not involved in any criminal activity or gravest misconduct.

16. The respondent has pleaded that out of 28 years service of deceased employee, 23 years of service was forfeited, thus, he was not entitled to pensionary benefits. The petitioner on account of absence from duty, by way of different orders, was punished and his service was forfeited. This Court in **Punjab State vs. Joginder Singh, 1992(3) SCT 671** and **Harminder Singh vs. State of Punjab and others, 2014(1) SCT 16** has clearly held that approved service of a police officer cannot be forfeited for the purpose of pension, promotion and seniority. The relevant extracts of the judgment in **Joginder Singh's case (supra)** reproduced as below :

4. After hearing the learned counsel for the parties and after going through the findings recorded by the courts below and the relevant rules on the point, this Court is of the firm view that there is no merit in the appeal. Rule 16.2. of the Punjab Police Rules specifies certain kinds of punishments to be inflicted but nowhere lays down that approved service of a police personnel with permanent effect can be forfeited. The defendants cannot take advantage from column No. 3 of Rule 16.2 of the rules wherein punishment of stoppage of increment or forfeiture of approved service for increment can be inflicted. The punishment of stoppage of increment or forfeiture of approved service for increment cannot be interpreted to mean that the approved service of a police official with permanent effect can be forfeited. Approved service for increment can be forfeited but not the approved service for a period of three years with permanent effect affecting the rights of a police constable for the purposes of gratuity, pension and seniority. The underlying object in not vesting the authorities, under the above-mentioned provisions,

*with powers to forfeit approved service with permanent effect appears to be that an official should not suffer for all times to come in the matter of gratuity, pension and seniority, otherwise, there was no difficulty in making such a provision. In somewhat similar circumstances Delhi High Court in **Ram Pat v. Union of India and others, 1984(3) SLR 756** did not approve the action of the authorities by which the approved service of a police official for one year permanently entailing reduction in pay was forfeited.*

The afore-cited judgment is directly applicable to facts of the present case. The respondent has forfeited 23 years of service of the petitioner. The forfeiture of service as per afore-cited judgments cannot be considered for the purpose of pension.

17. The delinquent employee has already passed away so there is no question of reinstatement. However, keeping in view the length of service rendered by the deceased employee and the fact that disciplinary authority, in the impugned order, has not taken into consideration his claim for pension, as mandated by Rule 16.2 of 1934 Rules and relied upon past record without complying with mandate of Rule 16.24 (vii) of 1934 Rules, the impugned order is hereby modified to the extent the punishment of dismissal from service is substituted by compulsorily retirement. In the normal course, the matter is remanded to the authorities to re-consider quantum of punishment, however, considering the fact that authorities, on the earlier occasions, have considered the matter and passed identical orders and employee during the pendency of petition has passed away, this Court finds it in the interest of justice and fitness of things to modify quantum of punishment.

18. The respondents are hereby directed to determine pensionary benefits of the deceased’s family within three months from today. It is made clear that the petitioner shall not be entitled to interest on arrears.

19. Disposed of in above terms.

20. Pending miscellaneous application, if any, shall also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

18.03.2024
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<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>