

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-12914-2023
Date of Decision:03.05.2024

SURJIT KAUR Petitioner

Versus

STATE OF PUNJAB AND OTHERS Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Ashwani Talwar, Advocate with
Mr. Nikhil Sehrawat, Advocate
for the petitioner.

Mr. Pawan Kumar, DAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Article 226 of the Constitution of India is seeking setting aside of orders dated 04.09.2018 (Annexure P-1), 08.11.2019 (Annexure P-2) and order dated 30.04.2022 (Annexure P-3) whereby husband of the petitioner was dismissed from service.
2. The petitioner is widow of Surinder Pal Singh who joined Punjab Police as Constable on 31.05.1985. He attained the age of 55 years on 21.11.2017. The respondent considering his service record and medical condition extended his service for 3 years. The extracts of service book as enclosed with the petition as Annexure P-6 are reproduced as below:

“Permission for extension in service by 3 years after

attaining the age of 55 years.

As per service book of Constable (PR) Surinder Pal Singh No.03/Mansa, his date of birth is 21/11/1962 and he is completing his age of 55 years on 20.11.2017. Civil Surgeon, Mansa has declared the said official medically fit for performing duties. Therefore, permission is granted for allowing the above official to serve the department up to 30.11.2020 even after completion of 55 years of age. The above has been issued as per this office number 18458-60/B/CRC dated 14/11/2017.”

3. The aforesaid employee absented himself from duty and on account of absence from duty, the jurisdictional SSP vide order dated 04.09.2018 dismissed him from service. He preferred an appeal before Appellate Authority which came to be dismissed by Inspector General of Police, Bathinda vide order dated 20.05.2021. He further unsuccessfully preferred revision before DGP. He passed away on 10.09.2022. This is how petitioner being widow of deceased employee has preferred present petition.

4. Mr. Ashwani Talwar, Advocate submits that husband of the petitioner, on one hand, was granted extension of service considering his service and medical condition and on the other hand dismissed without considering his 32 years of service. Due to order of dismissal, the petitioner has been deprived from benefit of family pension and other retiral benefits. The respondent has 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.

5. Per contra, learned state counsel submits that deceased employee was habitual absentee. On earlier occasions also he remained absent from

duty. The respondent had no option except to dismiss him from service.

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

7. 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.”

8. 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”.

[Emphasis supplied]

9. 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.

10. 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. This is apt to notice here that there is no such finding in the impugned order of dismissal from 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 04.12.2017 to 31.08.2018, however, appellate authority while dismissing appeal has considered past conduct of the deceased employee. It is a settled proposition of law that appellate authority cannot travel beyond impugned order unless permissible by law. The relevant extracts of order of dismissal are reproduced as below:

“3. From a careful perusal of the evidence placed on record, statements of complaint witnesses and conclusion report of the Inquiry Officer during the departmental inquiry proceedings, while consenting with the conclusion report of the Inquiry Officer, former SSP Mansa, Shri Parambir Singh Parmar, PCS formed his opinion that as to why Constable/ P.R. Surinderpal Singh No 03/Mansa not be dismissed from Police Department for the charges of persistently remaining absent from duty since 04.12.2017 and his period of absenteeism be computed as non- duty-period? For this purpose, a show cause notice bearing No 1704 Steno dated 04.07.2018 was issued alongwith copy of conclusion report to Constable/ PR Surinderpal Singh No. 03 Mansa on 14.07.2018 whereby a period of 10 days was granted to Constable/ P.R. Surinderpal Singh No. 03/Mansa to submit his reply in writing and furnish his verbal defence That Constable/ P.R. Surinderpal Singh No. 03/ Mansa received the same but did not produce his reply in writing or verbal defence within stipulated period Thereafter, the departmental inquiry was presented to me for further proceedings. The undersigned before passing any final order in the said departmental inquiry issued another notice bearing No. 1929 Steno dated 01.08.2018 and got the same delivered through special employee on 03.08.2018 while granting another opportunity to Constable/ P.R. Surinderpal Singh No. 03/ Mansa to furnish his defence. In the said notice, a period of 3 days was granted to furnish his defence, but the said constable despite of receiving the said notice, failed to submit his defence in writing or vocally within the stipulated period. Owing to the same, while affording another and last opportunity, third notice bearing No. 2125/ Steno dated 16.08.2018 was issued and delivered through special employee to the Constable Surinderpal Singh No. 03/Mansa on 18.08.2018. It was clearly mentioned in the said notice that if the defence in writing or vocally is not

submitted within a period of 3 days from the receipt of the said notice then it would be considered that the said constable does not want to state anything towards the charges pressed in the departmental inquiry and admits the charges leveled against him, whereupon, final order would be passed pertaining to the punishment proposed in the notice without affording any more time, but the said Constable inspite of receiving the notice by himself and lapse of the stipulated time period, did not furnish his defence in writing or vocally before me. Constable/ P.R. Surinderpal Singh No. 03/ Mansa is a responsible employee of the disciplinary class of the Police Department. That due to the persistent absenteeism of the said constable from duty affects other employees of the department as well which contributes to decline in discipline, which cannot be tolerated at any cost. Constable/ P.R. Surinderpal Singh No. 03/ Mansa inspite of receiving the 3 notices by himself in the departmental inquiry has not yet furnished any reply in writing or any defence vocally. Wherefrom, it is evident that the said Constable does not want to state anything in his defence towards the charges pressed against him in the departmental inquiry and admits the allegations of remaining persistently absent from duty leveled against him. Due to which, I find it apposite to grant the punishment to the said Constable as proposed in the Notice bearing No. 1704 Steno dated 04.07.2018 (with which I agree). As such the undersigned hereby passes the order for dismissal of Constable (P.R.) Surinderpal Singh No. 03/Mansa from the Police Department w.e.f. 31.08.2018 after noon for the charges leveled against him in the departmental inquiry for remaining continuously absent from his duty without leave and without permission w.e.f. 04.12.2017 and the total period of 270 days of absence of the said employee w.e.f. 04.12.2017 till 31.08.2018 is being enumerated as non duty period.”

11. 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.

12. Legal position needs to be examined from another angle. In the impugned dismissal 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 and disciplinary authority. The appellate authority while passing order dated 08.11.2019 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 appellate authority could not rely upon past record. The appellate authority 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.

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. Ashwani Talwar, 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 32 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 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 neither taken into consideration his length of service nor claim for pension, as mandated by Rule 16.2 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 back to the authorities to re-consider quantum of punishment, however, considering the fact that employee has already passed away, this Court finds it in the interest of justice, equity and fitness of things to modify quantum of

punishment.

16. As conceded by Mr. Ashwani Talwar, the petitioner would get pension from 01.05.2024 and gratuity, however, she would not be entitled to arrears and any other retiral/terminal benefit.

17. The respondents are hereby directed to determine family pension and gratuity of the petitioner within three months from today. It is made clear that the petitioner shall not be entitled to interest on gratuity.

18. Disposed of in above terms.

(JAGMOHAN BANSAL)
JUDGE

03.05.2024
Ali

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>