

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Letters Patent Appeal No.1193 of 2021 (O&M)

Date of Decision: 07.02.2024

Union Territory of Chandigarh and othersAppellants

versus

Didar SinghRespondent

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA, ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE LAPITA BANERJI, JUDGE

Present : Ms. Aakanksha Sawhney, Advocate, for the appellants.

Ms. Divya Sharma, Advocate, for the respondent.

G.S.SANDHAWALIA, ACTING CHIEF JUSTICE (ORAL)

The present appeal seeks consideration of the judgment dated 26.02.2020 passed by the learned Single Judge in Civil Writ Petition No. 19833 of 2019 *Didar Singh vs. Union Territory of Chandigarh and others*, whereby the learned Single Judge allowed the writ petition filed by the writ petitioner (respondent herein) and set aside the order dated 21.09.2016 (Annexure P-2) passed by the Commandant General Home Guards-cum-Inspector General of Police, Union Territory, Chandigarh, vide which the respondent was discharged from the rolls of Chandigarh Home Guards Organization as his services were no longer required.

2. The reasoning which persuaded the learned Single Judge to set-aside the said order and direct reinstatement of the respondent-Didar Singh in service forthwith with continuity in service along with consequential benefits except for the actual financial benefits prior to the date of submission

of his representation for reinstatement was his acquittal in the FIR No. 115 dated 2nd September, 2016, under Section 61 of the Punjab Excise Act, 1914. Rule 27 of the Punjab Home Guards Rules, 1963 (for short '1963 Rules') were relied upon which provides that *“any member may, for misconduct or for absence from duty without sufficient cause, be dismissed from service and that no order of dismissal shall be passed unless reasons of dismissal are recorded in writing and the member concerned has been given a reasonable opportunity of showing cause against the action proposed to be taken against him”*. Accordingly, it was recorded that no such procedure had been followed and it was admitted that the action was taken against the respondent for misconduct i.e. registration of an FIR against him under the Punjab Excise Act, 1914 and his consequential absence from duty.

3. A perusal of the document (Annexure P-1) would go on to show that there was information regarding the absence of the employee from duty from 03.09.2016 and in this regard a DDR was lodged in the Daily Diary by the employer. In paragraph-6 of the written statement, it has been categorically admitted by the appellants that registration of the FIR and arrest of the respondent had come to the knowledge of the Commandant General on 03.09.2016. It is also not disputed that the respondent had earned acquittal on 25.09.2018 in the said FIR (Annexure P-3), which was registered under Section 61/1/14 of the Punjab Excise Act, 1914 at Police Station, Kurali on 02.09.2016 on account of the fact that he was found in possession of 11 bottles of liquor *‘Everyday Prestige Whisky’* for sale in Chandigarh only and therefore, without having any licence for keeping the same in his possession, he had been prosecuted. The Trial Court came to the conclusion that the prosecution has failed to prove the charges beyond the scope of reasonable

doubt and therefore, acquitted the respondent. Apparently, upon acquittal, the respondent submitted a representation dated 13.03.2019 (Annexure P-4) for reinstatement as a Home Guard Volunteer, which led to no response. Thereafter a legal notice dated 24.05.2019 (Annexure P-5), had also been served by the respondent upon the appellants, which again was not responded to, leading to filing of the writ petition.

4. A perusal of the Rule 18 of 1963 Rules would go to show that discharge of a member can only be on the ground when his services are not longer required. Rule 18 of 1963 Rules reads as under:-

“Discharge of members:- Any member may be discharged at any time by the authority which had appointed him when his services are no longer required”.

Whereas on the other hand, Rule 27 of the 1963 Rules, provides that the dismissal can be there on account of misconduct or for absence from duty without sufficient cause. It is in such circumstances, the learned Single Judge has fallen back upon Rule 27 of the 1963 Rules keeping in view the fact that as noticed the lodging of the FIR was the reason for his discharge from duties and the same had not been done under Rule 18 and rather it was a case of misconduct or absence from duty without sufficient cause and the necessary procedure under Rule 27 had to be followed which has never been done. Rule 27 of the 1963 Rules reads as under:-

“27. Dismissal:- (1) any member may, for misconduct or for absence from duty without sufficient cause, be dismissed from service; provided that no order or dismissal shall be passed unless reasons of dismissal are recorded in writing and the member concerned has been given a reasonable opportunity of showing cause against the action proposed to be taken against him.

(2) The authority competent to pass an order of dismissal in the case of a Gazetted Officer shall be the Government and in the case of a Non Gazetted Officer and other

members, the Commandant General or the Gram Raksha Dal Chief, as the case may be.

(3) An appeal against an order of dismissal passed by the Commandant General or the Gram Raksha Dal Chief shall lie to the Government.

(4) The order of the Government passed under sub-rule (2) or sub rule (3) shall be final and shall not be called in question in any proceeding whatsoever.”

5. Reliance was accordingly placed on the judgment of the Apex Court in ***Davinder Singh and others vs. State of Punjab and others 2010(13) SCC 88***, wherein the services of the Home Guards were terminated on account of the fact that they were involved in an act of indiscipline at the Amritsar Railway Station while travelling in connection with election duty. The Apex Court accordingly held that without giving an opportunity, terminating their services was not justified. Relevant paragraphs of the judgment cited (supra) read as under:-

“(31) *In our considered view, even in matters of discharge, the authority concerned cannot act arbitrarily while discharging an employee. However, in the instant case, the appellants are being discharged from service for indiscipline. Therefore, as provided in proviso to rule 27 of the rules, the appellants should have been given a reasonable opportunity of showing cause against the action proposed to be taken against them. Admittedly, no such opportunity was given to them. Therefore, we are of the view that the action of the respondents is contrary to their own statutory rules and in violation of principles of natural justice.*

(32) *Even without going into the question whether the appellants are eligible for the protection under [Article 311](#) of the Constitution, in our view, the respondents seem to have acted in an arbitrary manner by terminating the services of the appellants, who have been working as*

Home Guards for the last 15-17 years. They are all over-aged. They may find it difficult to find alternate employment. Therefore, in the facts and circumstances of this case and in the interest of justice, we deem it proper to set aside the order of termination passed by the respondents dated 02.12.2004 and direct the respondents to reinstate the appellants as Home Guards without back wages.”

6. In the present case, it is also to be noted that the respondent already had almost 16 years of service with the Union Territory, Chandigarh having been appointed as Home Guard Volunteer on 14.02.2000 and had worked till the date of his discharge on 23.01.2014 and thereafter he was again enrolled as Home Guard Volunteer on 12.01.2015 and continued to work till the impugned order was passed on 21.09.2016. In such circumstances, the length of service is an important aspect which weighs with us also to uphold the order of the learned Single Judge.

7. The argument that has been raised qua the respondent only being a daily wager and the financial benefits have been granted to him from the date of his representation made on 13.03.2019, also does not cut much ice with us. The Apex Court in a subsequent judgment in ***Grah Rakshak, Home Guards Welfare Association vs. State of H.P. and others (2015) 6 SCC 247***, while noticing that it is a constitution of volunteer corps and Home Guards are not regular employees of the State, however, has issued directions that though regularization of services cannot be done but the fact is that the State Government should pay duty allowances at such rates, total of which 30 days (a month) comes to minimum of the pay, to which the police personnel of the State are entitled and the State Government should pass appropriate orders in terms of the aforesaid observations.

8. In such circumstances, once the order of discharge had been wrongly passed without falling back upon the prescribed rules, the reliance placed by learned counsel for the appellants upon the judgment rendered by the Supreme Court in ***Maharashtra State Road Transport Corporation vs. Dilip Uttam Jayabhay 2022 AIR (SC) 238***, would not be of much help since it was a case where the order of dismissal passed by the Disciplinary Authority dismissing the respondent was upheld while setting aside the judgment of the Industrial Court.

9. Similarly, ***Rajasthan State Road Transport Corporation, Jaipur vs. Shri Phool Chand (dead) through L.Rs. 2018(4) SCT 434***, was a case where full back wages had been granted to the deceased workman by the Labour Court and the Apex Court had modified the order to the extent of 50% back wages to be given, on account of the fact that the employee had expired and the benefits would go to his legal representatives. The issue was whether he was gainfully employed or not, which is a condition precedent under the provisions of the Industrial Disputes Act, and therefore, the said judgment is not applicable to the facts of the present case.

10. Reliance placed upon the judgment of the Supreme Court in ***Union of India and others vs. Jaipal Singh, 2004(1) SCT 108***, would also not be of much consequence as it was a case where the person was convicted under Section 302 of the Indian Penal Code and on that account while ordering reinstatement he was allowed back wages only from the date of his acquittal because it was a personal dispute as such and had nothing to do with the Employer. In the present case also, wages have been granted after the date of representation.

11. In *P.Karupaiah (D) through L.Rs. vs. General Manager, Thruuvalluvar Transport Corporation Ltd. 2018(1) SCT 2*, the Apex Court did not interfere in the discretion exercised by the Courts below declining to award any back wages on account of the fact that he had been involved in a murder case and was prosecuted for the said offence but subsequently he was reinstated and therefore, on the principle of “*no work no pay*” he was declined the relief.

12. As noticed above, apparent discharge from duties as such is on the basis of the reasoning that he was involved in a criminal matter and the principle had to be followed to give the employee an hearing in view of the statutory provisions, which was not adhered to on account of the fault of the appellants. The volunteer Home Guard cannot be put to a disadvantage and the reasoning as has been adopted by the learned Single Judge does not suffer from any infirmity which would warrant interference.

13. The argument raised by learned counsel for the appellants that there was no specific prayer made for grant of back wages is also without any basis. The learned Single Judge has exercised his power under the writ jurisdiction and granted the relief of back wages for the restricted period to balance the scales of justice in favour of the volunteer Home Guard who had been wrongly discharged without following the prescribed procedure under the rules.

14. The Apex Court in *Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others (2013) 10 SCC 324* has held that grant of full back wages is a normal rule in cases of wrongful termination of service. One of the principle laid down in the said judgment read as under:-

“33(v) The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under [Article 226](#) or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer’s obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.”

14. With these observations, the appeal stands dismissed. Pending applications, if any, also stand disposed of.

(G.S.SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

07.02.2024
ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No