



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(208)

RSA No. 1264 of 2014 (O&M)
Date of Decision : 23.05.2024

State of Punjab and others

...Appellants

Versus

Surinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rohit Ahuja, Deputy Advocate General, Punjab
for the appellants.

Mr. Shailesh Aggarwal, Advocate for the respondent.

Harsimran Singh Sethi J. (Oral)

1. In the present appeal, the challenge is to the judgments and decrees of the courts below dated 31.05.1991 and 26.11.2013 by which, the suit filed by the respondent- plaintiff challenging the punishment order dated 01.11.1985 by which the respondent-plaintiff was dismissed from service as well as the order passed by the appellate authority dated 31.01.1986 dismissing his appeal as well as the order dated 18.09.1986 passed by the revisional authority dismissing his revision, has been allowed and the appeal of the appellants-defendants has been dismissed.
2. Certain facts needs to be mentioned for the correct appreciation of the issue in hand.
3. The respondent-plaintiff was appointed as a Constable in Punjab Police on 06.04.1976. As per respondent-plaintiff, while working



on the said post, he fell sick in March, 1985 and could not attend his duties. He remained confined to the bed and he had also sustained injury on his right hand and had to undergo a plastic surgery and hence, he remained absent from duty for a period starting from 18.03.1985 to 11.04.1985. Keeping in view the said absence, the departmental proceedings were initiated and in the said departmental proceedings, the charge of the unauthorised absence was proved against the respondent-plaintiff as the respondent- plaintiff failed to produced any medical certificate of his illness which was being alleged by him.

4. Ultimately, keeping in view the charges alleged and proved, the respondent- plaintiff was dismissed from service by the competent authority vide order dated 01.11.1985. Against the said dismissal order, the respondent- plaintiff filed service appeal before the authorities concerned, which also came to be dismissed on 31.01.1986. Against the said order, revision petition was filed which was also dismissed by the Inspector General of Police on 18.09.1986.

5. The said orders were challenged by the respondent-plaintiff by filling the civil suit and keeping in view the evidence and facts which had come on record, the trial court vide judgement and decree dated 31.05.1991, decreed the suit but without any back wages. The trial court held that the absence from duty is not a grave act of misconduct as the absence period in question has already been regularised by treating it as



leave without pay and hence, no ground exists so as to treat the regularized period as an unauthorised period.

6. Feeling aggrieved against the said judgment and decree of the trial court, the appeal was preferred by the State, which appeal was also dismissed by the lower appellate court vide judgment and decree dated 26.11.2013 hence, the present regular second appeal.

7. While issuing the notice of motion in the present appeal, the execution of the judgments and degrees of the courts below was stayed. The learned counsel for the appellants-defendants argues that the act of unauthorised absence from duty is a grave misconduct, hence the judgment of the trial court holding that the act of unauthorised absence attributed to the respondent- plaintiff does not amount to grave misconduct, is perverse keeping in view the settled principle of law. Learned counsel for the appellants-defendants places reliance upon the judgement of the Hon'ble Supreme Court of India in Civil Appeal No. 9997 of 1995 titled as ***State of U.P. Vs. Ashok Kumar Singh***, decided on 10.11.1995.

8. Learned counsel for the appellants-defendants submits that the finding recorded by the trial court that the absence period has been regularised i.e. the absence period has been condoned is also contrary to the judgement of the Hon'ble Supreme Court of India in Civil Appeal No. 517 of 1966 titled as ***State of Madhya Pradesh Vs. Harihar Gopal***, decided on 10.03.1969, according to which, merely that the leave of the



kind due has been granted for the period of unauthorised absence, the same will not invalidate the order of termination as the said order has only been passed so as to maintain the correct record of duration of the service.

9. Learned counsel appearing on behalf of the respondent-plaintiff on the other hand submits that the absence for the period in question was bona fide and was due to the circumstances which were not within the control of the respondent-plaintiff as he was not well for the period in question. Learned counsel for the respondent-plaintiff further submits that merely for 24 days' absence, the order dismissing the respondent-plaintiff from service cannot be passed as the said punishment will be totally disproportionate to the charges alleged and proved. Learned counsel for the respondent-plaintiff further submits that keeping in view the facts and circumstances of the present case, the judgments and degrees of the courts below are perfectly valid and may kindly be upheld.

10. I have heard learned counsel for the parties and have gone through the record with their able assistance.

11. The first question which arises for adjudication is whether, the unauthorised absence from duty qua a policeman, who is a member of a discipline force, is to be treated as grave act of misconduct or not. It may be noticed that in the judgment dated 31.05.1991 the trial court has held that the 24 days' absence from service cannot be treated as a grave misconduct. The said finding is contrary to the judgment of the Hon'ble



Supreme Court of India in ***Ashok Kumar Singh's case (supra)***. The Hon'ble Supreme Court of India has held that where a Police Constable remained absent from duty without leave, the same amounts to a grave misconduct. The relevant paragraph 8 of the said judgment is 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.”

12. Keeping in view the judgment of the Hon'ble Supreme Court of India, the findings recorded by the courts below that the unauthorised absence from duty is not a grave misconduct, is to be treated as perverse in the facts and circumstances of the present case.

13. The second argument which has been raised by the learned counsel for the appellants-defendants is that the trial court has come to the



conclusion that while passing the impugned punishment order, the absence period in question has been treated as leave without pay hence, the same has been regularised, therefore, no action can be taken qua the said absence period so as to vitiate the order terminating the services of the respondent-plaintiff which is contrary to the settled principle of law.

14. The said argument is valid. As per the judgment of the Hon'ble Supreme Court of India in ***Harihar Gopal (supra)***, as far back as in the year 1969, it has been held that the order regularising the period is only to maintain the correct record of duration of service but that does not mean that the allegation of unauthorised absence stands condoned. The relevant paragraph No. 5, 6 and 7 of the said judgement are as under :-

"5. The High Court, however was of the view that since on March 9, 1962, two orders were passed by the State Government - one removing the respondent from service and the other granting him leave till March 4, 1960 and that by the order granting leave the respondent's absence from duty was regularised, the State Government was incompetent to remove the respondent from service on the ground that he was "absent from duty unauthorisedly.

6. In our view, the conclusion of the High Court cannot be sustained. The order terminating the respondent's service by paragraph 8 states :

"Now therefore, in exercise of the powers conferred by Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, the State Government is pleased to order that the said Harihar Gopal is hereby removed from service."



This order hears No. 1481-288, (ii) I dated March 9, 1962. Copies of this order have been forwarded to various authorities under Endorsement No. 1482-288/I(ii) also dated March 9, 1962. The order granting leave is also dated March 9, 1962 its No. is 1491-299/I(ii) and it recites Shri Harihar Gopal, Deputy Collector, is ground leave as here under :

- (a) Earned leave for 29 days with effect from 28.8.58 to 25.9.58.*
- (b) Half pay leave for 40 days with effect from 26.9.58 to 4.11.58.*
- (c) Leave without pay for 89 days from 5.11.58 to 1.2.59, for 76 days from 12.11.59 to 26.1.60 and for 18 days from 16.2.60 to 4.3.60".*

This order was also communicated to the Commissioner, Bhopal Division, Collector, Vidisha and the incharge Finance Department, Bhopal. Evidently the order granting leave was made after the order terminating the respondent employment.

7. It was urged before the High Court on behalf of the State that the order granting leave was only for the purpose of regularising the absence from duty and for maintaining a true account of absence from duty and had not the effect of first sanctioning leave to the respondent in which he was entitled and then removing him from service for absence from duty. The High Court rejected this contention observing. "..... When the leave was granted even though belatedly, it had the effect of authorising with retrospective effect the petitioner's (respondent's) absence from duty during the period for which it was sanction. Having thus authorised the petitioner's (respondent's) absence from



duty, it was not open to the State Government to proceed on the basis that his absence was unauthorised."

These observations proceed upon a misconception of the sequence of the orders passed by the State Government and the true effect of the order granting leave. The order granting leave was made after the order terminating the employment and it was made only for the purpose of maintaining a correct record of the duration of service and adjustment of leave due to the respondent and for regularising his absence from duty. Our attention has not been invited to any rules governing the respondent's service conditions under which an order regularising absence from duty subsequent to termination of employment has the effect of invalidating termination. Both the orders, one terminating the employment of the respondent and the other granting leave are made by order and in the name of the Governor of Madhya Pradesh" and they are signed by L.B. Sarje, Deputy Secretary to the Government of Madhya Pradesh, General Administration Department. We are unable to hold that the authority after terminating the employment of the respondent intended to pass an order invalidating the earlier order by sanctioning leave to that the respondent was to be deemed nor to have remained absent from duty without leave duly granted."

15. Not only this, the Hon'ble Supreme Court of India while deciding Civil Appeal No. 4969 of 2008 titled as ***State of Punjab Vs. Dr. P.L. Singla***, decided on 31.07.2008, has held that wherever the



unauthorised absence has been dealt in a manner required after imposing the punishment, it does not mean that the absence stands condoned or wiped out so as to set aside the punishment already imposed. The relevant paragraph No. 11 of the said judgment is as under :-

“11. In this case, the punishment was imposed by order dated 16.9.1999/11.10.1999. That order was not cancelled, revoked or withdrawn. The subsequent order dated 25.1.2001 merely accorded extraordinary leave in regard to the period of absence, but did not condone the unauthorized absence nor wipe out the punishment already imposed. The said order was only consequential to the imposition of punishment. Its effect was to maintain continuity of service of the respondent, but deny salary for the period of absence and not to count the period of absence as qualifying service for the purposes of pension. Its effect is certainly not to exonerate the respondent from the charge of unauthorised absence nor to wipe out the punishment. If the intention was to revoke the punishment, the order dated 25.1.2001 would have clearly stated so. But it did not.”

16. Keeping in view the judgements in **Dr. P.L. Singla (supra)** as well as **Harihar Gopal(supra)**, the findings recorded by the courts below that the period of unauthorised absence stands condoned is contrary to the settled principle of law and cannot be sustained.

17. At this stage, learned counsel for the respondent plaintiff submits that the punishment imposed was excessive, which has rightly been converted into stoppage of three increments with cumulative effect



by the courts below. It may be noticed that as per the settled principle of law, the courts have no power to modify the punishment imposed by the punishing authority and the same is beyond the jurisdiction of the courts even if, the punishments are found as excessive, the authority is to be given to the department concerned to pass a fresh order of punishment keeping in view the charges alleged and proved.

18. Even otherwise, as per the judgment of the Co-ordinate bench of this court in RSA No. 2248 of 2014 titled as *Swarn Singh Vs. State of Punjab*, decided on 08.09.2015, even one day's absence without intimation cannot be ignored and the quantum of punishment of dismissal imposed cannot be said to be disproportionate to the misconduct keeping in view the fact that the police officers are the members of the discipline force.

19. Learned counsel for the respondent-plaintiff has not been able to rebut the said settled principle of law hence, once, even one day's absence has been treated to be grave act of misconduct and can lead to dismissal from service, it cannot be said that the punishment imposed by the department qua the respondent-plaintiff is disproportionate in any manner and the lower appellate court has wrongly interfered with the said punishment imposed.

20. Even otherwise, once the lower appellate court had already come to the conclusion that the enquiry proceedings were conducted in a manner required for, the courts below did not have any power to modify



the punishment imposed. The jurisdiction of the court is only to see that the procedure envisaged under rules to conduct the disciplinary proceeding has been followed or not. The court cannot assume the role of an appellate authority so as to modify the punishment imposed as the same is only within the jurisdiction of the punishing authority and the department concerned. Hence, once the lower appellate court has recorded a finding that the disciplinary proceedings against the respondent-plaintiff were conducted in a manner required for, interfering with the quantum of punishment, was beyond the jurisdiction of the lower appellate court so as to modify the punishment in question.

21. Hence, keeping with the facts and circumstances is mentioned here-in-before, the judgments and degrees of the courts below are perverse to the settled principle of law and cannot be sustained. The judgment and decree of the trial court dated 31.05.1991 as well as the judgment and decree of the lower appellate court dated 26.11.2013 are set-aside. The appeal filed by the appellant-defendants is allowed and the suit filed by the respondent-plaintiff is also dismissed.

Pending miscellaneous application, if any, also stands disposed of.

May 23rd, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No