



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

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**RSA-1120-2001 (O&M)
Date of Decision: May 20, 2025**

State of Punjab and others**.....Petitioner(s)**

Vs.

Lakhwinder Singh**.....Respondent(s)****CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA****Present:** Mr. R.S. Pandher, Addl. A.G, Punjab.

Mr. Arun Abrol, Advocate for the respondent.

SUDEEPTI SHARMA J. (ORAL)

The present appeal is preferred against the judgment and decree dated 11.12.1997 passed by learned Civil Judge (Junior Division), Gurdaspur whereby the civil suit filed by the respondent-Lakhwinder Singh Ex. Constable was decreed in his favour and judgment and decree dated 21.09.2000 passed by learned Additional District Judge, Gurdaspur, whereby appeal filed by the appellant-State of Punjab against judgment and decree dated 11.12.1997 was dismissed.

BRIEF FACTS OF THE CASE

2. Brief facts of the case are that the respondent joined service in the Police Department of appellant as Constable on 08.11.1989 in District Ludhiana and was posted at Police Station Sahnewal in the year 1991. He remained absent from duty without any permission from competent authority for 71 days, 02 hours and 15 minutes. On the basis of the departmental enquiry, he was dismissed from service on 03.09.1994. Departmental appeal filed by



him was dismissed on 24.08.1995. He challenged dismissal order dated 03.09.1994 and appellate authority order 24.08.1995 on the ground that principles of natural justice were not followed at the time of passing of above orders. In the civil suit, he further prayed for all service benefits with interest @ 12 % per annum. The civil suit filed by him was decreed in his favour however, he was not held entitled to service benefits including pay and allowances since he admitted that he remained absent from duty without any leave or permission from the competent authority for the alleged period, however, the appellant-State of Punjab was granted liberty to pass fresh orders by holding the fresh enquiry in accordance with law.

3. Appellant-State of Punjab filed the appeal against judgment and decree dated 11.12.1997 passed by learned Civil Judge, Junior Division, Gurdaspur and the same was dismissed by learned Additional District Judge, Gurdaspur vide judgment and decree dated 21.09.2000. Hence, the present Regular Second Appeal.

SUBMISSION OF LEARNED COUNSELS FOR THE PARTIES

4. Learned counsel for the appellant-State contends that both the Courts failed to appreciate the conduct of the respondent, who was appointed as Constable in the Police Force, which is a disciplinary post and he admittedly remained absent from duty for a period of 71 days, 02 hours and 15 minutes. He, therefore, prays that the present appeal be allowed.

5. Per contra, learned counsel for the respondent contends that the civil suit filed by him was rightly decreed in his favour and the appeal filed by the appellant was rightly dismissed. Therefore, he prays that the present appeal be also dismissed.



6. I have heard learned counsel for the parties and perused the whole record of this case.

7. A perusal of the record shows as under:-

a) That admittedly the respondent remained absent from duty for 71 days, 02 hours and 15 minutes from 24.01.1991 to 05.04.1991 and then remained continuously absent from duty 21.10.1991 onwards.

b) That charge-sheet Ex.P-3 with the enquiry file Ex.P-1 at page No.17 was not approved by the competent authority and the approval of the same was taken lateron.

c). That the respondent appeared in the witness box as PW-1 and admitted his absence from duty and stated that the absence from duty was due to death of his grand-mother, grand-father and two aunts.

d). That the appellant-State of Punjab brought on record three witnesses and the service roll Ex.-D1 of the respondent. Head Constable Paramjit Singh appeared as DW-2 and he in his cross-examination admitted that the charge-sheet was prepared by him whereas the Enquiry Officer was Inspector Mangal Singh. He further deposed that concluding report of the enquiry was prepared by him and Inspector Mangal Singh only signed it.

e). That, it is admitted fact by the witnesses of the appellant-State of Punjab that the charge sheet was prepared by Head Constable Paramjit Singh who was neither an Enquiry Officer nor was appointing authority.

f) That the impugned order dated 03.09.1994 was passed with retrospective effect wherein the respondent was dismissed from service w.e.f. 31.08.1994.



- g). That no charge-sheet, show cause notice was ever conveyed to the respondent and an *ex parte* enquiry was conducted against him.
- h). That no personal hearing was given before passing the impugned order of retrospective dismissal dated 03.09.1994 dismissing the respondent from service w.e.f. 31.08.1994.
- i). That even the departmental appeal filed by the respondent which was dismissed is non-speaking and is passed without application of mind and without appreciation of evidence on record.
- j). That charge-sheet, copy of which was approved subsequently after holding the enquiry, alleged to have been served upon the respondent was not actually served.
- k). That a bare glance of the charge sheet which was served upon the respondent during the course of enquiry Ex.P-2 shows that it was not approved by the competent authority whereas the charge sheet which is there in the enquiry file was subsequently approved by the competent authority which is apparent and clear, since as per record the copy of charge-sheet which was served upon the respondent contained no approval. Further DW-2, Head Constable Paramjit Singh in his testimony stated that charge-sheet was prepared by him. He further deposed that he concluded the enquiry report and the same was only signed by Mangal Singh Enquiry Officer. Meaning thereby, no proper enquiry was conducted before dismissing the respondent and even principles of natural justice were not followed. Further, the dismissal order of respondent is dated 03.09.1994 and the respondent was dismissed retrospectively w.e.f. 31.08.1994.



8. Though the respondent being member of disciplined force, is not expected to leave his duty without any leave application but as per Rule 16.2 of Punjab Police Rules, 1934, dismissal shall be awarded only for gravest acts of misconduct or as a cumulative effect of repeated misconduct proving incorrigibility and complete unfitness for police service and in making such an award, regard shall be had to the service of the offender and his claim to pension, whereas in the present case, neither dismissal order is passed by the competent authority nor it is passed in accordance with Rule 16.2 of Punjab Police Rules, 1934. Therefore the dismissal order dated 03.09.1994 which is passed in-contravention of the Rule 16.2 of Punjab Police Rules, 1934 and without following principle of natural justice, has been rightly set aside by the learned Civil Judge, Gurdaspur and the appeal filed by the appellant -State has rightly been dismissed by Learned Additional District Judge, Gurdaspur.

9. Therefore, I do not find any infirmity in judgment and decree dated 11.12.1997 passed by learned Civil Judge (Junior Division), Gurdaspur and judgment and decree dated 21.09.2000 passed by learned Additional District Judge, Gurdaspur. The same are affirmed. The present appeal is accordingly dismissed being devoid of any merits.

10. Vide judgment and decree dated 11.12.1997 passed by learned Civil Judge (Junior Division) Gurdaspur, liberty was granted to the appellant-State to conduct a fresh enquiry in accordance with Rules, which was upheld by the learned Additional District judge, Gurdaspur vide judgment and decree dated 21.09.2000. In the Regular Second appeal filed by the State, vide order dated 29.11.2002, this Court stayed the execution of judgment and decree



under appeal. This shows that till date, no fresh enquiry was conducted by the appellant-State.

11. Hon'ble the Supreme Court in **Punjab National Bank and others Vs. Kunj Behari Misra, 1998 (7) SCC 84**, held as under:-

“Both the respondents superannuated on 31st December, 1983. During the pendency of these appeals Misra died on 6th January, 1995 and his legal representatives were brought on record. More than 14 years have elapsed since the delinquent officers had superannuated. It will, therefore, not be in the interest of justice that at this stage the cases should be remanded to the disciplinary authority for the start of another innings. We, therefore, do not issue any such directions and while dismissing these appeals we affirm the decisions of the High Court which had set aside the orders imposing penalty and had directed the appellants to release the retirement benefits to the respondents. There will, however, be no order as to costs.”

12. In the present case, the dismissal order pertains to the year 1994 and the present RSA is filed in the year 2001 which is decided in the year 2025 i.e. after almost 24 years. In view of the above referred to judgment passed by Hon'ble the Supreme Court in **Kunj Behari Mishra's** case, it will not be in the interest of justice to remand the matter to the disciplinary authority after a period of almost 30 years, to proceed afresh against the respondent. Therefore to avoid further delay in granting of pensionary benefits/retiral benefits to the respondent, this Court directs the appellant-State to calculate the retiral benefits of the respondent which he is entitled to and disburse the same in the account of the respondent within a period of six months from the date of receipt of certified copy of this judgment.



- 13. Decree sheet be drawn.
- 14. Pending application(s), if any, also stand disposed of.

May 20, 2025
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(SUDEEPTI SHARMA)
JUDGE

Whether speaking/reasoned: Yes
Whether reportable Yes