



RSA-1332-2001 (O&M)

-1-

201

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

**RSA-1332-2001 (O&M)
Date of Decision: 06.03.2025**

State of Punjab and others

.....Appellants

Vs.

Ex. Constable Palwinder Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Sartaj Singh Gill, Senior Deputy Advocate General, Punjab,
for the appellants.

Mr. Vinod Kumar Kaushal, Advocate,
for the respondent.

SUDEEPTI SHARMA J. (ORAL)

1. The present appeal is preferred by the State of Punjab against the judgment and decree dated 02.02.1998 passed by the learned Civil Judge (Senior Division), Gurdaspur, whereby, the civil suit filed by the respondent was decreed in his favour, as well as, the judgment and decree dated 25.10.2000 passed by the learned Additional District Judge, Gurdaspur (for short, 'First Appellate Court'), whereby, the appeal filed by the State of Punjab challenging the judgment and decree dated 02.02.1998 passed by the learned Civil Judge (Senior Division), Gurdaspur, was dismissed.

2. Vide order dated 28.08.2001, Co-ordinate Bench of this Court passed the following orders:-

"Notice of motion for 04.12.2001.



RSA-1332-2001 (O&M)

-2-

Records.

Operation of the impugned order shall remain stayed, till further orders.”

3. Thereafter, while admitting the present appeal, vide order dated 21.08.2002, Co-ordinate Bench of this Court passed the following orders:-

“As per the office report, the solitary respondent has been duly served but despite service neither the said respondent is present in person nor represented through counsel, as such, proceeded against ex parte.

Admitted.

The operation of the impugned judgment and decree of the Courts below shall remain stayed during the pendency of the appeal.”

4. The brief facts of the case are that the respondent joined the Police Department as a Constable. He remained absent from duty without any leave for a period of about 04 months, 20 days and 11 hours. He was served with charge-sheet and after holding a proper departmental inquiry and hearing him, he was found guilty, therefore, he was dismissed from service, vide order dated 29.09.1994.

5. He challenged the order of dismissal dated 29.09.1994 by filing a civil suit, which was decreed in his favour, vide judgment and decree dated 02.02.1998 passed by the learned Civil Judge (Senior Division), Gurdaspur, on the ground that the departmental appeal filed by the respondent was rejected by the Appellate Authority without serving any show cause notice and without giving him opportunity of being heard. Hence, the dismissal



RSA-1332-2001 (O&M)

-3-

order dated 29.09.1994 was held not to be legally sustainable by the learned Civil Judge (Senior Division), Gurdaspur.

6. The appellants/State of Punjab filed an appeal against the judgment and decree dated 02.02.1998 passed by the learned Civil Judge (Senior Division), Gurdaspur, and the learned First Appellate Court, vide its judgment and decree dated 25.10.2000, dismissed the same and affirmed the judgment and decree dated 02.02.1998 passed by the learned Civil Judge (Senior Division), Gurdaspur. Hence, the present appeal.

SUBMISSION OF THE LEARNED COUNSEL FOR THE PARTIES

7. Learned counsel for the appellants-State contends that the learned Civil Judge (Senior Division), Gurdaspur, while allowing the civil suit in favour of the respondent and the learned First Appellate Court while dismissing the appeal filed by the appellants-State, totally ignored the Enquiry Report and the conduct of the respondent. He further submits that due procedure was followed before dismissing the respondent from service. He further submits that the respondent was given personal hearing as well.

8. Per contra, learned counsel for the respondent submits that the appeal filed by the State of Punjab against the judgment and decree dated 02.02.1998 passed by the learned Civil Judge (Senior Division), Gurdaspur, has rightly been dismissed by the First Appellate Court, vide its judgment and decree dated 25.10.2000. He further submits that no opportunity of personal hearing was granted while dismissing the departmental appeal filed by the respondent.



RSA-1332-2001 (O&M)

-4-

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

10. A perusal of the record shows that the respondent was given show cause notice for willfully remaining absent from duty for a total period of 04 months, 20 days and 11 hours without any authorized leave or permission from any competent authority. A perusal of the record further shows that after appointing an Enquiry Officer, the respondent was dismissed from service after considering his reply to show cause notice and giving him full opportunity of being heard.

11. The impugned order of dismissal dated 29.09.1994 shows that the respondent appeared before the Punishing Authority and filed his reply, wherein, he stated that he did not want to work and he be discharged. Further, it was observed that within a period of three years, his conduct was found irresponsible and careless, since he remained absent from duty for a period of 04 months, 20 days and 11 hours without any leave or permission from the competent authority.

12. The respondent challenged the impugned order of dismissal dated 29.09.1994 before the departmental Appellate Authority on the ground that he was not granted any opportunity of being heard and was not supplied all the documents. The departmental Appellate Authority, vide its order dated 06.01.1998, held that the respondent was supplied with all the relevant documents and every reasonable opportunity of being heard was given to him and during the course of departmental inquiry, he had pleaded his guilt



RSA-1332-2001 (O&M)

-5-

and stated that he did not want to produce any defence witness. It was further held by the departmental Appellate Authority that the respondent was habitual absentee and during a short span of service, he was absent from duty without any leave or permission from the competent authority on many occasions, which shows his lack of interest in the job. In view of the same, the departmental appeal filed by the respondent was dismissed.

13. A perusal of the record further shows that the respondent was granted full opportunity of being heard before passing the impugned order of dismissal. Further the respondent, being a member of disciplinary force, remained absent from duty without any leave or permission from the competent authority on many occasions shows his conduct as well.

14. Hon'ble the Supreme Court in **Ex. Sepoy Madan Prasad v. Union of India and others, (2023) 9 SCC 100** while advertng to disciplinary action in case of absence from duty has held that the Court should not set aside order of dismissal where delinquent is part of Armed Forces and remained absent from duty. The relevant extracts of the judgment read as:-

“11. It is apparent from the above table that the appellant was a habitual offender. There were four red ink entries and one black ink entry against him before the present incident cited at Serial No. (f) above. Such gross indiscipline on the part of the appellant who was a member of the Armed Forces could not be countenanced. He remained out of line far too often for seeking condonation of his absence of leave, this time, for a prolonged period of 108 days which if accepted, would have sent a wrong



RSA-1332-2001 (O&M)

-6-

signal to others in service. One must be mindful of the fact that discipline is the implicit hallmark of the Armed Forces and a non-negotiable condition of service.

XXXX

XXXX

XXXX

18. For the aforesaid reasons, we do not find any infirmity in the impugned judgment [Madan Prasad v. Union of India, 2015 SCC OnLine AFT 887] passed by the AFT. The appellant had been taking too many liberties during his service and despite several punishments awarded to him earlier, ranging from imposition of fine to rigorous imprisonment, he did not mend his ways. This was his sixth infraction for the very same offence. Therefore, he did not deserve any leniency by infliction of a punishment lesser than that which has been awarded to him.”

15. A Division Bench of this Court while dealing with similar issue in **Balwinder Singh versus State of Punjab and others**, (LPA-934-2023, decided on 21.02.2024), has held that act of remaining absent from duty for a man in uniform is a gravest act of misconduct. The relevant extracts of the judgment read as:-

“That a man in uniform has to maintain greater discipline and the act of remaining absent from duty is a gravest act of misconduct. Reliance can be placed upon the judgment in State of Punjab & others Vs. Mohinder Singh, 2005 (12) SCC 182 wherein the Apex Court allowed the appeal by noticing that there was absence of 5 ½ months and it was reprehensible conduct by the Constable. The basic principle which has been time and again laid down is that remaining absent from duty after the sanctioned leave by a uniformed personnel is fatal.



RSA-1332-2001 (O&M)

-7-

Keeping in view the fact that the appellant voluntarily kept away from his duties which were very much required by his department and the fact that the matter was duly enquired upon. Copy of the notice was sent to his foreign address through registered post to which he had not replied and also copy had been sent to his father which would be clear from the order of dismissal.”

16. Since the respondent, despite being member of disciplined Police Force, was habitual absentee and did not mend his behavior, therefore, this Court is of the considered opinion that he does not deserve any sympathy.

17. In view of the above, the present appeal is allowed. The judgment and decree dated 02.02.1998 passed by the learned Civil Judge (Senior Division), Gurdaspur, as well as the judgment and decree dated 25.10.2000 passed by the learned First Appellate Court, are set aside and the suit of the respondent is dismissed.

18. Decree sheet be drawn. Parties are left to bear their own costs.

19. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

06.03.2025

Virrendra

Whether speaking/non-speaking : Yes

Whether reportable : Yes/No