



212 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-6558-2022 (O&M)

Date of Decision: 27.02.2026

Sunita Devi

...Petitioner

Versus

State of Haryana and Others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Pardeep Sehrawat, Advocate and
 Ms. Binayjeet Sheoran, Advocate (through V.C.)
 for the petitioner.

Mr. Akshit Pathania, AAG, Haryana.

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition under Articles 226 and 227 of the Constitution of India is seeking setting aside of orders passed by departmental authorities whereby her husband has been awarded punishment of dismissal from service.

2. Mr. Pardeep Sehrawat, Advocate has put in appearance on behalf of the petitioner and filed his power of attorney. Registry is directed to tag the same at an appropriate place on the case file.

3. The petitioner's husband (hereinafter referred to as 'Employee') joined Police Force as Constable on 31.08.1992. He was never promoted. In 2018, the respondent initiated departmental inquiry against him alleging that he remained absent from duty from 07.01.2018 to 07.08.2018 (total 212 days). The inquiry officer found him guilty of alleged misconduct.

4. The disciplinary authority issued him show cause notice dated 25.10.2018 proposing punishment of dismissal from service. Superintendent of Police (SP), Jhajjar vide order dated 03.12.2018 awarded him punishment of dismissal from service. He preferred an appeal which came to be dismissed by Appellate Authority vide order dated 04.04.2019. He preferred revision. He passed away during the pendency of revision. The Director General of Police (DGP) vide order dated 14.10.2020 dismissed his revision.

5. Learned counsel representing the petitioner submits that punishment awarded by authorities is disproportionate to alleged misconduct. The employee had 27 years' service to his credit at the time of passing of impugned order. He was dismissed on the ground of absence from duty. He was not involved in any criminal activity. His conduct by no stretch of imagination could be called as gravest mis-conduct. The impugned order was in the teeth of Rule 16.2 of Punjab Police Rules, 1934 (as applicable to State of Haryana) (in short 'PPR').

6. Learned State counsel reiterates findings of the departmental authorities and submits that no interference is warranted. The employee belongs to a disciplined force, thus, his conduct must be above board. He is bound to maintain high standards of discipline.

7. Heard the arguments and perused the record.

8. The petitioner is claiming that employee's conduct was neither gravest misconduct nor continued misconduct proving incorrigibility and complete unfitness for police service, thus, he could not be dismissed from service. The argument of the petitioner needs to be examined in the light of Rule 16.2 of PPR 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 or continued misconduct proving Incurability 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.

Explanation.- For the purposes of sub-rule (1), the following shall, inter alia, be regarded as gravest acts of misconduct in respect of a police officer, facing disciplinary action:

- (i) indulging in spying or smuggling activities;*
- (ii) disrupting the means of transport or of communication;*
- (iii) damaging public property;*
- (iv) causing indiscipline amongst fellow policemen;*
- (v) promoting feeling of enmity or hatred between different classes of citizens of India on grounds of religion, race, caste, community or language;*
- (vi) going on strike or mass casual leave or resorting to mass abstentions;*
- (vii) spreading disaffection against the Government; and*
- (viii) causing riots and the like*

(2) An enrolled police officer sentenced judicially to rigorous imprisonment exceeding one month or to any other punishment not less severe, shall, if such sentence is not quashed on appeal or revision, be dismissed. An enrolled police officer sentenced by a criminal court to a punishment of fine or simple imprisonment, or both, or to rigorous imprisonment not exceeding one month, or who, having been proclaimed under Section 87 of the Code of Criminal Procedure fails to appear within the statutory period of thirty days may be dismissed or otherwise dealt with at the discretion of the officer empowered to appoint him. Final departmental orders in such cases shall be postponed until the appeal or revision proceedings have been decided, or until the period allowed for filing an appeal has lapsed without appellate or revisionary proceedings having been

instituted. Departmental punishments under this rule shall be awarded in accordance with the powers conferred by rule 16/1.

(3) When a police officer is convicted judicially and dismissed, or dismissed as a result of a departmental inquiry, 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 description roll, with particulars of the punishments, shall be sent for publication in the Police Gazette.”

9. Sub-Rule (1) of Rule 16.2 of PPR provides that dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect or continued misconduct proving incorrigibility and complete unfitness for police service. Explanation underscores acts which are considered gravest misconduct. Misconducts contemplated by explanation to sub-rule (1) may not entail criminal proceedings e.g. causing indiscipline amongst fellow policemen. For the said offence, police officer would be subjected to departmental proceedings and may be subjected to punishment of dismissal. Sub-rule (2) contemplates an independent situation where a police officer may be dismissed from service. It provides that an enrolled police officer sentenced judicially to rigorous imprisonment exceeding one month unless sentence is quashed on appeal or revision, be dismissed from service. If conviction is upheld by higher courts, authorities are left with no other option except to dismiss the police officer. If quantum of sentence awarded by court is less than aforesaid e.g. fine or simple imprisonment of one week is awarded by criminal court, disciplinary authority possesses discretion of either to dismiss from service or award any other punishment.

10. The petitioner was charged for absenting himself without

any leave or prior permission for the period from 07.01.2018 to 07.08.2018 (total 212 days). He was dismissed from service for absence from duty. He was not involved in any criminal case, thus, his case ought to be examined in the light of Rule 16.2(1). His case does not fall within the ambit of explanation to Rule 16.2(1). The petitioner no doubt was guilty of mis-conduct, however, impugned order was passed without complying with mandate of Rule 16.2(1). The disciplinary authority did not consider his length of service and entitlement to pension. The authority further did not record findings to the effect that his absence from duty was gravest mis-conduct or incorrigible. Thus, impugned order was contrary to Rule 16.2(1).

11. There is another conundrum which needs to be looked into. The departmental inquiry is adumbrated in Rule 16.24 of PPR. Clause (vii) of Rule 16.24(1) provides that past record may be relied upon subject to conditions prescribed therein. Rule 16.24(1)(vii) reads as:-

“16.24. Procedure in departmental enquiries.-(1) The following procedure shall be followed in departmental enquiries –

(i) to (vi) XXX XXX XXX XXX

(vii) The enquiring officer shall 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 considerations 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 convey 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. As per Rule 16.24(1)(vii) of PPR, 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. The Disciplinary Authority dismissed him from service on account of remaining absent without permission. The authority relied upon his past service record without complying with mandate of Rule 16.24(1)(vii) of PPR. Action of respondent was bad in the eye of law.

13. It is a settled proposition of law that punishment should be commensurate to alleged offence. The principle of proportionality should be followed by all quasi- judicial and judicial authorities while awarding punishment irrespective of nature of offence. As per principle of proportionality, even punishment prescribed by legislation must be commensurate to alleged offence. If punishment is disproportionate to alleged offence, it is violative of Article 14 of the Constitution of India.

14. In ***Om Kumar v. Union of India, (2001) 2 SCC 386***, Supreme Court vide order dated 4.5.2000 proposed to re-open the land of the DDA allotted to M/s. Skipper Construction Co. It was proposed to consider imposition of higher degree of punishments in view of role of these officers in the said matter. The question posed before the court was whether the right punishment was awarded to the officers in accordance with well-known principles of law or whether the punishments required

any upward revision. The Court has highlighted proportionality as a constitutional doctrine.

15. In ***Bhagat Ram v. State of Himachal Pradesh, (1983) 2 SCC 442***, the Apex Court held that any penalty which is disproportionate to the gravity of misconduct would be violative of Article 14 of the Constitution of India. The relevant extracts of the judgment read as:

"15. ... It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution. ..."

16. In the case in hand, the employee herein joined service in 1992 and was dismissed from service vide order dated 03.12.2018. The order of dismissal was passed on account of absence from duty for 212 days. In the notice proposing punishment, there was no reference of his past record, however, Disciplinary Authority while passing dismissal order noticed that he was habitual absentee. He submitted before authorities that his wife is suffering from mental illness. During the course of hearing, learned counsel for the petitioner pointed out that the employee was suffering from Cancer and passed away during the pendency of revision. He was less than 55 years old at the time of death. His son is also mentally challenged. There is no finding that he was incorrigible or his conduct was gravest mis-conduct. He is not claiming back wages. Thus, awarded punishment cannot be called proportionate to alleged misconduct. The respondent was bound to award punishment proportionate to alleged offence.

17. The Supreme Court has held that in case Court finds that punishment awarded by authority is disproportionate to alleged misconduct, the Court should remand the matter back to competent

authority to reconsider quantum of punishment. Thus, in the normal course matter ought to be remanded to authorities to reconsider quantum of punishment. The employee has passed away, thus, this Court does not find it appropriate to remand the matter back to departmental authorities. A period of more than seven years from the date of alleged offence has already passed away. The authorities have passed impugned orders mechanically and there are all possibilities that remand would multiply the litigation. Thus, to cut short the litigation and considering the alleged misconduct, this Court deems it appropriate to modify the punishment of dismissal from service to compulsory retirement. The employee shall be deemed to be compulsorily retired w.e.f. 03.12.2018 i.e. date of dismissal from service. As conceded by petitioner, she would be entitled to pension w.e.f. 01.03.2026. The petitioner is entitled to gratuity and leave encashment (if any). She shall not be entitled to salary or pension for the past period. The respondent shall release gratuity, leave encashment (if any) and pension within three months from today failing which would be liable to pay interest @ 9% per annum on the expiry of said period.

- 18. **Allowed** in above terms.
- 19. Pending application(s), if any, shall also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

27.02.2026
Prince Chawla

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No