



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

102

RSA-1610-1995

Date of Decision : 29.01.2026

State of Haryana

.....Appellant

Versus

Mouz Din (since deceased) through his LRs

...Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present : Mr. Priyavrat Parashar, A.A.G., Haryana for the appellant.

Mr. Rohit Singh, Advocate and
Mr. Arvind Singh, Advocate for the respondent.

NAMIT KUMAR, J. (ORAL)

1. The instant Regular Second Appeal has been preferred by the State of Haryana, impugning the judgment and decree dated 08.04.1994, passed by learned Sub Judge 1st Class, Ambala, whereby the suit for mandatory injunction filed by the respondent/plaintiff has been decreed in his favour as also the judgment and decree dated 23.01.1995, passed by learned District Judge, Ambala, whereby an appeal filed by the State of Haryana/defendant against judgment and decree dated 08.04.1994, has been dismissed. Parties to the lis are being referred to as per their original position before the Trial Court.

2. Brief facts of the case are that the respondent/plaintiff namely Mouz Din was working as a Constable in the Haryana Police and was suspended on 12.05.1988 on account of absence from duty. During suspension also, he remained absent and did not attend the roll calls in terms of Rule 16.21 of Punjab Police Rules, 1934 (for short '1934 Rules'). His suspension was revoked without prejudice to the

**RSA-1610-1995****2**

inquiry proceedings. The inquiry was held as per prescribed procedure and the respondent/plaintiff was dismissed from service, vide order dated 30.03.1990, on account of his absence for 11 months, 20 days, 8 hours and 30 minutes from department. An FIR No.118 dated 14.08.1986 under Sections 148/149/323/325 of Indian Penal Code, 1860 was also registered against the respondent/plaintiff, wherein he was acquitted. Against the order of dismissal dated 30.03.1990, the respondent/plaintiff preferred an appeal, which was rejected by the Deputy Inspector General of Police, Ambala Range. Thereafter, he filed a suit for mandatory injunction directing the appellant/defendant to pay all kinds of arrears of salary by treating him in deemed service by setting aside the order of dismissal dated 30.03.1990, delivered on 09.04.1990 and order passed on his appeal. The learned Trial Court, vide its judgment dated 08.04.1994, recorded a finding that an inquiry against the respondent/plaintiff was held in accordance with the procedure prescribed under the Rules. However, while relying upon the judgment passed by a Division Bench of this Court in ***Ex. H.C. Munshi Ram Vs. State of Haryana and others : 1991(2) RSJ 345***, the learned Trial Court set aside the order of dismissal on the ground that the same is based upon the absence of the respondent/plaintiff from his duty, while he was under suspension and as per law, he was not required to attend the roll calls during the suspension period. The said findings recorded by the Trial Court has been upheld by the learned 1st Appellate Court, vide its judgment dated 23.01.1995. Aggrieved against the

**RSA-1610-1995****3**

concurrent finding recorded by the Courts below, the appellant-State has filed the instant appeal.

3. While issuing notice of motion, vide order dated 17.08.1995, the operation of the judgment and decree impugned was stayed. During the pendency of the instant appeal, the respondent/plaintiff has unfortunately died on 01.01.2000 and his LRs were impleaded as parties, vide order dated 30.08.2000. Thereafter, vide order dated 13.10.1995, the instant appeal was admitted.

4. Learned State counsel submits that the respondent/plaintiff was suspended on 12.05.1988 on account of absence from duty and during suspension also, he remained absent and did not attend the roll calls, whereas in terms of Rule 16.21 of 1934 Rules, the constable is required to attend the roll calls during the period of suspension. He further submits that absence from duty during suspension amounts to misconduct and justifies punishment under 1934 Rules. In support of his contention, learned State counsel has placed reliance upon the judgment passed by a Division Bench of this Court in ***Ex. Constable Jagan Singh Vs. Director General of Police, Haryana etc. : 2009(1) SCT 458*** and judgment passed by Single Bench of this Court in ***Haryana State through the Collector, Karnal Vs. Vijay Singh, Constable : 2024(3) SLR 703***.

5. Per contra, learned counsel for the respondent/plaintiff submits that the judgments and decrees passed by the Courts below are perfectly legal and valid and liable to be upheld.



RSA-1610-1995

4

6. I have heard learned counsel for the parties and perused the relevant documents with their able assistance.

7. While dealing with the similar issue, this Court in **Vijay Singh's case (supra)** has held as under :-

*“8. The legal issue is no longer res integra. Rule 16.21 of Punjab Police Rules has come up for consideration before the Hon'ble Supreme Court in **State of Punjab Versus Dharam Singh, 1997 (2) SCC 550**. Noticing the rule, Apex Court has held as under:*

“16.21 – Status and treatment of Officer under suspension– (i) A police officer shall not by reason of being suspended from office cease to be a police officer.

During the term of such suspension the powers, functions and privileges vested in him as a police officer shall be in abeyance, but he shall continue subject to the same responsibilities, discipline and penalties and to the same authorities, as if he had not been suspended.”

4. A reading of it would clearly indicate that even during the period of suspension the police officer is required to attend to roll-call and be available to the authorities. The payment of subsistence allowance, as ordered, under the suspension rule is one facet of it and his duty to be present is another. Non-payment of subsistence allowance does not entitle a delinquent officer to be absent from duty. It is his duty to claim subsistence allowance, go to the office and collect subsistence allowance and if it is not paid, necessary representation to the higher authorities and, if the grievance is not redressed, to the appropriate forum seeking payment, may be



made. But that does not mean that the delinquent officer, in the face of the express rule, can absent himself from duty. Under these circumstances, the conclusion reached by the disciplinary authority that he was wilfully absent from duty is well justified. However, on the quantum of punishment imposed, on the facts and circumstances of the case, we are of the view that instead of the removal, compulsorily retirement from service would be an appropriate punishment.”

9. A Division Bench of this Court in ***State of Punjab Versus Constable Daljit Singh, 1998 (2) S.C.T. 29*** has held that the rule is clear and categorical and it requires a Constable to remain present in the lines during suspension. He has to attend the roll-call as also to perform the duties as may be assigned to him as well as attend parades. The Division Bench has categorically held that a member of a disciplined force is required to abide by the discipline of his service and he has to remain physically fit and continue to follow the normal routine. It has further been held that in case the Constable does not abide by the discipline of the force as contemplated under Rule 16.21, *ibid*, he is liable to be treated as absent from duty. In *Ex. Constable Jagan Singh's case supra*, another Division Bench has held that *Ex.HC Munshi Ram's case* does not hold the sanctity and turned down the argument raised on behalf of the employee that absence from duty during the period under suspension does not amount to misconduct.”

8. Adverting to the facts of the present case, it is not in dispute that the respondent/plaintiff remained absent even during the suspension period and his total absence period is 11 months, 20 days, 8 hours and 30 minutes. The reliance placed by learned Trial Court upon



RSA-1610-1995

6

the judgment in *Ex. H.C. Munshi Ram’s case (supra)* is totally misplaced and stands distinguished by the Division Bench of this Court, therefore, the findings recorded by the Trial Court which have been upheld by the 1st Appellate Court are liable to be reversed.

9. For the forgoing reasons, the instant regular second appeal is allowed and the judgments and decrees passed by the Courts below are hereby set aside and the suit filed by the respondent/plaintiff is dismissed, with no order as to cost.

29.01.2026
Kothiyal

(NAMIT KUMAR)
JUDGE

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