

2026.PHHC:015830



217.

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

RSA No.1745 of 2000 (O&M)

Date of decision: 03.02.2026

State of Punjab and others

.... Appellants

Versus

Balwinder Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Satnampreet Singh Chauhan, DAG, Punjab,
for the appellants.

Mr. M.K. Dogra, Advocate, for the respondent.

NAMIT KUMAR, J. (ORAL)

1. The appellants-State have filed the instant Regular Second Appeal challenging the judgment and decree dated 19.11.1999, passed by the learned Additional District Judge, Gurdaspur, whereby the appeal filed by the State against the judgment and decree dated 08.04.1997, passed by the learned Civil Judge (Junior Division), Gurdaspur, in favour of the plaintiff-respondent, was dismissed.

2. The parties to the *lis* hereinafter shall be referred to as per their original position before the learned Trial Court.

3. Briefly stated, the facts of the case are that the respondent-plaintiff was enrolled as Constable on 09.08.1989 in the Punjab Police on a permanent post. He absented himself from duty without any leave or

permission on 10.05.1993 and returned back on 12.05.1993 and thereafter, he again remained absent from duty from 09.06.1993 to 29.07.1993 i.e. for a period of 01 month, 22 days, 10 hours and 45 minutes, while posted at Police Station City, Pathankot. A charge-sheet was issued to the respondent-plaintiff; however, he did not participate in the enquiry proceedings and was proceeded against ex-parte. Upon completion of the enquiry, the charges against the petitioner were found proved and he was issued a show cause notice for dismissal from service. No reply to the show cause notice was submitted by the respondent-plaintiff and consequently, he was dismissed from service, vide order dated 05.04.1994, passed by the Senior Superintendent of Police, Sadar, Gurdaspur. The departmental appeal preferred by him against the order of dismissal was dismissed by the Inspector General of Police on 13.05.1994. The said orders were challenged by the respondent-plaintiff by filing a suit for declaration to the effect that the impugned order dated 05.04.1994, passed by the Senior Superintendent of Police, Gurdaspur, vide which, the plaintiff was dismissed from service and the order of dismissal of departmental appeal passed by the Inspector General of Police on 13.05.1994 are illegal, unconstitutional and against the principles of natural justice. The suit preferred by the respondent-plaintiff was decreed on the ground that the previous instances of absence was not mentioned in the show cause notice, though the said instances have been taken into consideration by the punishing authority while passing the order of dismissal. In support of the said findings, the learned Trial Court placed

reliance upon the judgment of this Court in ***State of Punjab Versus Chanan Singh (deceased) represented by his LRs, 1988(2) CLJ (CCR) 21.***

Another ground on which the suit has been decreed is that the period of absence of the petitioner had been treated as leave without pay in the punishment order. The said findings recorded by the Trial Court were upheld by the Lower Appellate Court in its judgment dated 19.11.1999. Aggrieved thereby, the State of Punjab has preferred the instant Regular Second Appeal.

4. Learned State counsel argues that the judgments of the learned Trial Court and the First Appellate Court deserve to be set aside as the order of dismissal passed against the respondent-plaintiff on 05.04.1994, by the punishing authority is in accordance with law. He further submits that the respondent-plaintiff was dismissed from service on account of his unauthorized absence from duty for a continuous period of 01 month, 22 days, 10 hours and 45 minutes. It is further submitted that while passing the order of dismissal, the past conduct of the respondent-plaintiff has been discussed and there is no illegality in considering the past conduct of the employee while inflicting the punishment. He further submits that on earlier occasions also, the respondent-plaintiff remained absent from duty for prolonged period of 56 days, 23 days, 79 days and 02 days respectively, which clearly reflects habitual misconduct and indiscipline. In support of this contention, he has placed reliance upon the judgment of this Court in ***Darshan Singh Versus State of Haryana and others, 2025 NCPHHC***

140895. In the said judgment while considering the similar issue, it has been held as under:-

“5. From the perusal of impugned order, it is evident that petitioner was a habitual absentee and was subjected to punishment on multiple occasions. His past record was duly considered by authorities. Relevant extracts of impugned order disclosing his past record are reproduced as below:-

“1. In the year 1990, he was awarded punishment of 15 days drill for remaining absent from a period of 11 days 9 Hours, 13 minutes and the period of absence was treated as leave period.

2. During the year 1994, he was awarded punishment of 'stoppage of 3 future annual increments with permanent effect' for remaining absent from duty from 29.07.1993 to 02.09.1993 (34 days, 11 hours 30 minutes). However, the said punishment was reduced to 'stoppage of 01 annual increment with temporary effect' in the appeal filed by the petitioner vide order dated 17.11.2000 passed by the appellate authority.

3. During the year 1994, he was awarded punishment of 'stoppage of 01 increment with permanent effect' for remaining absent on 04.05.1994 from attending tear smoke course at PTC Madhuban.

4. During the year 1996 he remained absent from 27.11.1996 to 22.12.1996 and the period of 20 days was treated as leave without pay.

5. During the year 2005, he was awarded punishment of 'stoppage of 04 annual increment with permanent effect' for remaining absent from duty for a period of 104 days, 20 hours 05 minutes.

6. During the year 2006, he was dismissed from service vide impugned order dated 29.06.2006 for remaining absent from duty for a total period of 266 days without any leave or prior permission of competent authority.

6. Supreme Court in *Ex Sepoy Madan Prasad v. Union of India and others (2023) 9 SCC 100* while adverting 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 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.

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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.”

*7. Scope of interference while exercising jurisdiction under Articles 226/227 of the Constitution of India in disciplinary proceedings is very limited. The Court has no power to look into quantum of sentence/punishment unless and until Court finds that sentence awarded is disproportionate to alleged offence. It is further settled proposition of law that High Court while exercising its jurisdiction under Article 226 of Constitution of India can look into the procedure followed by authorities. In case, it is found that enquiry officer or disciplinary authority has not considered any evidence on record or misread the evidence or procedure as prescribed by law has not been followed, the Court can interfere. A two judge Bench of Hon'ble Supreme Court in **Union of India and others vs. Subrata Nath, 2022 SCC OnLine SC 1617** while advertng to scope of interference under Article 226 of the Constitution of India in disciplinary proceedings has held that departmental authorities are fact finding authorities. On finding the evidence to be adequate and reliable during the departmental inquiry, the Disciplinary Authority has the discretion to impose appropriate punishment on the delinquent employee keeping in mind the gravity of the misconduct.*

*8. 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 5½ 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. 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.”

9. In the instant case, the authorities have duly followed prescribed procedure. There is proper appreciation of evidence on record. The petitioner despite being member of disciplined Police Force was a habitual absentee. He did not mend his behaviour in spite of being subjected to punishment on multiple occasions. In these facts and circumstances, this Court does not find it appropriate either to interfere with findings of authorities or look into quantum of punishment awarded to him.”

5. *Per contra*, learned counsel for the respondent-plaintiff has supported the findings recorded by the learned Trial Court as well as the First Appellate Court and has submitted that the same deserve to be upheld. It has further been contended that the punishing authority i.e. Senior Superintendent of Police, Gurdaspur, vide order dated 05.04.1994, treated the period of absence of the plaintiff as leave without pay, thereby regularising the said absence. Consequently, the charge of absence does not survive any longer. It has further been submitted that while passing the

order of dismissal, the punishing authority had taken into consideration the past conduct of the plaintiff-respondent while inflicting the punishment, whereas the same was not mentioned in the show cause notice issued to the plaintiff-respondent. Therefore, the judgments and decrees passed by the courts below do not call for any interference by this Hon'ble Court and are liable to be upheld.

6. I have heard learned counsel for the parties and perused the record.

7. The matter stands admitted on 10.03.2003, whereby the operation of the decree under appeal was remain stayed.

8. So far as the reliance placed by the learned counsel for the appellant-State in ***Darshan Singh's case (supra)*** is concerned, by applying the ratio of the said judgment in the facts of the present case, it has been emerged that the respondent-plaintiff remained on unauthorized absence from duty for a period of 01 month, 22 days, 10 hours and 45 minutes. Thereafter, the respondent-plaintiff was dismissed from service after following the due procedure of law. The respondent-plaintiff deliberately chose not to participate in the enquiry proceedings and failed to submit any reply to the show cause notice issued to him. Mere regulating the period of absence for the limited purpose of maintaining the service records cannot be construed as condoning the misconduct of the unauthorised absence on the part of the respondent-plaintiff. The respondent-plaintiff, being member of the disciplined force, was expected to act as a responsible officer of the

force maintaining higher standard of conduct and discipline. In the past also, he remained unauthorizedly absent from duty on several occasions and, within a short span of 05 years, he had remained absent from duty for a total period of 210 days.

9. In view of the aforesaid facts, the findings recorded by the courts below are perverse and unsustainable in law and, therefore, liable to be reversed.

10. Keeping in view the aforesaid facts and discussion, the present appeal is allowed. The judgments and decrees passed by the courts below are hereby set aside.

11. Pending application, if any, shall also stand disposed of.

(NAMIT KUMAR)
JUDGE

03.02.2026
sanjeev

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No