



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

**201**

**RSA-4113-2000 (O&M)**

**Date of decision: 16.01.2026**

The State of Punjab and another

.....Appellants

Versus

Devinder Singh

.....Respondent

**CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR**

Present : Mr. Surya Kumar, AAG, Punjab  
for the appellants.

Mr. Sameer Sachdeva, Advocate  
for the respondent.

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**NAMIT KUMAR, J. (ORAL)**

1. The instant Regular Second Appeal has been preferred by the State of Punjab, impugning the judgment and decree dated 30.04.1994, passed by the trial Court, whereby the suit of the respondent/plaintiff has been decreed and the order of dismissal has been set aside, and he has been held entitled for reinstatement in service. Challenge is also made to the judgment and decree dated 01.06.2000, passed by the First Appellate Court, whereby the judgment passed by the trial Court has been modified only to the extent that the respondent/plaintiff shall not be entitled to back wages with effect from 01.09.1989 till the filing of the suit in the trial Court.

2. The undisputed facts of the case are that the respondent/plaintiff was enrolled as Constable on 24.08.1978 in the Punjab Police, Jalandhar Cantt. He sought leave on 25.08.1989 till

31.08.1989, which was duly sanctioned by the competent authority. However, thereafter, the respondent/plaintiff did not resume his duties due to alleged illness and was placed under suspension on 26.10.1989 with effect from 31.08.1989 (Ex.P1). The respondent/plaintiff was treated as absent from duty for the period from 01.09.1989 to 03.01.1990, which was followed by issuance of a chargesheet and the holding of a regular departmental enquiry. In the departmental enquiry, he was held guilty and dismissed from service, vide order dated 26.07.1990 (Ex.P2) passed by Commandant, 27<sup>th</sup> Battalion, PAP, Jalandhar Cantt. Without exhausting departmental remedies of filing appeal and revision, he preferred to file a suit for declaration before the Civil Court which has been decreed, vide judgment and decree dated 30.04.1994, on the ground that the absence from service is not a gravest act of misconduct and the fact that the period of absence has been treated as duty period without wages. The said judgment and decree passed by the trial Court was upheld by the First Appellate Court, vide judgment and decree dated 01.06.2000, with the modification that the respondent/plaintiff shall not be entitled to back wages with effect from 01.09.1989 till the filing of the suit.

3. Learned counsel for the appellant/State argues that the respondent, who was working on the post of Constable in Police, absented himself without there being any justifiable reason and on account of said absence from duty, the disciplinary proceedings were initiated against the respondent/plaintiff and after proving the allegations of unauthorized absence from duty, the punishment from dismissal of service was imposed and though the trial Court held that

the disciplinary proceedings were validly held but the relief has been granted to the respondent/plaintiff only on the ground that the absence from duty cannot be treated as grievous act of misconduct so as to impose the punishment of dismissal. He further submits that the said view of the trial Court, which has been affirmed by the lower Appellate Court, with the modification that the respondent/plaintiff shall not be entitled to back wages with effect from 01.09.1989 till the filing of the suit, is contrary to the settled principle of law settled by the Hon'ble Supreme Court of India in ***State of U.P. v. Ashok Kumar Singh : 1996(2) SCT 139.***

4. Learned counsel for the respondent/plaintiff submits that even if it is assumed for the sake of arguments that the enquiry proceedings against the respondent/plaintiff were held in accordance with law but mere absence from duty cannot be treated as grievous act of misconduct and further that once the period of absence have already been regularized, the same will amount to wipe out the absence period itself hence, the judgment and decrees of the Courts below are perfectly valid and legal and liable to be upheld.

5. I have heard learned counsel for the parties and have gone through the record with their able assistance.

6. The issue as to whether the absence from service is a gravest act of misconduct or not, has been considered by the Hon'ble Supreme Court in ***Ashok Kumar Singh's case (supra)***, which has been followed by a Coordinate Bench of this Court in ***RSA No.1866 of 1995 titled as 'State of Punjab and others v. Constable Chander Parkash', decided on 13.03.2024***, wherein similar facts and questions of law were

involved and in the said judgment it has been held as under:-

*“6. The first question which arise for consideration is whether, a police officer, who is the member of the disciplined force, if remains absent from duty without any valid justification, the same would amount to the grievous act of misconduct so as to invite the punishment of dismissal or not. The said issue has already been decided by the Hon’ble Supreme Court of India in **Ashok Kumar Singh’s case (supra)**. The Hon’ble Supreme Court of India has held that in case any member of the disciplined force remains absent from duty without leave, the same amounts to the grievous act of misconduct. The relevant paragraph 8 of the said judgment is as under:-*

*“8. We are clearly of the opinion that the High Court has exceeded its jurisdiction in modifying the punishment while concurring with the findings of the Tribunal on facts. The High Court failed to bear in mind that the first respondent was a police constable and was serving in a disciplined force demanding strict adherence to the rules and procedures more than any other department. Having noticed the fact that the first respondent has absented himself from duty without leave on several occasions, we are unable to appreciate the High Court's observation that 'his absence from duty would not amount to such a grave charge'. Even otherwise on the facts of this case, there was no justification for the High Court to interfere with the punishment holding that 'the punishment does not commensurate with the gravity of the charge' especially when the High Court concurred with the findings of the Tribunal on facts. No case for interference with the punishment is made out.”*

*7. Once the absence from duty qua the respondent-plaintiff amounts to grievous act of misconduct, the findings recorded by the Courts below are perverse being against the settled principle of law settled by the Hon’ble Supreme Court of India in **Ashok Kumar Singh’s case (supra)** and are liable to be set aside and accordingly set aside.”*

7. In the abovesaid case, the absence period was also regularised as leave without pay and the said issue was also considered by the Court and it was held as under:-

*“8. The further argument of the learned counsel for the respondent-plaintiff that once the period of absence from service has already been regularized as leave without pay,*

*the act of absence stands washed away, cannot be accepted.*

9. *Once, an order dismissing the respondent-plaintiff from service is being passed, the period for which the respondent-plaintiff remained absent, has to be regularized in a manner required. In order to define as to how the absence period will be treated, the same has been treated as leave without pay, the same does not mean to wash away the absence of the respondent-plaintiff from service. This issue has also been settled by the Hon'ble Supreme Court of India in **Civil Appeal No.4969 of 2008 titled as State of Punjab vs. Dr. P.L. Singla, decided on 31.07.2008** wherein, it has been held that where, while passing the order of punishment, the absence period has been decided to be treated in a particular manner, the same does not mean the condoning of the allegation of the charge alleged, which has already been proved. The relevant paragraph of the said judgment is as under:-*

*“10. Where the employee who is unauthorizedly absent does not report back to duty and offer any satisfactory explanation, or where the explanation offered by the employee is not satisfactory, the employer will take recourse to disciplinary action in regard to the unauthorised absence. Such disciplinary proceedings may lead to imposition of punishment ranging from a major penalty like dismissal or removal from service to a minor penalty like withholding of increments without cumulative effect. The extent of penalty will depend upon the nature of service, the position held by the employee, the period of absence and the cause/explanation for the absence. Where the punishment is either dismissal or removal, it may not be necessary to pass any consequential orders relating to the period of unauthorized absence (unless the rules require otherwise). Where the punishment awarded for the unauthorized absence, does not result in severance of employment and the employee continues in service, it will be necessary to pass some consequential order as to how the period of absence should be accounted for and dealt with in the service record. If the unauthorized absence remains unaccounted, it will result in break in service, thereby affecting the seniority, pension, pay etc., of the employee. Any consequential order directing how the period of absence should be accounted, is an accounting and administrative procedure, which does not affect or supersede the order imposing punishment.*

11. *In this case, the punishment was imposed by*

*order dated 16.9.1999/11.10.1999. That order was not cancelled, revoked or withdrawn. The subsequent order dated 25.1.2001 merely accorded extraordinary leave in regard to the period of absence, but did not condone the unauthorized absence nor wipe out the punishment already imposed. The said order was only consequential to the imposition of punishment. Its effect was to maintain continuity of service of the respondent, but deny salary for the period of absence and not to count the period of absence as qualifying service for the purposes of pension. Its effect is certainly not to exonerate the respondent from the charge of unauthorised absence nor to wipe out the punishment. If the intention was to revoke the punishment, the order dated 25.1.2001 would have clearly stated so. But it did not.*

*12. The assumption by the courts below that when an order is passed according extra-ordinary leave for the period of absence, it will have the effect of effacing or erasing the punishment already imposed, is therefore incorrect and is a serious error of law. When the trial court and the appellate court had committed this serious error, the High Court ought to have formulated an appropriate question of law and allowed the second appeal. Instead, it chose to dismiss the second appeal putting its seal of approval on a wrong interpretation of law leading to serious repercussions in regard to discipline and administration. The judgment of the High Court confirming the orders of the courts below, therefore calls for interference.”*

*10. Keeping in view the above, the judgment and decrees of the Courts below are perverse to the settled principle of law as the evidence which has already come on record, has not been appreciated in a manner required for.*

*11. The present regular second appeal is allowed. The judgment and decrees of the Courts below are set aside. Consequently the suit filed by the respondent-plaintiff is dismissed.”*

8. The present case is squarely covered by the ratio of law laid down in the abovesaid judgment. In the present case, the respondent/plaintiff remained absent from duty with effect from 01.09.1989 till he was dismissed from service on 26.07.1990. The

delinquent employee did not participate even in the departmental enquiry proceedings and failed to lead any evidence in justification of his unauthorised absence and was, therefore, rightly proceeded against ex-parte. As such unauthorised absence from service strikes at the root of discipline and operational efficiency and is, therefore, regarded as one of the gravest act of misconduct. Such conduct reflects disregard for duty, disrupts institutional functioning, and undermines the principles of accountability and trust essential to public service.

9. In this view of the matter, the judgments/decrees passed by the trial Court and the First Appellate Court are not valid in law and are perverse and are liable to be set aside.

10. Consequently, the instant appeal is allowed and the judgments/decrees dated 30.04.1994 and 01.06.2000 passed by the learned trial Court and the First Appellate Court respectively, are set aside with no order as to costs.

11. Pending applications, if any, stand disposed of.

16.01.2026

Vinay

(NAMIT KUMAR)  
JUDGE

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