
(1998) 12 P&H CK 0114
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 456 of 1993

Ranbir Singh (Ex. Const.)

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 24-12-1998

Acts Referred:

Punjab Police Rules, 1934 — Rule 16.2

Citation : (1999) 121 PLR 435

Hon'ble Judges : T.H.B. Chalapathi, J

Bench : Single Bench

Advocate : I.S. Balhara, for the Appellant; Govind Dhanda, A.A.G., for the Respondent

Judgement

T.H.B. Chalapathi, J.—Invoking the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India the petitioner filed this writ petition for issuance of a writ of certiorari to quash the order of dismissal passed against him by the Superintendent of Police, Panipat dated 21.8.1991.

2. The petitioner was working as a constable for more than 17 years. He proceeded on earned leave for a period of 60 days in 1990. After expiry of leave, he did not join duty immediately, but he joined duty almost one year thereafter i.e. on 8.3.1991. For his absence from duty without leave, a regular enquiry was held against him in which he was found guilty of wilful absence for a period of 344 days. On the basis of the inquiry report, the petitioner was issued a Show Cause Notice on 22.7.1991. Thereafter the petitioner was dismissed from service on the basis of the inquiry conducted against him by an order dated 21.8.1991. The appeal and revision filed by the petitioner to the 2nd respondent and the 1 st respondent were also unsuccessful. Therefore, the petitioner filed this writ petition.

3. There is no dispute of the fact that the petitioner absented himself for a period of 344 days. The learned counsel for the petitioner relied upon a decision of this Court in State of Punjab v. Parkash Chand 1992 (1) S.L.R. 174, wherein the

period of absence for a period of 58 days was not considered as gravest act of misconduct. The act of misconduct depends on the facts of each case. It has been held by, the Apex Court in State of U.P. and others Vs. Ashok Kumar Singh and another, as follows:-

"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."

In this view of the matter when the petitioner was absent from service for nearly one year without getting the leave sanctioned, it cannot be said that the absence does amount to gravest misconduct under Rule 16.2 of Punjab Police Rules.

4. The learned counsel for the petitioner contended that the punishment of dismissal from service is too severe in the present case. According to him, for the absence from duty, the petitioner can be awarded a punishment of compulsory retirement in view of the length of service put in by the petitioner. Under 16.2 of the Punjab Police Rules, 1934 that length of service of the delinquent and his claim to pension shall be taken into account while passing an order of dismissal.

5. The petitioner admittedly put in service of more than 17 years as Constable and if an order of compulsory retirement is passed, he will be entitled to pensionary benefits. In view for the specific provision as contained in Rule 16.2 of the Punjab Police Rules, regard shall be had to be length of service. I am of the opinion that in the circumstances of the case the punishment of compulsory retirement will meet the ends of justice.

6. I accordingly allow the writ petition partly and convert the punishment of dismissal from service into one of compulsory retirement. The petitioner will be entitled to pensionary benefits on the ground that he has been retired compulsorily with effect from the date on which the order of dismissal has been passed.