
(2005) 08 P&H CK 0060

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 168 of 1997

State of Punjab and Others

APPELLANT

Vs

Gursewak Singh

RESPONDENT

Date of Decision : 04-08-2005

Acts Referred:

Punjab Police (Amendment) Rules, 1934 — Rule 12.1
Punjab Police Rules, 1934 — Rule 16.2, 16.2(1)

Citation : (2006) 142 PLR 116

Hon'ble Judges : Ashutosh Mohunta, J

Bench : Single Bench

Advocate : H.P.S. Gill, D.A.G, for the Appellant; C.B. Goel, for the Respondent

Final Decision : Dismissed

Judgement

Ashutosh Mohunta, J.—Whether or not an employee can be dismissed from service by the Punishing Authority, who is lower in rank to the Appointing Authority?

And

Whether or not absence from duty for a period of 9 days can be considered as "gravest act of misconduct" so as to warrant dismissal from service under Rule 16.2(1) of the Punjab Police Rules, 1914? are the questions of law that arise for consideration in the present appeal.

2. With regard to the first question, it has been contended by Mr. H.P.S. Gill, learned Deputy Advocate General, Punjab, that the rank of S.S.P. is equal to that of the S.P. The Senior Superintendent of Police, who was the appointing authority of the plaintiff-respondent, is only first among equals with regard to the rank of the Superintendents of Police. In this view of the matter, the punishment of dismissal awarded to the plaintiff-respondent cannot be considered as illegal merely on the ground that as the S.S.P. was the appointing authority of the respondent, so he could only be dismissed by him and not by the S.P. who was

the Punishing Authority of the plaintiff-respondent.

3. It is the admitted fact that the plaintiff was appointed as Constable by the S.S.P. Ludhiana on 16.4.1975. He was promoted as Head Constable by the same authority on 12.6.1980. Certainly, the post of Superintendent of Police is lower in rank to that of the Senior Superintendent of Police who was the appointing authority of the plaintiff. The S.S.P. is considered to be the head of the District in the Police hierarchy in the State of Punjab whereas the S.P. is below in rank to him. Though in Rule 12.1 of the Punjab Police Rules, 1934 (for short "the Rules") there is a mention that for the appointment of Constable and Head Constable, the Superintendent of Police would be the appointing authority, yet the Court cannot lose sight of the fact that when the Rules were framed in the year 1934, there was no post of Senior Superintendent of Police in the State of Punjab and the Superintendent of Police used to be the Head of the District in the Police hierarchy. But with the creation of the post of Senior Superintendent of Police, the rank of Superintendent of Police cannot be equated with the rank of the Senior Superintendent of Police. There is also no evidence on the record to show that the S.S.P., Ludhiana, had ever delegated his powers to the Superintendent of Police, Ludhiana, authorising him to make the appointments of Constables/ Head Constables. In this view of the matter. it cannot be said that the rank of S.P. is not lower to the rank of S.S.P. Consequently. I do not find any infirmity in the finding arrived at by the Courts below on the point. The first question posed at the outset is answered in the negative and it is held that the punishing authority, who is lower in rank to the appointing authority cannot dismiss an employee.

4. With regard to the second question, it has been argued by the learned Deputy Advocate General that the absence from duty without leave is the gravest act of misconduct of a Constable or a Head Constable employed in the disciplined force and deserved the award of major punishment like dismissal. It has thus been contended that both the Courts below have erred in holding that absence from duty was not such an act of gravest misconduct for the award of punishment of dismissal from service.

5. I do not find any merit in this argument of the learned Counsel appearing on behalf of the State of Punjab. The mere allegation against the plaintiff-respondent was that he remained absent from duty for 9 days, 22 hours and 45 minutes on different occasions in the year 1986-87. The relevant Rule 16.2 of the Rules, which deals with "Dismissal", is reproduced hereunder for ready reference:

16.2. Dismissal.- Dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility 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.

As already mentioned above, in the present case the mere allegation against the appellant is that he remained absent from duty for 9 days 22 hours and 45 minutes in the year 1986-87. In the afore-quoted rule it has been mentioned that dismissal can only be awarded for the gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service. The authorities have failed to prove as to how the absence from duty for 9 days 22 hours and 45 minutes could be considered as a "gravest act of misconduct" "proving incorrigibility" or "complete unfitness for police service". In the case reported as Ex. HC Munshi Ram v. The State of Haryana and ors. 1991(2) R.S.J. 345 it was held by a Division Bench of this Court that "absence of 174 days could not be a ground for dismissal of the petitioner." Similarly in the case The State of Punjab v. Parkash Chand, Constable 1992(1) S.L.R. 174 it was held by the Division Bench of this Court that absence without leave "does not amount to gravest act of misconduct." In Shri Bhagwan Lal Arya Vs. Commissioner of Police Delhi and Others, , it has been held by their Lordships of the Supreme Court that "the. punishment of dismissal was not only highly excessive and disproportionate but also impermissible under the service rules...." In view of the afore-quoted dictum of their Lordships, I do not feel any hesitation in holding that absence from duty for about 9/10 days could not be considered as the gravest act of misconduct so as to warrant the punishment of dismissal.

6. It is also the undisputed fact that the plaintiff-respondent in the present case was dismissed from service without affording any opportunity of hearing by the punishing authority. The fact also goes undisputed that the appellate and the revisional authorities dismissed his appeal as well as the revision against the order of dismissal passed by the punishing authority without giving an opportunity of hearing to the plaintiff. The action of the authorities concerned is highly violative of the principles of natural justice which cannot be justified from any legal angle whatsoever. There is no infirmity in the well-reasoned judgments and decrees passed by both the Courts below and I concur with the same.

7. Consequently, I do not find any merit in this appeal. It is, accordingly, dismissed. However, the competent authorities can pass fresh order by giving specific finding in the light of the Punjab Police Rules, 1934, within a period of three months from the date of receipt of a certified copy of this judgment.