

(2013) 01 P&amp;H CK 0032

## High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 12523 of 2011

Paramjit Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

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**Date of Decision:** Jan. 15, 2013**Citation:** (2013) LabIC 1276**Hon'ble Judges:** Augustine George Masih, J**Bench:** Single Bench**Advocate:** V.K. Shukla, for the Appellant; Inder Pal Goyat, Addl. A.G., for the Respondent**Final Decision:** Dismissed

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**Judgement**

@JUDGMENTTAG-ORDER

Augustine George Masih, J.

Challenge in this writ petition is to the order of dismissal dated 4.7.2007 (Annexure P-3) passed by the Senior Superintendent of Police, Moga and order dated 5.12.2007 (Annexure P-5) passed by the Deputy Inspector General of Police, Ferozepur Range, Ferozepur Cantt-respondent No. 3 rejecting the statutory appeal preferred by the petitioner on the ground that the said orders are illegal, unjust, unlawful and unconstitutional and violative of the provisions of the Punjab Police Rules, 1934 (hereinafter referred to as "1934 Rules"). Petitioner was enrolled as a Constable on regular basis in Punjab Police on 24.4.1990. He was performing his duties and was posted in Police Station (City), Moga in October 2006 when due to ill-health of his wife, he proceeded on 7 days" casual leave after getting it duly sanctioned by the Competent Authority. He rejoined the duty, but since the illness of his wife prolonged, he again proceeded on leave to attend his ailing wife. Further extension of leave was sought by the petitioner through telegrams. However, the same was not sanctioned and he was deemed to be absent from duty since 23.10.2006 to 4.1.2007. He was placed under suspension vide order dated 28.12.2006 and a charge-sheet dated 15.1.2007 was served upon the petitioner for remaining absent from duty for a period of two months, 13 days, 4 hours and 50 minutes. It was

asserted that he was marked absent on 23.10.2006 when he was not found present at 7.40 a.m. at the time of counting of employees and thereafter he reported for duty on 4.1.2007 at 11.30 a.m. This period of absence was without permission/leave which grossly violated the discipline of the Police Department. Regular departmental enquiry was initiated against him. Enquiry Officer submitted enquiry report dated 19.2.2007 (Annexure P-2) wherein petitioner was held guilty of absence from duty for two months, 13 days, 4 hours and 50 minutes without leave/permission. On receipt of the enquiry report, Senior Superintendent of Police, Moga served a notice dated 20.6.2007 on the petitioner to show-cause as to why punishment of dismissal from service be not imposed upon him in the light of the enquiry report and his previous service record which showed that he was a habitual absentee. This show-cause notice was received by the petitioner along with the enquiry report under his own signatures on 21.6.2007. Petitioner was given 10 days" time to file reply to the notice and was directed to appear before the Punishing Authority in person if he wanted to produce any defence.

2. Petitioner preferred not to file any written reply to the notice but presented himself before the Punishing Authority and stated that due to illness of his wife, he could not come present on duty and had remained absent. He, however, was unable to produce any evidence to show that his wife was ill and that she had taken treatment for her illness. Finding the explanation of the petitioner to be not satisfactory, the Punishing Authority came to the conclusion that his absence from duty for such a long period proved it to be a gross departmental misconduct which cannot be tolerated in a disciplined force like the Police and keeping in view his earlier service record of his being habitual absentee, it was concluded that he was an incorrigible employee and if allowed to continue, would adversely affect the other employees also and the discipline of the force would suffer. Taking this into consideration, the Senior Superintendent of Police, Moga proceeded to dismiss the petitioner from service vide impugned order dated 4.7.2007 (Annexure P-3). The appeal preferred by the petitioner against the order of his dismissal before the Deputy Inspector General of Police, Ferozepur Range, Ferozepur Cantt-respondent No. 3 was rejected vide order dated 5.12.2007 (Annexure P-5). These two orders are under challenge in the present writ petition.

3. It is the contention of the counsel for the petitioner that the impugned orders have been passed by the respondents in violation of Rule 16.2(1) of the 1934 Rules as the punishment imposed upon the petitioner is not commensurate to the charges levelled against him. It is further asserted that the punishment of dismissal from service can be imposed upon an employee in a gravest act of misconduct or a cumulative effect of continued misconduct proving incorrigibility and complete unfitness for the police force. Absence from duty, as in the case of the petitioner, cannot be termed as the gravest act of misconduct and, therefore, the order of dismissal from service cannot sustain. He has further contended that as per the requirement of Rule 16.2(1) of the 1934 Rules, it is mandated upon the Punishing

Authority to take into consideration the length of service of the offender and his claim for pension prior to passing the order of punishment. Petitioner was appointed as a Constable on 24.4.1990 and till the date of his dismissal from service i.e. 4.7.2007, he had completed more than 17 years of service which would entitle him to the grant of pension, which aspect has not been taken into consideration by the Punishing Authority, as according to him, an employee with 10 years" service can be granted pension on termination of his services. He asserts that the Punishing Authority and the Appellate Authority have not taken into consideration the justifiable reasons of the petitioner for absenting himself from duty which is ill-health of his wife and since he was taking care of his wife, he could not come present on duty, which aspect has been overlooked by the respondents and proceeded to impose a punishment of dismissal from service. Reliance has been placed upon a Division Bench judgment of this Court in the case of Dhan Singh v. State of Haryana and others, 2009 (1) RSJ 62 : (2009 Lab IC 12 (P&H) to contend that absence from duty is not a gravest act of misconduct which would have an effort of imposing the extreme punishment of dismissal from service. For the claim of pension also, reliance has been placed upon the said judgment. Accordingly, prayer has been made for setting aside the impugned orders and continuance of the petitioner in service.

4. On the other hand, counsel for the respondents has vehemently argued that in the departmental enquiry which was held against the petitioner, he was given ample opportunities to produce his evidence justifying his absence from duty but the petitioner was unable to produce any evidence, documentary or otherwise, to prove that the wife of the petitioner was unwell and that he was taking care of her. In the absence of any evidence, the finding recorded by the Enquiry Officer, which are based upon the official record, is fully justified and does not call for any interference. The Punishing Authority also gave an opportunity to the petitioner to produce the evidence in support of his reasons for remaining absent from duty but that also did not result in production of any evidence in support of his plea of his wife being unwell. Ample opportunities have been given to the petitioner to defend himself in the departmental enquiry and prior to the imposition of punishment of dismissal. Referring to the service record of the petitioner, which has been mentioned in the order of punishment dated 4.7.2007 (Annexure P-3). he contends that the petitioner is a habitual absentee. He has remained absent for 497 days during his entire service without giving any information to his higher officials and for which, various punishments have been imposed upon him on 10 occasions. 7 years of his qualifying service have been ordered to be forfeited and his absence period of 497 days has also been treated as non-duty period. He, on this basis, contends that the petitioner is not eligible for grant of pension and, therefore, the Punishing Authority has rightly proceeded to dismiss him from service as his qualifying service is less than 10 years. In any case, he contends that for an employee to be entitled for the grant of pension, he is required to have 20 years" qualified service, which the

petitioner, even if all the punishments are ignored, has not completed on the date of his dismissal as his total service period comes to a little more than 17 years. The Punishing Authority has given a categoric finding that the petitioner, in the light of his being a habitual absentee, is an incorrigible employee and, therefore, not fit to be retained in service which fulfils the mandate of Rule 16.2(1) of the 1934 Rules. The order passed by the Punishing Authority is in consonance with the Statutory Rules. Similarly, the order passed by the Appellate Authority is also justified and does not call for any interference by this Court. Prayer has, thus, been made for dismissal of the writ petition.

5. I have considered the submissions made by the counsel for the parties and with their assistance have gone through the records of the case.

6. Petitioner absented himself from duty for two months, 13 days, 4 hours and 50 minutes, for which he was charge-sheeted and followed by a regular departmental enquiry against him. In the said enquiry, petitioner was given ample opportunities to cross-examine the witnesses and to produce evidence in his defence. Petitioner chose not to produce any evidence except that he submitted a written reply where his primary defence for being absent from duty was illness of his wife. Apart from that, it was asserted that he was the eldest in the family and there was bereavement in his family due to which he was mentally shocked and could not report for duty. Because of the domestic circumstances, the period of his absence be treated as leave or medical rest. Considering the evidence which was produced before the Enquiry Officer, he proceeded to submit his report dated 19.2.2007 which went against the petitioner and it was held that the charges of absence of two months, 13 days, 4 hours and 50 minutes without leave/permission stood proved against him. On receipt of the report of the Enquiry Officer, past service record of the petitioner was perused by the Punishing Authority and a show-cause notice was served upon him as to why the punishment of dismissal from service be not imposed upon him in the light of the enquiry report proving him to be absent from duty and his earlier conduct which reflected of his being a habitual absentee as on 10 earlier occasions also, he had been found guilty of absence from duty and various punishments have been imposed upon him. Seven years of approved service stood permanently forfeited and absence period of 497 days was treated as non-duty period to which the petitioner did not file any reply but presented himself before the Punishing Authority and put-forth an explanation for his absence from duty by stating that his wife was ill and, therefore, could not attend his duties as he was taking care of her. He failed to produce any evidence in this regard showing that she had been treated for her illness during the said period. Punishing Authority finding the explanation of the petitioner unsatisfactory, proceeded to record a finding that the petitioner being a habitual absentee and having been found guilty of the charges levelled against him for absence from duty, it stood proved that this act of the petitioner was a gross departmental misconduct which could not be tolerated in a disciplined force like the Police. Taking into consideration the earlier conduct of the petitioner, the Punishing

Authority came to the conclusion that he is an incorrigible employee and cannot be retained in service as it would adversely affect the discipline of the force and would have an adverse effect on other employees if a lenient view is adopted. As is apparent from the earlier part of the order; the Punishing Authority was aware of the punishment imposed upon the petitioner which would lead to a situation where he would not have even 10 years of qualifying service to his credit. That being so, it proceeded to impose a punishment of dismissal from service upon him which is in accordance with law while exercising its powers under Rule 12.1(1) of the 1934 Rules. Merely because the length of service of the petitioner has not been mentioned in the order of dismissal, the said Order would not be rendered illegal when on the basis of the records it is apparent that he would not be entitled to pension as he does not have even 10 years of qualifying service to his credit keeping in view the punishment imposed upon him which has resulted in forfeiture of his seven years approved service with permanent effect and absence period of 497 days which had been treated as non-duty period. Total length of service of the petitioner from 24.4.1990 till 4.7.2007 comes to a little more than 17 years. With more than 8 years of qualifying service having been lost by the petitioner, due to the punishment imposed upon him which had attained finality, the impugned order cannot be said to be illegal. Reference can be made to a Division Bench order passed by this Court in the case of *Rajesh Kumar v. State of Haryana and others*. 2005 (3) SCT 512 wherein it has been held that merely because the respondents had failed to use the term that the petitioner has committed the gravest act of misconduct, would not render the impugned order in any manner improper or illegal. In such matters, the Courts have to look at the substance of the order rather than the form. All the departmental authorities if had examined the relevant material to come to the conclusion that the petitioner is not fit to be retained in service any more, the said opinion should be upheld. Courts had proceeded to hold that absence from duty for a policeman is a gravest act of misconduct which could invite punishment of dismissal from service. In the case of *Ex. Constable Sat Pal v. State of Haryana*, 1998 (2) SCT 408, it has been held by the Division, Bench of this Court that merely because the length of service has not been mentioned in the order of punishment, the same would not be vitiated if no pension is admissible to an employee on the date of his dismissal and he does not have the requisite qualifying service for the said entitlement. It has been held in various judgments passed by this Court as in the cases of *Ex. Constable Sat Pal* (supra) and *Rajesh Kumar* (supra) that absence from duty by a police official would be a gravest act of misconduct which would call for punishment of dismissal from service in a disciplined force. Reference in this regard may also be made to the judgment of the Supreme Court in the case of [State of U.P. and others Vs. Ashok Kumar Singh and anothers](#), where the Hon"ble Supreme Court has proceeded to hold that absence from duty in a disciplined force like the Police would amount to gravest act of misconduct which would invite punishment of dismissal from service. Judgment relied upon in *Dhan Singh's case*, ( 2009 Lab IC 12 (P&H)) (supra) by the counsel for the petitioner would, thus, be not of any help to the

petitioner in the facts and circumstances of the case.

7. It may be added here that it is reflected from the reply which has been filed by the respondents that the petitioner absented from his duties from 11.11.1991 to 2.1.1993 and as the service of the petitioner in Police Department is less than 3 years, for which he was discharged from service in accordance with Rule 12.21 of the 1934 Rules vide order dated 2.1.1993 by the Senior Superintendent of Police, Ferozepur, against which the petitioner preferred an appeal before the Deputy Inspector General of Police, Ferozepur Cantt, Ferozepur, who vide order dated 14.2.1994 reinstated the petitioner in service and ordered holding of a departmental enquiry, on conclusion of which punishment order dated 7.5.1996 was passed by the Senior Superintendent of Police, Ferozepur vide which four years' approved service of the petitioner was forfeited permanently and the absence period was treated as non-duty period. The details of the punishments awarded to the petitioner for absence from duty have been mentioned in the order of dismissal dated 4.7.2007 which read as follows:--

1. On account of remaining absent from 11-11-1991 to 2-1-1993 and in consequence of departmental enquiry, his 4 years approved service was forfeited permanently and the absence period was treated as non-duty period.
2. On account of remaining absent from 5-7-96 to 26-9-96 was awarded punishment of Censure and absence period was treated as non-duty period.
3. On account of remaining absent from 22-11-96 to 2-1-97 was awarded punishment of Censure and absence period was treated as non-duty period.
4. On account of remaining absent from 5-3-97 to 2-6-97, his absence period was treated as non-duty period and awarded punishment of Censure.
5. On account of remaining absent from 20-12-99 to 4-2-2000 was awarded punishment of Censure and absence period was treated as non-duty period.
6. On account of remaining absent from 6-2-2000 to 8-3-2000, punishment of Censure was awarded and absence period was treated as non-duty period.
7. On account of remaining absent from 22-5-2000 to 27-7-2000, punishment of Censure was awarded and absence period was treated as non-duty period.
8. On account of remaining absent from 25-7-2003 to 4-8-2003 and 10-8-2003 to 20-9-2003 and in consequence of departmental enquiry, his 2 years approved service was forfeited temporarily and absence period was treated as non-duty period.
9. On account of remaining absent from 12-5-2003 to 9-7-2003 and in consequence of departmental enquiry, his 2 years approved service was forfeited permanently and absence period was treated as non-duty period.

10. On account of remaining absent from 12-3-2004 to 28-4-2004 and in consequence of departmental enquiry, his 1 year approved service was forfeited permanently and absence period was treated as non-duty period.

Besides this, on account of remaining absent at different periods, his absence of about 497 days was treated as non-duty period.

8. A perusal of the above leaves no manner of doubt that the conclusion drawn by the Punishing Authority that the petitioner is a habitual absentee and his conduct is of such a nature rendering him incorrigible to be retained in service is fully justified and based on the records and, therefore, the punishment of dismissal imposed upon him is in accordance with law. In view of the above, finding no merit in the present writ petition, the same stands dismissed.