**(1994) 03 P&H CK 0012**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Regular Second Appeal No. 1739 of 1992

| | | |
|---|---|---|
| Punjab State and Others | | APPELLANT |
| | Vs | |
| Gurdip Singh | | RESPONDENT |

**Date of Decision:** March 31, 1994

**Acts Referred:**

- Punjab Police Rules, 1934 - Rule 16.2(1)

**Citation:** (1994) 107 PLR 698

**Hon'ble Judges:** S.K. Jain, J

**Bench:** Single Bench

**Advocate:** Charu Tuli, AAG, for the Appellant; H.S. Gill, for the Respondent

**Final Decision:** Dismissed

**Judgement**

S.K. Jain, J.

The plaintiff was appointed police constable in Kapurthala District. On 2.8.1987, he was posted at Bus Stand Phagwara, Inspector Krishan Lal, SHO, found him under the influence of liquor. He was charge sheeted followed by a departmental enquiry. He was found guilty and vide order dated 14,3.1988 he was dismissed from service by S.P. Kapurthala. His appeals were also dismissed by the DIG Jalandhar and IGP Punjab on 5.8.1988 and 6.12.1988 respectively. Thereafter, he instituted Civil Suit No. 240 of 2.8.1989 thereby challenging the orders of his dismissal and those passed by the DIG and IGP in appeals. The suit was contested on behalf of the department and the parties fought the litigation on the following issues :-

1. Whether the impugned orders dated 2.8.1988 and 14.3.1989 passed by the defendants are illegal, null and void as alleged in para Nos. 9 and 10 of the plaint? OPP.

2. Whether the plaintiff is entitled to interest?

3. Whether the plaintiff is entitled to declaration?

4. Relief?

Learned Sub Judge 1st Class, Kapurthala vide his judgment and decree dated 14.10.1991 decreed the suit of the plaintiff.

2. Feeling aggrieved, the State preferred Civil Appeal No. 27 of 16.1.1992/18 of 31.1.1992. It was heard by Additional District Judge, Kapurthala, who vide his judgment and decree dated 7.5.1992 dismissed the appeal.

3. It is that judgment and decree of the first Appellate Court which has been appealed against by the defendant and which requires my examination of its sustainability.

4. I have seen the pleadings in the suit, the evidence adduced by the parties in the suit and the judgments of both the Courts below.

5. It is vehemently argued by Mrs. Charu Tuli, learned Assistant Advocate General, Punjab, that the Enquiry Officer vide Enquiry Report Ex.P-4 had found the delinquent official guilty of misconduct as he was found under the influence of liquor while on duty, but the Courts below have wrongly decreed the suit of the plaintiff. This argument attractive at first sight, is, in my opinion, not tenable on the sound appreciation of the provisions of Rule 16.2 of the Punjab Police Rules, 1934 Vol. II which governed the service conditions of the plaintiff and which is reproduced below for ready reference :-

"16.2.(1) 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 the Police Service. In making such an award, regard shall be had to the length of service of the defendant and his claim to pension."

6. No doubt, even a single act of misconduct can, in a given situation amount to the gravest act of misconduct, but the mandate of the rule making authority is clear that the punishment of dismissal from service has not to be awarded in case of a misconduct of ordinary nature. In the present case, admittedly :-

(i) It was only a single stray case of taking liquor by the petitioner;

(ii) there is no evidence whatsoever that the petitioner had created nuisance under the influence of liquor;

(iii) that the petitioner had put in about 10 years of qualifying service for grant of pension under the Punjab Civil Service Rules Vol. II;

(iv) there is no finding by the Punishing Authority to the effect that the alleged misconduct was proving incorrigibility and complete unfitness for the police service and

(v) that no regard was shown to the length of service of the petitioner and his claim to pension.

7. In view of the aforesaid factual and legal position the impugned order of dismissal from service is wholly arbitrary and illegal.

8. In holding the above view a reference can be had to :-

(i) Ram Partap Constable v. State of Haryana and Ors. 1989(2) RSJ 566; and

(ii) Ram Kishan Constable v. State of Haryana 1990(1) RSJ 637.

9. In view of the above discussion, no fault can be found with the concurrent findings recorded by two Courts below.

10. Resultantly, the impugned judgment and decree of the first Appellate Court is hereby affirmed. This regular second appeal is, therefore, dismissed. No costs.