

RAJINDER KUMAR

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v.

STATE OF HARYANA AND ANOTHER

(Civil Appeal No.8064 of 2015)

SEPTEMBER 30, 2015

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[T.S. THAKUR AND KURIAN JOSEPH, JJ.]

Service law – Dismissal from service – Constable remained absent from duty – Disciplinary Authority as also appellate authority found him unfit for service – Penalty of dismissal from service – Writ petition by constable – The learned single Judge of the High Court set aside the punishment order and remanded back the matter to the Disciplinary Authority – Division Bench set aside the order of the learned single judge – On appeal, held: Once a person is found unfit for service on account of intermittent and unauthorized absence for which the delinquent though has a reasonable explanation, no doubt, there is no point in continuing him in service either by reverting him or by imposing punishments like stoppage of increment, etc. – Indiscipline of any sort cannot be tolerated at all in a disciplined force – However, in view of the factual background of the constable, authorities should have considered whether a punishment other than dismissal would have been appropriate – On facts, it is not proper to remand the matter to any of the authorities – Authorities having found the appellant to be unfit to continue in Police Service, the punishment of compulsory retirement, which is also a prescribed punishment, should have been the appropriate one – Thus, the order of dismissal of the constable is set aside – Constable be treated as compulsorily retired from service from the date of the original order.

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- A *Ghanshyam Dass Relhan v. State of Haryana and others*
2009 (10) SCR 603: (2009) 14 SCC 506 – referred to.

Case Law Reference

- B 2009 (10) SCR 603 referred to. Para 6

CIVILAPPELLATE JURISDICTION: Civil Appeal No. 8064 of 2015.

- C From the Judgment and Order dated 22.02.2013 of the High Court of Punjab and Haryana at Chandigarh in LPA No. 1077 of 2010 in CWP No. 19992 of 2009.

Manjit Singh, Vivekta Singh, Satyendra Kumar for the Appellant.

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Sanjay Kumar Visen, Rajesh Kumar Singh for the Respondents.

The Judgment of the Court was delivered by

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KURIAN, J.: 1. Leave granted.

2. The appellant was appointed as a constable under the first respondent-State on 24.12.1979. On the ground that he remained absent from duty while he was posted in police lines, Kurkshetra, Haryana on three occasions, extending to a total period of thirty seven days, disciplinary proceedings were initiated. He was found guilty of misconduct and a major penalty of dismissal was imposed on him by order dated 22.11.1994 of the Superintendent of Police, Kurukshetra, Haryana. The appeal before the D.I.G. of Police, Ambala, Haryana was dismissed, and that order was challenged before the High Court in C.W.P. No. 16511 of 1997. The said Writ Petition was disposed of by Judgment dated 26.05.2009. The operative portion of the judgment reads as follows:
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"It is, thus, clear that the finding regarding the petitioner having committed gravest misconduct cannot be faulted. However, reading the impugned order against the backdrop of the latest exposition of law (reproduced above). I find that the punishing authority has not considered the question regarding the right of the petitioner's pension. In the circumstances, the writ petition is allowed, the impugned orders of punishment (Annexure P-3 and P-8) are set aside and the matter is remanded back to the disciplinary authority for taking a fresh decision on the above aspect and pass a fresh order of punishment within a period of three months. However, the order of reinstatement shall remain in abeyance till such fresh consideration and will depend upon the outcome of the same."

3. The order of the learned Single Judge was taken up in intra court appeal leading to the impugned Judgment dated 22.02.2013. The Division Bench set aside the judgment of the learned Single Judge and dismissed the writ petition. Aggrieved, the appellant approached this Court.

4. It is not in dispute that the appellant had put in around fifteen years of service prior to his termination. The charge against the appellant was only of unauthorized absence of short durations. The appellant had an explanation for his absence, that he was taking treatment in the District Chest T.B. and Leprosy Centre, Kurukshetra, Haryana, for his chronic tuberculosis. It appears, on that count, the appellant pleaded for mercy before the Inquiry Officer. However, the Disciplinary Authority, by order dated 22.11.1994, passed an order dismissing the appellant from service. The operative portion of the order dated 22.11.1994 reads as follows:

"In the case in hand the absence from duty for 37 days on

- A the part of the defaulter was not an isolated act. Even prior to this as mentioned earlier, there have been repeated acts of remaining absent from duty, and taking lenient view of the matter, the defaulter had been let off by the award of lesser punishment giving him an opportunity to reform.
- B Despite giving an opportunity to reform himself he continued to remain absent from duty off and on. Such a misconduct from a member of disciplined force is not expected, who has about 15 years of service to his credit.
- C He has thus proved himself to be incorrigible and thereby unfit to continue in service. Police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious affects in the maintenance of law and order.

- D I thus award Constable Rajinder Kumar, 343/KKR penalty of dismissal from service with immediate effect."

5. In appeal, the appellant, inter alia, pleaded for mercy and alteration of the punishment. His plea was rejected by
- E the appellate authority. The operative portion of the order dated 21.04.1995 passed by the appellate authority, reads as follows:

- F "The appellant has further pleaded that the punishment awarded to him is extreme. He is the only earning member of the family. He has prayed for leniency. I have perused the service record of the appellant. He was enrolled in the police force w.e.f. 24/12/79. He has rendered the service of 15 ½ years. He remained absent
- G on four occasions in the year 1986. He remained from 12/4/89 to 3/7/89. Again he remained absent for 33 days. He was awarded censured in 1986. Punishment of stoppage of two increments vide O.B. No. 530/94. He was also given punishment of stoppage of one increment

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vide O.B. No. 523/94 for consuming liquor on duty. A
Besides these the appellant remained absent which were
converted into the leave of the kind due. In these
circumstances, it is fully proved that the appellant is an
habitual defaulter. His continued misconduct has fully
proved him incorrigible and complete unfit for police B
service. In these circumstances he does not deserve
any leniency. In the case of appellant the only
punishment of dismissal can meet the ends of justice.
Therefore, the plea of leniency is also rejected.” C

6. It appears, both, the learned Single Judge as well as the
Division Bench, dealt with the challenge on an entirely different
angle, perhaps on account of the misconceived contentions raised
by the appellant on the claims for pension. The reliance sought
to be placed on **Ghanshyam Dass Relhan v. State of D
Haryana and others**⁽¹⁾ is of no assistance. In that case, this Court
in fact considered the difference between dismissal from
service and resignation from service for the purpose of
pensionary benefits and it was held that the employee, on
resignation being accepted, was entitled, under the relevant rules, E
for retirement benefits, subject to his completing the prescribed
service. That decision apparently does not have any relevance
in the case of the appellant. There cannot be any dispute that the
dismissal from service entails forfeiture of past service as per F
the unambiguous provisions under the Punjab Civil Services
Rules, 1989. The only contention, which should probably have
weighed with the Court, was on the quantum of punishment in
the given factual situation. It was in that background, this Court
issued a limited notice on 04.04.2014 for considering the G
only question of quantum of punishment.

7. It is not in serious dispute that the appellant is a serious
patient of tuberculosis. According to the disciplinary authority
as well as the appellate authority, the appellant became

¹. (2009) 14 SCC 506

A completely unfit for service in view of the background of the unauthorized absence on many occasions. Once a person is found unfit for service on account of intermittent and unauthorized absence for which the delinquent though has a reasonable explanation, no doubt, there is no point in continuing him in service either by reverting him or by imposing punishments like stoppage of increment, etc. But the question is, whether dismissal is the only option in such situations where an employee is found unfit for service. We have no doubt in our mind that indiscipline of any sort cannot be tolerated at all in a disciplined force. However, in the factual background of the appellant which we have referred to above, the disciplinary authority or at least the appellate authority, should have considered whether a punishment other than dismissal would have been appropriate and whether dismissal is the only punishment available and appropriate in the circumstances. The fact that different punishments are prescribed under the rules shows that there is a discretion vested on the competent authority to decide what should be the proper punishment taking note of the nature of misconduct, its gravity and its impact on the service. Having regard to the facts and circumstances of each case, the disciplinary authority has to take a proper decision on punishment.

8. Having regard to the fact that the disciplinary proceedings were initiated in the year 1994, and having regard to the prolonged litigation, we do not find it proper to remand the matter to any of the authorities, either original or appellate. The authorities having found the appellant to be unfit to continue in Police Service, we are of the view that the punishment of compulsory retirement, which is also a prescribed punishment, should have been the appropriate one to be imposed in the circumstances. Therefore, we set aside the order passed by the disciplinary authority as confirmed by the appellate authority on the punishment of

dismissal of the appellant and order that the appellant be A
treated as compulsorily retired from service from the date
of the original order, i.e., 22.11.1994. Needless also to say
that, in case the appellant is otherwise entitled to any
consequential reliefs on that account, the same shall follow.

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9. The appeal is disposed of as above. There shall be no
order as to costs.

Nidhi Jain

Appeal disposed of.