(22) It is admitted position that the petitioner had secured 62.65 marks and the persons who had secured 61.875 marks was offered appointment and further out of 39 vacancies in the General Category only 37 were filled, meaning thereby two posts are still available.

(23) For the reasons mentioned above, the writ petition is allowed. The petitioner is declared eligible for appointment as Vocational Master-General Receptionist. The respondents are directed to offer appointment to the petitioner within a period of two months from the date of receipt of copy of the order. The petitioner shall be entitled to all the benefits notionally from the date, person lower in merit than the petitioner was appointed, however, the actual payment shall be made only from the date the petitioner joins service.

J.S. Mehndiratta

Before Rakesh Kumar Garg, J.

STATE OF PUNJAB AND OTHERS—*Appellants*

versus

CONSTABLE BUDH SINGH—*Respondent*

RSA No. 2315 of 1993

January 21, 2014

Punjab Police Rules, 1934 - Rls. 1.8 and 16.2 - Code of Civil Procedure, 1908 - S. 100 - Dismissal - Respondent Constable was dismissed from service by SP on account of wilful absence of 4 months without permission - IG upheld dismissal - Suit filed by Respondent Constable was decreed - First appellate Court held that absence from duty is not a gravest act of insubordination, for which penalty of dismissal was required - Held, that once Punishing Authority itself comes to conclusion that a particular act of delinquent official constitutes gravest act of misconduct warranting his dismissal from service, then Courts have no jurisdiction to re-examine question as to whether such act constituted gravest act of misconduct or not - Courts cannot sit over the findings of the disciplinary authority and act as a court of appeal unless it is shown that the findings are without any evidence.

Held, that the punishing authority categorically concluded that the absence of the plaintiff-respondent, without any authorized leave, was an act of gravest misconduct and gross negligence. Not only this, even the appellants and the revisional authority under the statutory rules upheld the aforesaid findings of the punishing authority. It is well settled that once the punishing authority itself comes to a conclusion that a particular act of the delinquent official constitutes gravest act of misconduct warranting his dismissal from service, then the Courts have no jurisdiction to re-examine the question as to whether such act constitutes the gravest act of misconduct.

(Para 27)

Further held, that it is also equally well settled that Courts cannot sit over the findings of the Enquiry Officer as accepted by the disciplinary authority and act as a court of appeal unless it is shown that the findings are without any evidence.

(Para 28)

Hari Pal Verma, Addl.A.G., *for the appellants.*

Veneet Sharma, Advocate for the respondent.

RAKESH KUMAR GARG, J.

(1) The plaintiff (now respondent) who was a Constable in the Police Department had filed a suit for declaration challenging the order dated 14.11.1984 passed by the Superintendent of Police (City) dismissing him from services and also order dated 3.7.1985 of the D.I.G. of Police dismissing the appeal. Further challenge was made in the suit to order dated 18.12.1985 of the Inspector General of Police on the ground that the aforesaid orders were illegal *ultra vires*, unconstitutional, *mala fide and* against the principles of natural justice as well as the rules governing service of the plaintiff and thus, he was entitled to continue in service along with all the benefits.

(2) Allegations against the plaintiff were that he absented himself from the Police Lines on 13.3.1983 and rejoined on 26.5.1983 after remaining absent for 2 months, 13 days and 15 minutes. Further allegation against him was that he again absented himself on 4.7.1983

and returned on 20.8.1983 after remaining absent for 1 month, 16 days and 30 minutes. An enquiry was conducted against the plaintiff after serving summary of allegations upon the plaintiff and thereafter, recording evidence. Chargesheet was also served upon the plaintiff and reply to the chargesheet was given by him. However, he did not produce any evidence. The plaintiff was then served a Show Cause Notice, reply to which was given by him, but his plea was rejected by the punishing authority and he was dismissed from service. Thereafter, his appeal and revision, filed against the aforesaid orders, were also dismissed.

(3) The dismissal orders were challenged by the plaintiff on various grounds including that his termination orders were passed by an officer who was not his appointing authority. Moreover, the punishment of dismissal could be awarded only for gravest misconduct under Rule 16.2 of the Punjab Police Rules, 1934 (for short, "the Rules") whereas no such finding has been recorded by the punishing authority while passing the impugned order of termination.

(4) The suit was contested by the appellant-State raising various preliminary objections. On merits, it was stated that the orders of termination and subsequent orders were legal and valid and entire procedure as per law was strictly adopted and the plaintiff was properly heard and afforded full opportunity before the order of termination was passed. Moreover, the S.P. (City) who had passed the termination order was fully competent to pass the said order in accordance with the Rules.

(5) Plaintiff filed replication to the written statement of the defendants, in which he reiterated the allegations made in the plaint and denied those made in the written statement.

(6) From the pleadings of the parties, following issues were framed:–

> *"1. Whether the order of Superintendent of Police, Ludhiana dated 14.11.1984 and of DIG in appeal on 3.7.85 and that of I.G. Police dated 18.12.1985 are illegal, null and void? OPP.*

2. *Whether the suit is not maintainable in the present form? OPD.*

3. *Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD.*

4. *Relief."*

(7) Parties led oral as well as documentary evidence in support of their case and on conclusion of trial, issue no.1 was decided in favour of the plaintiff holding that Shri P.M. Dass, S.P. (City) was not competent to pass the punishment order and issues no. 2 and 3 were decided against the defendants and the suit was decreed in favour of the plaintiff-respondent.

(8) Aggrieved from the aforesaid judgment and decree of the trial Court, the defendants filed an appeal before the first Appellate Court which was dismissed. While dismissing the appeal and affirming the findings of the trial Court, learned District Judge further held that absence from duty is not a gravest act of insubordination, for which penalty of dismissal was required and before awarding the extreme penalty of dismissal, the punishing authority has failed to keep in view the fact of length of service of the plaintiff-respondent and his claim for pension.

(9) Still not satisfied, the defendants have filed the instant appeal challenging the impugned judgments and decrees of the Courts below.

(10) This appeal was admitted vide order dated 24.11.1993 for regular hearing.

(11) Learned counsel for the appellant vide Civil Misc. No.11897-C of 2013 framed following substantial questions of law for consideration of this Court:–

"(a) Whether the authority who had passed the order of termination i.e. Superintendent of Police is competent to pass the order of termination particularly in view of the Punjab Police Rules?

(b) Whether the act and conduct of the respondent and wilful continuous absence from the service without any sanction from the competent authority not only misconduct to gravest of misconduct?

(c) Whether the plaintiff-respondent was liable to be dismissed for continuous absence from the duty?"

(12) I have heard learned counsel for the parties and perused the records.

(13) Further, with the help of learned counsel for the parties, this Court framed following substantial questions of law for consideration:-

"1. Whether the Courts below had the jurisdiction to re-examine the question as to whether a particular act of the delinquent official, in the facts and circumstances of the case, constitutes an act of gravest misconduct?

2. Whether the judgments passed by the Courts below are erroneous in law in view of settled principles of law and consequently, the same are liable to be set aside?"

(14) In support of this appeal, learned counsel for the appellant has vehemently argued that the plaintiff-respondent had wilfully remained absent from duty twice for a total period of 3 Months, 29 days and 45 Minutes, which amounts to gravest act of misconduct. The police force is a disciplinary force and absence of an employee even for a short period may prove dangerous to the society because the police personnel are meant for protection of the society from criminals. Moreover, proper procedure was adopted before termination of services of the respondent, as per rules and the termination order was passed by S.P. (City) who was competent to pass such an order. According to learned counsel for the appellants, the Courts cannot sit over the findings of the Enquiry Officer, as accepted by the Punishing Authority and act as a Court of appeal unless it is shown that the findings are without any evidence. According to learned counsel, the punishing authority has come to the conclusion that the act of the delinquent official constituted gravest act of misconduct and while passing the

order of dismissal from service, the disciplinary authority was fully conscious of the provisions of Rule 16.2(1) of the Rules and his absence from duty was examined in the light of attending circumstances by the authority concerned and once the punishing authority itself has come to the conclusion that a particular act of the delinquent official constituted gravest act of misconduct, then this Court has no jurisdiction to re-examine the question as to whether it constituted gravest act of misconduct and thus, the findings of the Courts below being contrary to settled law, give rise to the substantial questions of law, as raised. Thus, the impugned judgment and decrees of the Courts below are liable to be set aside.

(15) However, learned counsel for the respondent has vehemently opposed the arguments raised on behalf of the appellant-defendants. According to learned counsel for the respondent, the S.P. (City) had no authority to pass the dismissal orders against the plaintiff-respondent, as he was not the appointing authority. The respondent was appointed by SSP, Ludhiana, who could only be the punishing authority in the case of the appellant. Moreover, Shri P.M. Dass, Superintendent of Police (City), Ludhiana, who passed the order, was not the District Superintendent of Police and thus, the impugned order is liable to be set aside being against the rules. According to learned counsel for the respondent, the punishment of dismissal from service could be awarded only for gravest acts of misconduct or for cumulative effect of his continued misconduct proving incorrigibility and further keeping in view his length of service rendered, whereas no such finding has been recorded by the punishing authority and moreover, the punishing authority has failed to keep in view the length of service of the plaintiff-respondent and his right to pension at the time of passing the order of dismissal and thus, the impugned judgments and decrees do not warrant any interference by this Court.

(16) At this stage, a reference may be made to the relevant provisions of the Punjab Police Rules, which reads thus:–

> *"**1.8 Superintendent of Police.** - The Superintendent of Police is the executive head of the district police force. He is directly responsible for all matters relating to its internal economy,*

training and management, and for the maintenance of its discipline and the efficient performance of all its duties.

In every district there shall be one or more Superintendents and such number of Assistant Superintendents/Deputy Superintendents, Inspectors, Sergeants, Sub-Inspectors, Assistant Sub-Inspectors, Head Constables and Constables as the Provincial Government may direct."

(17) Rule 12.1 gives a table showing the authorities empowered to make appointments in the case of Constables and Head Constables. It is as under:

"Superintendents of Police, and Deputy Superintendent, (Administrative), Government Railway Police, Assistant Superintendent, Government Railway Police, Deputy Superintendents, in-charge of Railway Police Sub- Divisions, Senior Assistant Superintendent of Police, Lahore and [officers-in-charge, of Police Constables Training Centres] Deputy Superintendent of Police, Punjab Armed Police, Lahaul and Spiti."

(18) The authorities, who are empowered to inflict punishment of dismissal in the case of Constables, are provided in Column No.6 of Rule 16.1. of the Rules which reads as under:

"Superintendents of Police, Deputy Superintendent (Administrative), Government Railway Police; Deputy Superintendents incharge of Railway Police Sub-Divisions; Senior Assistant Superintendent of Police. Lahore: Officer-in-charge of Recruits Training Centres. Deputy Superintendent of Police, Lahaul and Spiti."

(19) The aforesaid provisions of the Punjab Police Rule came for interpretation before this Court in RSA No.2316 of 1993 titled as ***State of Punjab & others v. Constable Sarwan Singh*** decided on 2.3.2007, wherein after discussing the law, it was held that it was not necessary that punishment be inflicted only by Superintendent-in-charge of the district. It could be any of the officers of the rank of Superintendent of Police.

(20) Learned counsel appearing on behalf of the plaintiff-respondent has not cited any judgment to the contrary to refute the arguments raised on behalf of the appellant-State. Thus, the argument raised on behalf of the plaintiff-respondent that the punishment has been inflicted by an officer not authorized under the rules is not sustainable and it is held that the impugned order was passed by the competent officer under the rules.

(21) At this stage, it is also relevant to refer to Rule 16.2 of the Punjab Police Rules, which reads thus:-

> *"**16.2. Dismissal.** - (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 police service. In making such an award regard shall be had to the length of service of the offender and his claim to pension".*

(22) At this stage, it is also relevant to notice that Rule 16.2 (1) of the Rules came up for interpretation of Hon'ble the Supreme Court in the case of ***State of Punjab v. Ram Singh(1)***. While interpreting the Rule, the Hon'ble Supreme Court observed as under:–

> *"7. Rule 16.2(1) consists of two parts. The first part is referable to gravest acts of misconduct which entails awarding an order of dismissal. Undoubtedly there is distinction between gravest misconduct and grave misconduct. Before awarding an order of dismissal it shall be mandatory that dismissal order should be made only when there are gravest acts of misconduct, since it impinges upon the pensionary rights of the delinquent after putting long length of service. As stated the first part relates to gravest acts of misconduct. Under general clauses Act singular includes plural, act includes acts. The contention that there must be plurality of acts of misconduct to award dismissal is festidious. The word "acts" would include singular "act" as well. It is not the repetition of the acts complained of but*

(1) (1992) 4 SCC 54

its quality, insideous effect and gravity of situation that ensues from the offending `act'. The colour of the gravest act must be gathered from the surrounding or attending circumstances. Take for instance the delinquent that put in 29 years of continuous length of service and had unblemished record; in 30th year he commits defalcation of public money or fabricates false records to conceal misappropriation. He only committed once. Does it mean that should not be inflicted with the punishment of dismissal but be allowed to continue in service for that year to enable him to get his full pension. The answer is obviously no. Therefore, a single act of corruption is sufficient to award an order of dismissal under the rules as gravest act of misconduct.

8. The second part of the rule connotes the cumulative effect of continued misconduct proving incorrigibility and complete unfitness of police service and that the length of service of the offender and his claim for pension should be taken into account in an appropriate case. The contention that both parts must be read together appears to us to be illogical. Second part is referable to a misconduct of minor in character which does not by itself warrant an order of dismissal but due to continued acts of misconduct would have insidious cumulative effect on service morale may be a ground to take lenient view of giving an opportunity to reform. Despite giving such opportunities if the delinquent officer proved to be incorrigible and found complete unfit to remain in service than to maintain discipline in the service, instead of dismissing the delinquent officer, a lesser punishment of compulsory retirement or demotion to a lower grade or rank or removal from service without affecting his future chances of re-employment, if any, may meet the ends of justice. Take for instance the delinquent officer who is habitually absent from duty when required. Despite giving an opportunity to reform himself he continues to remain absent from duty off an on. He proved himself to be incorrigible and thereby unfit to continue in service. Therefore, taking into account his long length of service and his claim for pension

he may be compulsorily retired from service so as to enable him to earn proportionate pension. The second part of the rule operates in that area. It may also be made clear that the very order of dismissal from service for gravest misconduct may entail forfeiture of all pensionary benefits. Therefore, the word 'or' cannot be read as "and". It must be disjunctive and independent. The common link that connects both clauses is "the gravest act/acts of misconduct"

(23) Thus, Rule 16.2(1) of the Rules consists of two parts. The first part is referable to gravest acts of misconduct which entails awarding an order of dismissal and the second part of the Rule connotes the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service and the length of service of the offender and his claim for pension. The word 'or' cannot be read as "and". It must be disjunctive and independent and the common link that connects both the clauses is the gravest act/acts of misdonduct. Therefore, the argument raised on behalf of the plaintiff-respondent that while awarding punishment, length of past service of the plaintiff-respondent has not been taken into consideration, is without any substance.

(24) It may further be noticed that in the case of ***Ex.Constable Balbir Singh v. State of Punjab & others(2)***, this Court has held that the police force is a disciplinary force and absence of an employee even for a single minute may prove dangerous for the society because police personnel are meant to protect the society from the criminals and thus, the misconduct of such wilful absence from duty amounts to gravest act of misconduct, as defined under the Rules. Further in the case of ***State of Punjab & others v. Ex.Constable Jagir Singh(3)*** it was held that absence from duty by the delinquent official without permission from the competent authority is gravest violation of police discipline and thus, an act of gravest misconduct and gross negligence.

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(2) 2012(3) PLR 615

(3) 2009(4) Law Herald (P&H) 2711

(25) This Court in ***Satish Kumar*** **v.** ***State of Haryana(4)*** while interpreting Rule 16.2(1) of the Punjab Police Rules, 1934 held that dismissal from service on account of unauthorized absence from duty of a Police Constable is an act of gravest misconduct. Similarly, in ***Rajesh Kumar*** **v.** ***State of Haryana(5)***, it was held that mere non-mentioning of specific word 'act of gravest misconduct' will not vitiate the order of misconduct if on consideration of the facts, the nature of charges clearly show it to be a misconduct of such nature.

(26) At this stage, it may be noticed that the Enquiry Officer in his enquiry report has held that the charges against the plaintiff-respondent have been proved. Plaintiff-respondent was granted full opportunity in the enquiry, as has been rightly pointed out by learned State counsel. Moreover, while imposing the punishment, the punishing authority after considering the attending facts and circumstances of the case has recorded a finding to the effect that the plaintiff-respondent twice remained absent from duty without permission for a long period totalling about 4 months, which is an act of grave violation of the police discipline and the same is punishable. Not only this, while considering the appeal filed by the plaintiff-respondent under the service rules, the Appellate Authority had also recorded a finding against the plaintiff-respondent to the effect that the charges of absence were fully proved against him and the Superintendent of Police was competent to pass the order of dismissal in accordance with the Rules, so much so that even the I.G. Police, Punjab while dismissing the revision petition filed by the plaintiff-respondent also recorded a finding that wilful absence from duty is a gravest act of misconduct on the part of the member of a disciplined force and the competent authority was well within its right to pass the order in question by taking into consideration the gravity of misconduct and that the delinquent official has failed to point out any material irregularity in the proceedings of the enquiry or adduce any evidence which may call for interference in the order of the punishing authority.

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(4) 2001(4) SCT 237

(5) 2005(3) SCT 512

(27) Thus, in the instant case, the punishing authority categorically concluded that the absence of the plaintiff-respondent, without any authorized leave, was an act of gravest misconduct and gross negligence. Not only this, even the appellants and the revisional authority under the statutory rules upheld the aforesaid findings of the punishing authority. It is well settled that once the punishing authority itself comes to a conclusion that a particular act of the delinquent official constitutes gravest act of misconduct warranting his dismissal from service, then the Courts have no jurisdiction to re-examine the question as to whether such act constitutes the gravest act of misconduct. In this regard, reliance may be placed upon judgment of Hon'ble the Supreme Court in the case of ***Maan Singh v. Union of India(6)***.

(28) It is also equally well settled that Courts cannot sit over the findings of the Enquiry Officer as accepted by the disciplinary authority and act as a court of appeal unless it is shown that the findings are without any evidence. In this regard reliance could be placed on the judgment of the Supreme Court in the case of ***B.C. Chaturvedi v. Union of India(7)*** wherein it has held as under: -

> *"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that findings must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority*

(6) (2003) 3 SCC 464

(7) (1995) 6 SCC 749

accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

(29) The findings recorded by both the Courts below are without any application of mind and fail to take into consideration the evidence on record and the settled principles of law. The argument raised on behalf of the plaintiff-respondent that the punishing authority has ignored the factum of length of service and right to pension of the delinquent official while passing the punishment order is again liable to be rejected, as admittedly, the length of service of the respondent is less than the qualifying service required for pension. In such a situation, in the case of ***Constable Jagmal Singh v. State of Haryana(8)***, a Division Bench of this Court held that Punishing Authority was not required at all to consider length of service of the petitioner for the purpose of pension when no right to pension had accrued to him. The judgments cited on behalf of the plaintiff-respondent do not help him in any manner in view of the facts and circumstances, as discussed above.

(30) The facts in the present case would make the absence of plaintiff-respondent as a gravest act of misconduct. Therefore, those findings recorded by both the courts below cannot be sustained.

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(8) 1998(1) SCT 260

(31) In ***Boodireddy Chandraiah and others v. Arigela Laxmi and another(9)*** the principles relating to Section 100 CPC have been summarized as under:-

> *"The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law."*

(32) In view of the aforesaid discussion, it is clearly established that despite the fact that legal position in the case in hand was clear on the basis of binding precedents but the Courts below decided the matter in favour of the plaintiff-respondent contrary to such settled legal principles. Therefore, the substantial questions of law framed by the State of Punjab do arise because the impugned decision which has been rendered on the material question by the trial Court has violated the settled position of law.

(33) Thus, the substantial questions of law, as raised, are answered in favour of the appellant-State, the appeal is allowed and the judgment and decrees of the Courts below are set aside and the suit of the plaintiff-respondent is ordered to be dismissed. No costs.

S. Gupta

(9) (2007) 8 SCC 155