

Before M. M. Kumar & Sabina, JJ.

SI SURINDER SINGH,—Petitioner

versus

STATE OF PUNJAB AND OTHERS,—Respondents

C.W.P. No. 9776 of 1994

23rd July, 2008

Constitution of India, 1950—Art.226—Punjab Police Rules, 1934—Rls.16.2(1)—Dismissal from service on account of absence from duty—Petitioner rendering meritorious service for about 22 years—Petitioner neither committing misconduct nor habitual absentee during his service period—Provisions of Rl.16.2(1) requires appointing authority to take into account length of service of a police officer before passing order of dismissal—Disciplinary and punishing authorities ignoring mandatory requirement of Rl.16.2(1)—Petition allowed, order of dismissal set aside being not sustainable while holding petitioner entitled to retire voluntarily from service.

Held, that the rule making authorities have intentionally used the expression 'gravest act of misconduct' to constitute a basis for the order of dismissal because such order impinges upon the pensionary rights of a delinquent employee, who might have put in a long length of service. There is no finding recorded that the absence from duty by the petitioner from 17th April, 1992 till 17th September, 1993, when the order of dismissal was passed, was a gravest act of misconduct proving incorrigibility. It is further worthwhile to notice that neither the punishing authority nor any other authorities like appellate authority or revisional authority, has followed the mandatory provision of considering the length of service of the petitioner, who had joined as Constable on 10th October, 1971 and remained in service till 1993. The service rendered by him does not show that he had earlier committed misconduct or he is a habitual absentee. He was sent on deputation where he earned repeated promotions. The problem started only when the petitioner was repatriated from the CID Department to his parent PAP Department,—

vide order dated 16th March, 1992 because he was expected to join on the post of Head Constable. The petitioner while on deputation with the CID Department had earned promotions to the post of Head Constable, Assistant Sub Inspector and Sub Inspector. That appears to be the basic reason for absence from duty. However, it is established that the authorities have violated the requirement of Rule 16.2 (1) of the Rules, which has been held to be mandatory.

(Para 9)

Further held, that on the one hand there is violation of mandatory provisions of Rule 16.2(1) of the Rules in more than one way and on the other hand there are binding directions issued by Hon'ble the Supreme Court permitting the petitioner to exercise option of seeking voluntary retirement from the CID Department on the rank he was working. The disciplinary and punishing authority has ignored from consideration while passing the order of dismissal, the mandatory requirement of Rule 16.2(1) of the Rules. The petitioner has rendered meritorious service from 10th October, 1970 to 16th March, 1992 and, therefore, the order of dismissal would not be sustainable.

(Paras 11 and 13)

K. G. Chaudhary, Advocate *for the petitioner*.

P. C. Goyal, Sr. D.A.G., Punjab, *for the respondents*.

M. M. KUMAR, J.

(1) The petitioner has approached this Court with a prayer for quashing order dated 17th September, 1993 (P-1) passed by the Commandant, 7th Bn., P.A.P. Jalandhar Cantt. respondent No. 4. The petitioner has been dismissed from service on account of his absence from duty, which was established in a regular departmental enquiry. The afore- mentioned order has been affirmed on appeal by the Deputy Inspector General Police on 14th December, 1993 (P-6) and even the revision was subsequently dismissed by the Inspector General of Police,—*vide* order dated 18th March, 1994 (P-7).

(2) Brief facts of the case necessary for disposal of the controversy raised in the instant petition are that the petitioner was

appointed as a Constable in the Punjab Armed Police Wing of the Police Department on 10th October, 1971. On 27th March, 1975, he was sent on deputation to CID Department where he earned numerous promotions on *ad hoc* basis. On 13th November, 1979 he was promoted as Head Constable (*Ad hoc*). He is stated to have earned a number of commendation certificates in the CID Department (P-1 to P-3). He was also promoted as Assistant Sub Inspector (*Ad hoc*) on 3rd October, 1986 in the CID Department and further earned promotion on the post of Sub Inspector on 19th January, 1990. The petitioner has claimed that he has excellent service record as no adverse entry has ever been conveyed to him. However, on 16th March, 1992 he was repatriated to his parent department as Head Constable when he served the CID Department for more than 17 years and had earned three promotions up to the rank of Sub Inspector.

(3) The petitioner did not accept the aforementioned order of repatriation to his parent department and challenged the same by filing CWP No. 4276 of 1993, which was eventually disposed of on 25th August, 1994 with a direction that the order of re-patriation being legal was not to be set aside. Further directions were given that the petitioner be considered for promotion in his parent department with effect from the dates when his juniors were promoted at different levels by the competent authority and if necessary by relaxing the rules regarding attending of courses. The matter was taken to Hon'ble the Supreme Court and the S.L.P. was allowed setting aside directions of the Division Bench of this Court for consideration of the case of the petitioner for promotion on the various posts with effect from the dates persons junior to him were considered and promoted. The view taken by Hon'ble the Supreme Court in the case of the petitioner alongwith cases of other persons is now reported as **State of Punjab versus Inder Singh, (1)**. However, in para 21 of the judgment, their Lordships have granted option to persons like the petitioners, who have put in more than 20 years qualifying service, to seek voluntary retirement.

(4) After the petitioner was repatriated to his parent department he was required to report for duty at PAP on 16th March, 1992 but he

(1) (1997) 8 S.C.C. 372

failed to do so. To that effect an order was passed on 17th April, 1992 asking the petitioner to join duty. The petitioner, however, intimated the respondents that he was unwell and requested for sanction of leave. On account of his absence from duty, he was placed under suspension on 5th September, 1992. A regular departmental enquiry was ordered. The Enquiry Officer found the petitioner guilty of willful absence from duty in his report. On the basis of the enquiry report, respondent No. 4, namely, Commandant 7th Bn. PAP Jalandhar issued him a show cause notice for dismissal from service on account of willful absence from duty. Eventually, he passed the order of dismissal *ex parte* on 17th September, 1993 (P-4). The aforementioned order has been upheld in appeal as well as in revision,—*vide* orders dated 17th December, 1993 and 18th March, 1994 (P-5) and P-7 respectively). It would be apposite to extract the operative portion of the order passed by respondent No. 4, which reads thus :

“From the above facts and from the departmental inquiry file, it is clear that I have come to this conclusion that the above said charges are fully proved against the Head Constable Surinder Singh No. 7/79 (Now No. 7/1101) and the Inquiry Officer has rightly found him guilty. Therefore, it is just and proper to give him the punishment as proposed in the show cause notice. In this way, today on 17th September, 1993, I order the dismissal of Head Constable Surinder Singh No. 7/79 (now No. 7/1101) from PAP department with effect from after noon and the period of absence from 17th April, 1992 up to the passing of this order will be treated as period without duty and the suspension period from 5th September, 1992 up to the passing of this order will be included in the suspension period. This employee will not be entitled to anything for the suspension period.

The order be registered and a copy of this be sent to Head Constable Surinder Singh No. 7/790 (now No. 7/1101) free of cost.”

(5) Mr. K.G Chaudhary, learned counsel for the petitioner has submitted that respondent No. 4, who is the appointing authority of the

petitioner, has failed to take into account the provisions of Rule, 16.2 of the Punjab Police Rules 1934 (for brevity, 'the Rules') which are mandatory in nature. According to the learned counsel, this rule requires the appointing authority to take into account the length of service of a police officer before passing the order of dismissal. In support of his submission, learned counsel has placed reliance on a Division Bench Judgment of this Court in the case of **Constable Shiv Charan versus Senior Superintendent of Police, Gurdaspur, (2)** and a judgment of Hon'ble the Supreme Court in the case of **Harjit Singh versus State of Punjab, (3)**. Learned counsel has emphasised that in the absence of consideration of the case of the delinquent employee by keeping in view his length of service, the order of dismissal is liable to be set aside. Mr. Chaudhary has also argued that the petitioner has not been given reasonable opportunity of hearing during the enquiry proceedings by the Enquiry Officer and the order passed by the appointing authority is also *ex parte*.

(6) Mr. P.C. Goyal, learned State counsel, however, has argued that absence from duty is the gravest act of misconduct and it is sufficient to order dismissal of such an employee. According to the learned counsel, this Court cannot go into the question of quantum of punishment once the charges have been established. Learned State counsel has also submitted that the procedure laid down for holding enquiry into the misconduct has been religiously followed and no fault could be pointed out by the counsel for the petitioner. In support of his submission he has placed reliance on a judgment of Hon'ble the Supreme Court in the case of **State of Rajasthan versus Mohd. Ayub Naz, (4)** .

(7) We have heard learned counsel for the parties and have perused the record with their able assistance. One principle of law which is now well settled is that the Courts ordinarily do not enjoy jurisdiction to alter the quantum of punishment inflicted by the employer on its employee. In that regard reliance may be placed on the judgment

(2) 1998 (3) R.S.J. 351

(3) (2007) 9 S.C.C. 582.

(4) (2006) 1 SCC 589.

of Hon'ble the Supreme Court in the case of **State of U.P. versus Jaikaran Singh, (5) U.P. State Road Transport Corporation versus Suresh Pal, (6) Regional Manager, U.P. State Road Transport Corporation, Etawah versus Hoti Lal, (7) U.P. State Road Transport Corporation versus Ram Kishan Arora, (8) and Messrs Amrit Vanaspati Company Limited versus Khem Chand, (9)**. The principle laid down in the aforementioned judgments is that ordinarily the Courts do not substitute the quantum of punishment unless it is found that the punishment is shockingly disproportionate to the misconduct or for any other sufficient reason. In the case of Harjit Singh (*supra*) on which reliance has been placed by the learned counsel for the petitioner, some of the aforementioned judgments have been considered and the order of dismissal has been altered with the order of premature retirement because Rule 16.2 of the Rules was found to be violated. The aforementioned Rule, which is also relevant to the case of the petitioner, reads thus :—

“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.

- (2) An enrolled police officer convicted and sentenced to imprisonment on a criminal charge shall be dismissed .

Provided that in case the conviction of a police officer is set aside in appeal or revision, the officer empowered to appoint him shall review his case keeping in view the instructions issued by the Government in this behalf.”

(5) (2003) 9 S.C.C. 228

(6) (2006) 8 S.C.C. 108

(7) (2003) 3 S.C.C. 605

(8) (2007) 4 S.C.C. 627

(9) (2006) 6 S.C.C. 325

(8) Rule 16.2 of the Rules came up for interpretation of Hon'ble the Supreme Court in the case of **State of Punjab versus Ram Singh, (10)**. While interpreting the rule, Hon'ble the Supreme Court cited the law in the following terms :—

“ “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 the are gravest acts of misconduct, that too when it impinges 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 fastidious. The word “acts” would includ singular “act” as well. It is not the repetition of the acts complained of but is quality, insidious effects 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 he 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 rule 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 is habitually absent from duty when required. Despite giving an opportunity to reform himself he continues to remain absent from duty off and on. He 2192 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."

(9) The aforementioned statement of law would help the petitioner only to the extent that in the departmental inquiry no findings have been recorded that the misconduct of the petitioner is gravest in terms of Rule 16.2(1) of the Rules, as interpreted by Hon'ble the Supreme Court in Ram Singh's case (*supra*). It appears that the rule making authorities have intentionally used the expression 'gravest act of misconduct' to constitute a basis for the order of dismissal because such order impinges upon the pensionary rights of a delinquent employee, who might have put in a long length of service. The first part of the

rule as interpreted in para 7 of the judgment in Ram Singh's case (*supra*), would apply to the case of the petitioner because there is no finding recorded that the absence from duty by petitioner from 17th April, 1992 till 17th September, 1993, when the order of dismissal was passed, was a gravest act of misconduct proving incorrigibility. It is further worthwhile to notice that neither the punishing authority nor any other authorities like appellate authority or revisional authority, has followed the mandatory provision of considering the length of service of the petitioner, who had joined as Constable on 10th October, 1971 and remained in service till 1993. The service rendered by him does not show that he had earlier committed misconduct or he is a habitual absentee. He was sent on deputation where he earned repeated promotions. The problem started only when the petitioner was repatriated from the CID Department to his parent PAP Department,—*vide* order dated 16th March, 1992 because he was expected to join on the post of Head Constable. The petitioner while on deputation with the CID Department had earned promotions to the post of Head Constable, Assistant Sub-Inspector and Sub-Inspector. That appears to be the basic reason for absence from duty. However, it is established that the authorities have violated the requirement of Rule 16.2(1) of the Rules, which has been held to be mandatory.

(10) There is another aspect of the matter. The order of repatriation dated 17th April, 1992 was challenged by filing a writ petition in this Court (CWP No. 4276 of 1993), which was disposed of on 25th August, 1994, with a direction that the order of repatriation could not be set aside and the petitioner be considered for promotion in his parent department with effect from the dates his junior were promoted at different levels by the competent authority. This Court further directed that if necessary the rule may be relaxed with regard to attending various courses. However, the matter culminated in Hon'ble the Supreme Court as the State of Punjab files SLPs in the case of the petitioner and many others,—*vide* judgment rendered in the case of Inder Singh (*supra*). It was concluded that the petitioner is entitled to exercise option if he has qualified 20 years of qualifying service to seek voluntary retirement from the CID Department in the rank he was holding there and he would be deemed to be working in that department

till the date of the judgment. The option was to be exercised within a period of 30 days. The views expressed by Hon'ble the Supreme Court in para 21 of the judgment reads thus :—

“Considering the whole aspect of the matter we affirm the order of the High Court to the extent that option be given to all those respondents who have put in 20 years qualifying service to seek voluntary retirement from the CID in the ranks they are holding and they will be deemed to have worked in CID upto the date of this judgment. The option shall be given within 30 days.”

The aforementioned judgment was delivered on 3rd October, 1997 much after passing the order of dismissal on 17th September, 1993 and the petitioner has been permitted to exercise his option for his voluntary retirement. Mr. K.G. Chaudhary, learned counsel for the petitioner has stated at the bar that the petitioner has already exercised his option in terms of the judgment of Hon'ble the Supreme Court in the case of Inder Singh (supra).

(11) It is, thus, evident that on the one hand there is violation of mandatory provisions of Rule 16.2(1) of the Rules in more than one way and on the other hand there are binding directions issued by Hon'ble the Supreme Court permitting the petitioner to exercise option of seeking voluntary retirement from the CID Department on the rank he was working.

(12) It is equally well settled that the administrative orders can be interfered with, once they are considered to be unreasonable, by invoking '*Wednesbury*' principle. In a Seven Judges Bench judgment of Hon'ble the Supreme Court in the case of **Rameshwar Prasad (VI) versus Union of India (11)**, a statement of *Wednesbury* principle has been made in para 242, which reads thus :—

“242. The *Wednesbury* [Associated Provincial Picture Houses Ltd. V. *Wednesbury* corpn., (1948) 1 KB 223] principle is often misunderstood to mean that any administrative decision which is regarded by the Court to be unreasonable must be

struck down. The correct understanding of the Wednesbury principle is that a decision will be said to be unreasonable in the Wednesbury sense if (i) it is based on wholly irrelevant material or wholly irrelevant consideration, (ii) it has ignored a very relevant material which it should have taken into consideration, or (iii) it is so absurd that no sensible person could ever have reached it.”

(13) The case of the petitioner would be covered by the aforementioned principle, inasmuch as, the disciplinary and punishing authority has ignored from consideration while passing the order of dismissal, the mandatory requirement of Rule 16.2(1) of the Rules. The petitioner has rendered meritorious service from 10th October, 1970 to 16th March, 1992 and, therefore, the order of dismissal would not be sustainable.

(14) In view of the above and keeping in view the peculiar facts and circumstances of this case, we deem it just and appropriate to set aside the order of dismissal, dated 17th September, 1993 (P-1) and consequential orders dated 14th December, 1993 (P-6) and 18th March, 1994 (P-7). The petitioner has already completed 20 years of service till the date of his dismissal as he has joined as Constable on 10th October, 1971, and in terms of direction issued by Hon'ble the Supreme Court in Inder Singh's case (supra), he would be entitled to retire voluntarily from the CID Department on the post of Sub Inspector with effect from the date he has been dismissed from service. Accordingly, the CID Department of the Punjab Police through respondent No. 1 is directed to pass an order of voluntary retirement of the petitioner from the post of Sub Inspector by treating him in service till 17th September, 1993 nay 30th September, 1993. Accordingly, his pension and other retiral benefits be calculated and paid to him alongwith his arrears of salary. In the facts and circumstances of the case, the petitioner is held entitled to payment of simple interest @ 9% per annum of the delayed payment from the date the judgment in Inder Singh's case was delivered i.e. 3rd October, 1997, till the date of actual payment. The needful shall be done within a period of two months from the date of receipt of a certified copy of this order.

R.N.R.