

A

STATE OF PUNJAB AND ORS.

v.

CHARANJIT SINGH

SEPTEMBER 17, 2003

B

[V.N. KHARE, CJ. AND S.B. SINHA, J.]

Service Law:

C

Dismissal from service—unauthorized absence—Punishment awarded—Absence treated as leave without pay—Effect of—Police Constable—Place under suspension for misconduct—During suspension he absented himself unauthorisedly—Departmental Inquiry—Dismissal from service on proved charge of unauthorized absence—Period of absence treated as leave without pay—Delinquent filing suit for declaration contending that once the period of absence from duty was treated as leave without pay, the misconduct stood condoned—Suit decreed—Department's appeal and second appeal dismissed—Held, the courts below relying upon Bakshish Singh erred in holding that the misconduct stood condoned—No law has been laid down in Bakshish Singh to the effect that only in the event leave without pay is directed to be granted while passing an order of punishment, the leave having been regularised the order of punishment also becomes bad in law and void ab initio.*

E

F

**The State of Punjab & Ors. v. Bakshish Singh, JT (1998) 7 SC 142, explained and distinguished.*

Maan Singh v. Union of India and Ors., [2003] 3 SCC 464 and State of Madhya Pradesh v. Harihar Gopal, 1969 SLR 274(SC), relied on.

G

Suspension—Police Constable under suspension—Absented himself without permission—Disciplinary proceedings—Dismissal from service—Held, courts below erred in holding that since the delinquent was under suspension he was not required to take leave—The order of suspension stipulated that the delinquent shall remain present in the Police lines and will attend all the roll calls and parades and he was further ordered not to leave station without prior permission.

H

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1768 of A
2002.

From the Judgment and Order dated 3.11.2000 of the Punjab and
Haryana High Court in R.S.A. No. 980 of 1994.

Harinder Mohan Singh, Kaushal Yadav, Anil Hooda and R.S. Suri B
for the Appellants.

Rajesh Kumar Sharma, Pramod Kumar Yadav and Ms. Shalu Sharma
for the Respondent.

The following Order of the Court was delivered : C

The respondent herein was recruited as a Constable on the rolls of
Patiala Police, Punjab. His appointing authority was superintendent of
Police, Patiala. Subsequently, the respondent was promoted to the post of
Head Constable. Certain Misconduct committed by the respondent in the D
year 1984 came to the notice of the appellants and as a result of which
the respondent was placed under suspension in view of contemplated
inquiry. While the respondent was under suspension, he absented himself
atleast on three occasions without any kind of leave from the Superintendent
of Police. In view of unauthorised absence, the appellants herein initiated E
a departmental inquiry against the respondent. The respondent was served
with a charge-sheet to which he filed a reply. In his explanation, it was
stated that he had gone to attend a court case at Patiala where he had learnt
that his wife was ill and, therefore, he went to his home town and in such
circumstances he could not take any permission. The Inquiring Officer F
after making inquiry found the charges to have been proved and he sent
his report to the disciplinary authority. The disciplinary authority having
agreed with the finding of the Inquiring Officer issued a show cause notice
to the respondent. After considering the explanation of the respondent, the
disciplinary authority by an order dated 15.4.1985 dismissed him from G
service.

The disciplinary authority, however, while dismissing the respondent
from service held that the period of absence of respondent from duty shall
be treated as leave without any pay. The respondent thereafter filed an
appeal before the appellate authority which was rejected and a revision H

A filed before the Inspector General of Police was also met with the same fate.

B It is under such circumstances, the respondent filed a suit for declaration that his dismissal from service is null and void. The trial court framed a large number of issues. It had decreed the suit, *inter alia*, on the ground that the authority could have refused to grant leave of any kind to the respondent and then proceeded to punish him. It held that "Once the leave has been granted, it cannot be said that the employee had absented himself from duty and thereby made himself liable to be punished. In this way, it would appear that the period of absence of the plaintiff having been treated as period spent on leave without pay, charge for which he was proceeded against departmentally is knocked out." In view of the aforesaid finding, the suit was decreed. Aggrieved, the appellants filed an appeal before the appellate authority, but the same was dismissed. A second appeal preferred by the appellants was also dismissed by the High Court. It is against the said orders and judgments of the courts below, the appellants are in appeal before us.

E Learned counsel appearing for the appellants, *inter alia*, urged that the view taken by the courts below that since the disciplinary authority has treated the period of absence as leave without pay, therefore the misconduct stood condoned, is patently erroneous. Learned counsel also relied upon a decision of this Court in *Maan Singh v. Union of India and Ors.*, [2003] 3 SCC 464. Having heard the learned counsel for the respondent, we find that the argument raised by the learned counsel for the appellants has merit.

F In *The State of Punjab and Ors. v. Bakshish Singh*, JT (1998) 7 SC 142 which was relied upon by the courts below in holding that the misconduct stood condoned, was explained in *Maan Singh* (supra). No law has been laid down in *Bakshish Singh* (supra) to the effect that only in the event, leave without pay is directed to be granted while passing an order of punishment, the leave having been regularised the order of punishment also becomes bad in law and void *ab initio*. While deciding *Bakshish Singh* (supra), this Court had not taken into consideration an earlier binding precedent in *State of Madhya Pradesh v. Harihar Gopal*, (1969) SLR 274 (SC) wherein it has clearly been stated that such an order is passed only for the purpose of regularising the leave and thereby the effect of punishment is not wiped out. In *Maan Singh* (supra), it was held that the

period of absence when treated as leave without pay, was with a view to regularise the leave and not for condonation of misconduct. A

The submission of the learned counsel appearing for the respondent that since the respondent was under suspension, therefore there was no occasion for him to seek permission for leave, is also erroneous. The order of suspension dated 24.11.1984 stipulated that the respondent shall remain present in Police Lines and will attend all the roll calls and parades and he was further ordered not to leave station without prior permission. B

In that view of the matter, the view taken by the courts below while decreeing the suit that since the respondent was under suspension he was not required to take leave, is erroneous. C

For the aforesaid reasons, we find that the appeal deserves to succeed. It is allowed. The order and judgment under challenge is set aside. The suit filed by the respondent in the trial court shall stand dismissed. D

Before parting with the case, we may, however, observe that from the Record of Proceedings dated 21.1.2002 it appears that the learned senior counsel appearing for the appellants had suggested that the order of dismissal passed against the respondent herein be converted into an order of compulsory retirement. Learned counsel now appearing for the appellants, however, states that he does not have any instruction in this behalf. Keeping in view the fact that at one point of time, a senior counsel appearing on behalf of the appellants had given the aforementioned suggestion, we are of the opinion that in fitness of the matter, the appellants may consider the same. E F

R.P.

Appeal allowed.