

OM PRAKASH

v.

STATE OF PUNJAB AND ORS.
(Civil Appeal No. 4893 of 2007)

SEPTEMBER 08, 2011

[DR. MUKUNDAKAM SHARMA AND ANIL R. DAVE,
JJ.]

*Service law: Termination/Dismissal from service –
Absence from duty without leave/information – Disciplinary
proceedings – Dismissal from service – Appeal and revision
dismissed – Suit for declaration and for setting aside order
of dismissal from service – Trial court decreeing the suit
holding that in view of the regularisation of the leave by the
competent authority for the period of unauthorized absence,
the charge would no longer survive – Consequently, order of
dismissal set aside with direction to reinstate the appellant in
service and to pay him backwages – Appeal before District
Judge dismissed – Appeal before High Court – High Court
held that the order of punishment awarded against appellant
was legal and valid – Justification of – Held: Justified –
Appellant's contention that absence report was not furnished
to him which vitiated the inquiry proceeding not tenable since
appellant himself was fully conscious and aware that he was
absent from duties for 39 days – The said fact was mentioned
in the charge-sheet and he had full opportunity to defend
himself – No prejudice was, thus, caused to him even if such
a report was not furnished to him by the departmental
authorities – Contention that appellant was not given any
opportunity of hearing in the departmental proceedings also
not tenable – Records showed that the appellant participated
in the Departmental proceedings and was given an
opportunity to cross-examine which he had availed of – He
had even taken notes from the records as also of the*

A *proceedings before the Inquiry Officer – Moreover it was established from the records and the report of the Inquiry Officer that no medical certificate was produced by the appellant before the Inquiry Officer during the departmental proceeding –*
 B *Contention that period of absence of the appellant having been regularized, the said charge of unauthorized absence would fall through not tenable since period of the unauthorised absence was not condoned by the authority but the same was simply shown as regularised for the purpose of maintaining a correct record – Appellant was a habitual absentee without leave and, therefore,*
 C *deserved no sympathy.*

State of M.P. v. Harihar Gopal 1969 SLR 274 (SC); Maan Singh v. Union of India and Others 2003 (3) SCC 464: 2003 (2) SCR 129 – relied on.

D

Case Law Reference:

1969 SLR 274(SC)	relied on	Para 11
2003 (2) SCR 129	relied on	Para 12

E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4893 of 2007.

F From the Judgment & Order dated 01.03.2007 of the High Court of Punjab & Haryana at Chandigarh in R.S.A. No. 336 of 1993.

Harikesh Singh (for Yash Pal Dhingra) for the Appellant.

Kuldip Singh, R.K. Pandey, H.S. Sandhu, Mohit Mudgil for the Respondents.

G

The following order of the Court was delivered

O R D E R

H 1. This appeal is directed against the judgment and order

dated 1.3.2007 passed by the Punjab & Haryana High Court setting aside the judgment and decree passed in favour of the appellant herein and thereby upholding the order of punishment awarded to the appellant. A

2. The appellant was working as Head Constable in Punjab Police. He absented from duty on 13.10.1984 which was recorded vide D.D.R. No. 2 at 10.00 A.M. It is alleged on behalf of the respondents that neither did he pray for any leave for his absence nor did he intimate the authorities the reasons for not attending the duty. The appellant after absenting from duty for 39 days reported back on 22.11.1984. Even at that stage, he did not produce any document regarding his illness or any evidence to indicate that he was admitted in any hospital. B C

3. Consequently, a departmental proceeding was initiated against the appellant for awarding major punishment. In the said proceedings, the appellant appeared and contested the matter. After the conclusion of the inquiry, the inquiry officer submitted his report finding the appellant guilty of the charges. On submission of the aforesaid report by the Inquiry Officer, the competent and disciplinary authority on going through the records passed an order of dismissal from service. D E

4. The said order was challenged by the appellant by filing an appeal which was dismissed and thereafter, by filing a revision petition, which was also dismissed. F

5. The appellant thereafter filed a civil suit seeking for a declaration and for setting aside the order of dismissal from service. The Trial Court decreed the suit holding that in view of the regularisation of the leave by the competent authority for the period of unauthorised absence, the charge no longer survives. Consequently, the order of dismissal was set aside with a direction to reinstate the appellant in service and to pay him back wages. G

6. Being dissatisfied with the aforesaid judgment and H

A decree passed by the Trial Court, an appeal was filed which was heard by the District Judge and the said appeal filed by the respondent herein was dismissed. Still aggrieved, the respondent filed an appeal before the High Court which was registered as RSA No. 336 of 1993. The said second appeal was heard and by the impugned judgment and order, the said second appeal was allowed and the judgment and decree passed was set aside. The High Court held that the order of punishment awarded against the appellant herein is legal and valid. Being aggrieved, the appellant has filed this appeal on which we have heard the learned counsel for the parties who have taken us through the records.

7. The first contention that is raised by the counsel appearing for the appellant is regarding non furnishing or the absence report. The submission is that it was not furnished to the appellant at all during the proceeding and, therefore, the Inquiry proceeding was vitiated. The aforesaid submission is untenable. The appellant himself was fully conscious and aware that he was absent from duties for 39 days. The said fact was mentioned in the charge-sheet and he had full opportunity to defend himself against the said allegation of unauthorised absence of 39 days. Therefore, no prejudice was caused to the appellant even assuming that such a report was not furnished by the departmental authorities.

8. The next contention is that the appellant was not given any opportunity of hearing in the departmental proceedings. The said submission is belied on the face of the records as it is established from the records that the appellant participated in the departmental proceedings. He was given an opportunity to cross-examine which he had availed of. He had taken even notes from the records as also of the proceedings before the Inquiry Officer. The said contention, therefore, is also baseless.

9. It was also sought to be contended that he produced a medical certificate in support of his contention that he was medically unfit to work. However, it is established from the

records and the report of the Inquiry Officer that no such medical certificate was produced by the appellant before the Inquiry Officer during the departmental proceeding. A

10. The next contention that is raised is that the period of absence of the appellant having been regularised, the aforesaid charge of unauthorised absence would fall through and, therefore, the order of punishment is required to be set aside and quashed. We are unable to accept the aforesaid contention as period of the unauthorised absence was not condoned by the authority but the same was simply shown as regularised for the purpose of maintaining a correct record. B C

11. A similar issue came to be raised in this Court several times. In the case of *State of M.P. Vs. Harihar Gopal* 1969 SLR 274(SC), this Court noticed that the delinquent officer in failing to report for duty and remaining absent without obtaining leave had acted in a manner irresponsibly and unjustifiedly; that, on the finding of the enquiry officer, the charge was proved that he remained absent without obtaining leave in advance; that the order granting leave was made after the order terminating the employment and it was made only for the purpose of maintaining a correct record of the duration of service and adjustment of leave due to the delinquent officer and for regularising his absence from duty. This Court in the said decision held that it could not be accepted that the authority after terminating the employment of the delinquent officer intended to pass an order invalidating that earlier order by sanctioning leave so that he was to be deemed not to have remained absent from duty without leave duly granted. D E F

12. Our attention is also drawn to the decision of this Court in *Maan Singh Vs. Union of India and Others* 2003(3) SCC 464 wherein a similar situation and proposition has been reiterated by this Court. There are a number of decisions of this Court where it has been held that if the departmental authorities, after passing the order of punishment, passes an order for maintaining a correct record of the service of the G H

A delinquent officer and also for adjustment of leave due to the delinquent officer, the said action cannot be treated as an action condoning the lapse and the misconduct of the delinquent officer.

B 13. There is yet one more factor which stands against the appellant herein. It is indicated from the counter affidavit filed by the respondents 1 to 4 that the appellant had also been punished earlier to the aforesaid incident also with a punishment for leave without pay for total of 527 days on different occasions in service as per details below:-

C	13.11.1965 to 05.01.1996 -	54 days
	25.07.1973 to 28.07.1973 -	4 days
	04.10.1977 to 12.01.1978 -	120 days
D	13.01.1978 to 09.05.1978 -	118 days
	25.10.1979 to 31.10.1979 -	6 days
	10.02.1981 to 14.08.1981 -	185 days
E	13.10.1984 to 22.11.1984 -	40 days

F 14. Therefore, it is established that the appellant was a habitual absentee without leave and, therefore, he does not deserve any sympathy from this Court. In terms of the aforesaid order, we hold that there is no merit in this appeal which is dismissed but leaving the parties to bear their own costs.

D.G.

Appeal dismissed.