

A STATE OF U.P. & ORS.

v.

MADHAV PRASAD SHARMA
(Civil Appeal No. 242 of 2011)

B JANUARY 10, 2011

[P. SATHASIVAM AND DR. B.S. CHAUHAN, JJ.]

Allahabad High Court Rules, 1952:

C Chapter 8, Rule 5 – Special appeal – Writ petition
challenging the order of appellate authority passed in exercise
of appellate jurisdiction in terms of Service Rules of 1991 –
Allowed by Single Judge of High Court – Special appeal
before Division Bench of High Court – HELD: Has been
D rightly held by Division Bench of the High Court as not
maintainable.

Service Law:

E Termination of service – Police Constable –
Departmental proceedings for unauthorized absence from
duty – Delinquent sanctioned leave without pay –
Subsequently services terminated – Plea of double
punishment – HELD: Single Judge of High Court erred in
quashing the order of termination holding that the delinquent
F was inflicted with two punishments – Rule 4 of the Service
Rules of 1991, defining the penalties in clear terms, makes
it clear that sanction of leave without pay cannot be treated
as a penalty – There is no question of awarding two
G punishments in respect of one charge – Doctrine of double
jeopardy has no application in the case – Judgment of Single
Judge set aside – Matter remitted to Single Judge of High
Court for disposal afresh – Uttar Pradesh Subordinate Police
Officers/ Employees (Punishment and Appeal) Rules, 1991

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– Rules 4,7 and 8 – Constitution of India, 1950 – Article 20(2). A

The respondent was appointed as Police Constable on 1.2.1978. He remained on unauthorized leave for 101 days from 19.10.2001 to 28.01.2002. Departmental proceedings were initiated against him which culminated in termination of his services by order dated 23.11.2002 passed by the Senior Superintendent of Police. The departmental appeal filed by him before the Deputy Inspector General of Police was rejected. However, the writ petition filed by the respondent was allowed by the Single Judge of the High Court holding that the respondent was sanctioned leave without pay and subsequently, his services were terminated on the same ground and, as such, two punishments were inflicted for one charge which was not permissible in law. The special appeal filed by the State Government was dismissed by the Division Bench of the High Court on the ground of maintainability. B
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In the instant appeal filed the State Government the questions for consideration before the Court were: (i) whether the special appeal preferred by the State before the Division Bench of the High Court against the order of the Single Judge allowing the writ petition filed by the petitioner therein was maintainable? and (ii) whether the order of the Single Judge quashing the order of termination of the petitioner therein was sustainable. E
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Partly allowing the appeal, the Court

HELD: G

1. It is fairly admitted that in view of the fact that against the order of termination the delinquent availed departmental appeal to the DIG, against the order of the Single Judge of the High Court no further appeal by way H

A of special appeal before the Division Bench would lie.
The order of the SSP was considered and disposed of
by the Appellate Authority, i.e., DIG and the order
impugned in the writ petition was passed in exercise of
appellate jurisdiction in terms of the Uttar Pradesh
B Subordinate Police Officers/Employees (Punishment and
Appeal) Rules, 1991. Therefore, in view of Rule 5 of
Chapter VIII of the Allahabad High Court Rules, 1952, the
Division Bench of the High Court rightly arrived at the
conclusion that the special appeal filed by the State
C Government was no maintainable. [para 8] [274-A-D]

2.1 The Single Judge of the High Court, without
going into the merits of the claim made by both the
parties with reference to the charge levelled against the
delinquent, enquiry proceedings, order of the SSP and
D DIG, erred in quashing the order of termination holding
that the delinquent was inflicted with two punishments.
Rule 4 of the Uttar Pradesh Subordinate Police Officers/
Employees (Punishment and Appeal) Rules, 1991, makes
it clear that sanction of leave without pay is not one of
E the punishments, prescribed. Disciplinary authority is
competent to impose appropriate penalty from those
provided in Rule 4 of the Rules which deals with major
penalties and minor penalties. Denial of salary on the
ground of 'no work no pay' cannot be treated as a penalty
F in view of statutory provisions contained in Rule 4
defining the penalties in clear terms. Rule 8 provides for
punishment of dismissal and removal. Thus, the
punishment of dismissal from the service is the
punishment which has been awarded to the respondent
G in accordance with Rules 4 and 8 of the Rules. There is
no question of awarding two punishments in respect of
one charge. [para 8-9] [274-E-F; 276-E-G]

2.2 Doctrine of double jeopardy enshrined in Article
H 20(2) of the Constitution of India has no application in the

event of there being only one punishment awarded to the respondent under the Rules on charges being proved during the course of disciplinary enquiry. [para 10] [276-H; 277-A]

Union of India vs. Datta Linga Toshatwad (2005) 13 SCC 709; and *Maan Singh vs. Union of India*, 2003 (2) SCR 129 = (2003) 3 SCC 464, relied on

2.3 The decision in the case of *Bakshish Singh**, was considered by this Court in *Mann Singh's* case wherein after following the judgment in *Hari Har Gopal's* case, this Court clarified that in *Bakshish Singh* the Court dealt with only the issue of remand by the High Court as well as by the first appellate court to the punishing authority for imposing the fresh punishment and held that "Bakshish Singh's case is not an authority for the proposition that the order terminating the employment cannot be sustained inasmuch as in the later part of the same order the Disciplinary Authority also regularized unauthorized absence from duty by granting an employee leave without pay." [para 11] [277-D-G]

**State of Punjab & Ors. Vs. Bakshish Singh*, 1998 (1) Suppl. SCR 478 = AIR 1999 SC 2626 = (1998) 8 SCC 222 - distinguished.

State of M.P. v. Hari Har Gopal & Ors., (1969) 3 SLR 274 (SC) – relied on

2.4. In the circumstances, the conclusion of the Single Judge that the delinquent had suffered two punishments cannot be sustained. Inasmuch as the Single Judge quashed the order of termination only on the ground that it is impermissible to impose two punishments, the order of the Single Judge is set aside and the matter remitted to the Single Judge for disposal expeditiously. [para 12] [278-B-D]

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Case Law Reference:

(2005) 13 SCC 709 relied on para 10

2003 (2) SCR 129 relied on para 10

B

1998 (1) Suppl. SCR 478 distinguished para 11

(1969) 3 SLR 274 (SC) relied on Para 11

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 242 of 2011.

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From the Judgment & Order dated 29.06.2009 of the High Court of Judicature at Allahabad in Special Appeal No. 614 of 2009.

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Shail Kr. Dwivedi, AAG, Abhishek K. Chaudhary, Manoj Kumar, Gunnam Venkateswara Rao for the Appellants.

V. Shekhar, K. Krishna Kumar, M.A. Chinnasamy for the Respondent.

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The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. Leave granted.

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2. his appeal is directed against the final judgment and order dated 29.06.2009 passed by the High Court of Judicature at Allahabad in Special Appeal No. 614 of 2009 whereby the Division Bench of the High Court dismissed the special appeal preferred by the appellants herein.

3. Brief facts:

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(a) The respondent was appointed as Police Constable at Police Lines, Aligarh vide order dated 01.02.1978. On 19.10.2001, the respondent had gone for some official work and left the Police Station, Sikandarpur Vaishya and thereafter came back on his duty on 28.01.2002 after 101 days. After

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initiation of departmental proceedings, the Disciplinary Authority issued notices to the respondent on various dates for seeking explanation for his unauthorized absence from duty. On 23.03.2002, the Deputy Superintendent of Police (in short "the DSP") issued charge sheet against the respondent by leveling charges and directed him to submit the reply by 01.04.2002. As the respondent did not reply to the notice, the DSP issued another notice to the respondent on 04.04.2002. After giving several opportunities to the respondent, the Disciplinary Authority fixed the date as 01.07.2002 for recording of evidence but the respondent did not appear before the Presiding Officer. Finally, the respondent appeared before the Presiding Officer on 16.09.2002 and informed that he has no defence witness. After completion of the enquiry, the Presiding Officer, vide his order dated 09.10.2002, submitted his report to the Disciplinary Authority. Agreeing with the enquiry report, the Disciplinary Authority issued show cause notice dated 25.10.2002 to the respondent along with the copy of the enquiry report for his comments/reply on the findings recorded therein. On 06.11.2002, the respondent submitted his reply stating that he had accepted the findings on the charge of unauthorized absence from duty on the ground of illness.

(b) The Sr. Superintendent of Police (in short "the SSP"), Etah, vide order dated 23.11.2002, terminated the service of the respondent. Feeling aggrieved by the said order, the respondent preferred Departmental Appeal before the Deputy Inspector General of Police (in short "the DIG"), Agra Zone, Agra. Vide order dated 27.02.2003, the DIG rejected the appeal filed by the respondent herein.

(c) Aggrieved by the said order, the respondent preferred writ petition being C.M.W.P. No. 53909 of 2003 before the High Court which was allowed by the learned single Judge vide his order dated 17.09.2008. Against the said order, the appellants herein preferred special appeal being S.A. No. 614 of 2009 before the High Court. The Division Bench of the High Court,

A vide its order 29.06.2009, dismissed the special appeal on the ground of maintainability. Aggrieved by the said order, the appellants have preferred this appeal by way of special leave before this Court.

B 4. Heard Mr. Shail Kr. Dwivedi, learned Additional Advocate General for the State of U.P. and Mr. V. Shekhar, learned senior counsel for the respondent.

C 5. Without going into the merits of the charges leveled against the respondent, let us consider the following two questions:-

D (i) Whether the Special Appeal No. 614 of 2009 preferred by the State before a Division Bench against the order of the learned single Judge allowing the writ petition filed by the petitioner therein is maintainable?

E (ii) Even if we answer the first question in the negative, whether the order of the learned single Judge quashing the order of termination dated 23.11.2002 of the petitioner therein is sustainable.

F 6. In view of the limited issues, there is no need to traverse all the factual details. However, it is relevant to refer the charge leveled against the respondent herein which reads as under:-

G "You left Police Station Sikandarpur Vaishya on 19.10.2001 for the Office of Circle Officer in connection with some departmental work and thereafter you came back on 28.01.2002 and thus remained unauthorizedly absent for 101 days from your service without any sanctioned leave/permission in this regard."

H Pursuant to the Charge Memo, the delinquent was asked to show cause and ultimately enquiry was conducted and the Enquiry Officer submitted his report. The Disciplinary Authority, namely, the SSP, by order dated 23.11.2002 terminated the service of the respondent with immediate effect. By order dated

27.02.2003, the Appellate Authority, i.e., the DIG, Agra also dismissed the appeal filed by the respondent herein. Against the said order, the respondent filed Writ Petition No. 53909 of 2003 before the High Court. By order dated 17.09.2008, the learned single Judge, after finding that the respondent herein had been sanctioned leave without pay and subsequently his service was terminated on the same ground and as such two punishments were inflicted for one charge which is not permissible in law, quashed the order of termination dated 23.11.2002. We will consider the merits of the order of the learned single Judge while considering the second issue.

About the First Issue:-

7. Against the order of the learned single Judge, the State Government filed Special Appeal No. 614 of 2009 before the Division Bench of the High Court. Rule 5 of Chapter VIII of Allahabad High Court Rules, 1952 speaks about Special Appeal which reads as under:-

“Special Appeal.—An appeal shall lie to the Court from a judgment not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made by a Court subject to the Superintendence of the Court and not being an order made in the exercise of revisional jurisdiction or in the exercise of its power of Superintendence or in the exercise of criminal jurisdiction or in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award (a) of a tribunal Court or statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution, or (b) of the Government or any Officer or authority, made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction

A under any such Act of one Judge.”

B 8. It is fairly admitted that in view of the fact that against
the order of termination the delinquent availed departmental
C appeal to the DIG, after the order of the learned single Judge
no further appeal by way of special appeal before the Division
Bench would lie. The materials placed and in view of the fact
D that the order of the SSP was considered and disposed of by
the Appellate Authority, i.e., DIG and also of the fact that the
order impugned in the writ petition was passed in exercise of
appellate jurisdiction in terms of The Uttar Pradesh Subordinate
Police Officers/Employees (Punishment and Appeal) Rules,
1991 (hereinafter referred to as “the Rules”), we concur with the
conclusion arrived at by the Division Bench of the High Court
in the impugned order. However, in view of the fact that this
Court issued notice in the special leave petition as early as on
20.11.2009, after hearing the arguments of either side, we
intend to consider the merits of the order of the learned single
Judge dated 17.09.2008.

About the Second Issue:-

E The learned single Judge, without going into the merits of
the claim made by both the parties with reference to the charge
leveled against the delinquent, enquiry proceedings, order of
the SSP and DIG, quashed the order of termination on the
F simple ground that the delinquent was inflicted with two
punishments which is not permissible in law. In the second
paragraph, the learned single Judge after pointing out that due
to illness of the delinquent the Department has sanctioned his
leave without pay and thereafter his service has been
terminated for his absence which amounts to two punishments
G for one charge and quashed the order of termination. On going
through the relevant rules, we are of the view that the learned
single Judge committed an error in arriving at such a
conclusion.

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9. Rule 4 of the Rules prescribes the mode of punishment which reads as under: A

"4. Punishment.—(a) The following punishments may, for good and sufficient reasons and as hereinafter provided, be imposed upon a Police Officer, namely:— B

(a) Major Penalties:—

(i) Dismissal from service

(ii) Removal from service C

(iii) Reduction in rank including reduction to a lower-scale or to a lower stage in a time-scale.

(b) Minor Penalties:—

(i) With-holding of promotion D

(ii) Fine not exceeding one month's pay

(iii) With-holding of increment, including stoppage at an efficiency bar. E

(iv) Censure

(2) In addition to the punishments mentioned in sub-rule (1) Head Constables and Constables may also be inflicted with the following punishments:— F

(i) Confinement to quarters (this term includes confinement to Quarter Guard for a term not exceeding fifteen days extra guard or other duty).

(ii) Punishment Drill not exceeding fifteen days. G

(iii) Extra guard duty not exceeding seven days.

(iv) Deprivation of good conduct pay. H

A (3) In addition to the punishments mentioned in sub-rules (1) and (2) Constables may also be punished with Fatigue duty, which shall be restricted to the following tasks:-

(i) Tent pitching;

B (ii) Drain digging;

(iii) Cutting grass, cleaning jungle and picking stones from parade grounds;

C (iv) Repairing huts and butts and similar work in the lines;

(v) Cleaning Arms.”

D We are not concerned about other rules. The perusal of major and minor penalties prescribed in the above Rule makes it clear that “sanctioning leave without pay” is not one of the punishments prescribed, though, and under what circumstances leave has been sanctioned without pay is a different aspect with which we are not concerned for the present. However, Rule 4 makes it clear that sanction of leave without pay is not one of the punishment prescribed. Disciplinary authority is competent to impose appropriate penalty from those provided in Rule 4 of the Rules which deals with the major penalties and minor penalties. Denial of salary on the ground of ‘no work no pay’ cannot be treated as a penalty in view of statutory provisions contained in Rule 4 defining the penalties in clear terms. Rule 7 empowers the Government or any Officer of the Police to award the punishment mentioned in Rule 4. Rule 8 provides for punishment of dismissal and removal. Thus the punishment of dismissal from the service is the punishment which has been awarded to the Respondent in accordance with Rules 4 and 8 of the Rules. There is no question of awarding two punishments in respect of one charge.

H 10. Doctrine of double jeopardy enshrined in Article 20(2) of the Constitution of India has no application in the event of

there being only one punishment awarded to the respondent under the Rules on charges being proved during the course of disciplinary enquiry. The law laid down by this Court in the case of *Union of India vs. Datta Linga Toshatwad* (2005) 13 SCC 709 and *Maan Singh vs. Union of India*, (2003) 3 SCC 464 fully apply in the facts and circumstances of the present case.

11. In *State of Punjab & Ors. v. Bakshish Singh*, AIR 1999 SC 2626 = (1998) 8 SCC 222, this Court has dealt with a case wherein the Trial Court as well as the First Appellate Court and the High Court had taken the view that in case unauthorized absence from duty had been regularized by treating the period of absence as leave without pay, the charge of misconduct did not survive. However, without examining the correctness of the said legal proposition, this court allowed the appeal on other issues. As the said judgment gave an impression that this Court had laid down the law that once unauthorized absence has been regularized, the misconduct would not survive. The matter was referred to the larger bench in *Mann Singh's case* (supra) wherein this Court clarified that the earlier judgment in *Bakshish Singh* (supra) did not affirm the said legal proposition and after following the judgment of this court in *State of M.P. v. Hari Har Gopal & Ors.*, (1969) 3 SLR 274 (SC) disposed of the case clarifying that this court in *Bakshish Singh* (supra) dealt with only on the issue of remand by the High Court as well as by the 1st Appellate Court to the punishing authority for imposing the fresh punishment. This Court held as under:

“Bakshish Singh’s case is not an authority for the proposition that the order terminating the employment cannot be sustained inasmuch as in the later part of the same order the Disciplinary Authority also regularized unauthorized absence from duty by granting an employee leave without pay.”

This Court further held that the law laid down by this court in *Hari Har Gopal* (supra) wherein it had been held that in absence of regularization of unauthorized absence it may not be possible

A for the employer to continue with the disciplinary proceedings as there would be break in service and thus, regularization of such absence even without pay is justified. It is so necessary to continue with the disciplinary proceedings.

B 12. In such circumstances, the conclusion of the learned single Judge that the delinquent had suffered two punishments cannot be sustained. At present, we are not inclined to go into the validity or otherwise of the order of termination in this proceeding. Inasmuch as learned single Judge quashed the order of termination only on the ground that it is impermissible to impose two punishments, we set aside the order of the learned single Judge dated 17.09.2008 and remit the matter to the learned single Judge for fresh disposal. Both parties are permitted to put forth their claim with regard to the outcome of the charge, order of the original and appellate authority for which we express no opinion and it is for the learned single Judge to consider and dispose of the same as expeditiously as possible, preferably within a period of six months from the date of receipt of the copy of this judgment. Civil Appeal is allowed to this extent with no order as to costs.

R.P.

Appeal Partly allowed.