

CASE NO.:
Appeal (civil) 2531 of 2001

PETITIONER:
Maan Singh

RESPONDENT:
Union of India & Ors.

DATE OF JUDGMENT: 18/02/2003

BENCH:
S. RAJENDRA BABU, D.M. DHARMADHIKARI & G.P. MATHUR.

JUDGMENT:

J U D G M E N T

[WITH CIVIL APPEAL NOS. 2884/2001, 2860/2001, 3268/2001, 3269/2001, 3270/2001, 3271/2001, 5057/2000, 3273/2001, 4343/2000, 2602/2000, 3274/2001, 3272/2001, 2861/2001, 3275/2001, 2946/2001, 2915/2001, S.L.P. (C) NOS. 13896/2002 AND 12/2003]

RAJENDRA BABU, J. :

CIVIL APPEAL NO. 2531/2001

The appellant in this appeal was serving as a Constable in Delhi Police. A departmental enquiry was initiated against the appellant by an order made on 11.11.1991 under Section 21 of the Delhi Police Act, 1978. The allegation against him is that while he was posted at Police Station Chanakya Puri, New Delhi he proceeded to avail medical rest for three days on 31.1.1990; that he was to report back on 2.2.1990 when he again extended his leave till 9.2.1990; that again he further sought seven days medical leave; that he was due to report back on duty on 16.2.1990, but he did not resume his duty nor sent any information nor submitted application for further medical leave and thus he was marked absent; that thereafter, a notice was sent to his native place through the Superintendent of Police, Ghaziabad, U.P., to the effect that he remained absent from duty; that though he received that notice on 23.4.1990, he did not respond to the same nor did he send any information nor resumed duty; that in these circumstances, a departmental enquiry was initiated; that an Inspector was authorised to conduct the enquiry and he got served the copies of the summary of allegations, list of witnesses with the gist of evidence and documents at his residence; that Enquiry Officer tried his best to secure the presence of the appellant to participate in the proceedings but in vain; that after obtaining orders from the competent authority to conduct the proceedings of the departmental enquiry ex parte, he proceeded further; that the Enquiry Officer completed the enquiry proceedings and submitted his findings with the conclusion that the charge of unauthorised and wilful absence from duty was established; that a copy of the findings of the Enquiry Officer was sent to the residence of the appellant with the directions to represent his case against the findings of the Enquiry Officer within a period of 15 days from 5.1.1992 and he submitted his response on 10.2.1992; that he was informed that if he wishes to be heard in person, he may do so on 28.2.1992; that though he received the said communication on 26.2.1992, he did not appear before the disciplinary authority before passing of final order in the departmental enquiry. It was noticed that he remained unauthorisedly absent from duty for more than 2 years continuously without any intimation to the department or submissions of any medical papers in support of his illness. The disciplinary authority held that absence of the appellant from duty was unauthorised and wilful and these facts were fully

established in the enquiry; that he had absented himself unauthorisedly on 21 different occasions from the date of his enlistment in the department on 10.7.1978; that in spite of several punishments for lapse of absence on the said 21 occasions, he did not improve himself; that this indicated that he was a habitual absentee and did not take any lesson from the previous punishments awarded to him. Bearing these facts in mind, the disciplinary authority dismissed the appellant from service by an order made on 13.3.1992. The appellant filed an appeal against the said order of dismissal to the Additional Commissioner of Police, New Delhi range but the same was rejected by an order made on 18.9.1992. Thereafter, the appellant filed an Original Application No. 99/93 on the file of the Central Administrative Tribunal (hereinafter referred to as 'the Tribunal'), which also stood, dismissed. The appellant thereafter filed a writ petition in the High Court challenging the order of the Tribunal dismissing his application. The High Court having dismissed the said writ petition, the appellant has come up in this appeal by special leave.

Firstly, it was urged before the Tribunal that the appellant had been appointed by the Commandant of Police who is equivalent in rank to Deputy Commissioner of Police, whereas the impugned order of dismissal had been passed by an Additional Deputy Commissioner of Police and, therefore, the said order was not passed by a competent authority. This contention was rejected by the Tribunal by holding that the Additional Commissioner of Police is not subordinate to Deputy Commissioner of Police and that they are equivalent in rank and there is division of work among the two and, as such, the Additional Deputy Commissioner of Police was not subordinate to the Deputy Commissioner of Police. The second ground urged before the Tribunal was that the period of absence having been treated as 'leave without pay' could not be treated as a ground for dismissal. After noticing various periods for which the appellant was absent, the disciplinary authority held as follows :-
"Keeping in view the position, explained above, I am inclined to pass order that the retention of such incorrigible type of person in the disciplined force is not allowed as it affect the discipline of the force and instigates other members of the force to be in disciplined. I, J.K. Sharma, Additional Dy. Commissioner of Police, N. Delhi Distt., therefore, order that the defaulter Constable Maan Singh No. 728/ND is hereby dismissed from the force with immediate effect."

It is thereafter he noticed as follows :-

"The absence period from 17.2.90 to the date of issue of this order be treated as leave without pay.."

It is in these circumstances the Tribunal read the order as a whole and took the view that the disciplinary authority had not condoned his absence by regularising the absence from duty subsequent to the termination of the employment and upheld the order of dismissal.

In the writ petition filed against the order of the Tribunal, in the High Court the only ground urged was that the present case is covered by the decision of this Court in State of Punjab & Ors. vs. Bakshish Singh, 1998 (8) SCC 222, wherein this Court held that the period of absence having been regularised as 'leave without pay' would automatically set at naught the order of dismissal. It was also contended that the decision of this Court in State of Madhya Pradesh vs. Harihar Gopal, 1969 SLR 274, is deemed to have been overruled. The High Court carefully examined this contention and took the view that the decision in Harihar Gopal's case is by a larger Bench and this decision had not been brought to the notice of this Court in Bakshish Singh's case and the view taken by the Tribunal being in conformity with the view expressed by this Court Harihar Gopal's case upheld the order of the Tribunal and dismissed the writ petition.

When this appeal came up for consideration before this Court, a Bench of two learned Judges referred this matter to a Bench of three Judges in view of apparent conflict between the decisions of this Court in Harihar Gopal and Bakshish Singh. It is thus this matter is set down for hearing before us.

In Harihar Gopal's case 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 delinquent officer and for regularising his absence from duty. This Court's attention was not invited to any rule governing the respondent's service conditions under which an order regularising absence from duty subsequent to termination of employment had the effect of invalidating termination. Thus, this Court concluded that it could not be held that the authority after terminating the employment of 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.

Bakshish Singh's case arose out of a suit filed by Bakshish Singh who was a police constable in Punjab but was dismissed from service on 1.6.1988 after a regular departmental enquiry on the charge of unauthorised absence from duty. This order was challenged on several grounds and the trial court decreed the suit on the basis that the order of dismissal could not have been passed by the defendants inasmuch as they themselves had regularised and treated the period of the plaintiff's absence from duty as the period of leave without pay and they could not legally say that he was guilty of misconduct for unauthorised absence from duty. Having found that it was not a case of misconduct of the gravest kind, the lower appellate court, while upholding the findings of the trial court, remanded the case back to the disciplinary authority for passing a fresh order of punishment. Second appeal preferred before the High Court was dismissed in limine. In those circumstances, this Court noticed that "once it was found as a fact that the charge of unauthorised absence from duty did not survive, we fail to understand how the lower appellate court could remand the matter back to the punishing authority for passing a fresh order of punishment." It was further noticed that the finding of the trial court was that proper opportunity of hearing was not given and the signatures of the Bakshish Singh were obtained under duress during departmental proceedings and when that finding remained intact, there was no occasion to remand the case to the punishing authority merely for passing a fresh order of punishment. It is in these circumstances this Court ultimately passed an order as set out in para 11 of the judgment, which is as under :-

".it will be noticed that the trial court recorded a categorical finding of fact that a proper opportunity of hearing was not afforded to the respondent in the departmental proceedings and that his allegation that his signatures on certain papers during those proceedings were obtained under duress, was not controverted as the State of Punjab had led no evidence in defence. The trial court also recorded a finding that unauthorised absence from duty having been regularised by treating the period of absence as leave without pay, the charge of misconduct did not survive. It was with this finding that the suit was decreed. The lower appellate court confirmed the finding that since the period of unauthorised absence from duty was regularised, the charge did not survive but it did not say a word about the finding relating to the opportunity of hearing in the departmental proceedings. Since those findings were not specifically set aside and the lower appellate court was silent about them, the same shall be treated to have been affirmed. In the face of these findings, it was not open to the lower appellate court to remand the case to the punishing authority for passing a fresh order of punishment. The High Court before which the second appeal was filed by the State of Punjab, did not advert itself to this inconsistency as it dismissed the appeal summarily, which indirectly reflects that it allowed an inconsistent judgment to pass through its scrutiny." [pp. 226, 227]

Therefore, the appeal in Bakshish Singh's case was allowed. It is only in the head note of the report that the question whether an employee could be held

guilty of misconduct on the basis of unauthorised absence is set out as decided in the trial court and affirmed by the first Appellate Court and not from the judgment of this Court such a conclusion can be drawn since there is no consideration or discussion at all, much less any declaration of law is made by this Court on this aspect of the matter. This Court in that case really considered the scope of powers of remand, made the order as set out above and did not, in fact, consider the question whether the view expressed by the first Appellate Court in affirming the order of the trial court was justified or not, but proceeded on the basis that on the conclusion reached by the first Appellate Court whether remand to disciplinary authority is permissible in law and recorded its findings. Therefore, the decision of this Court in 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 regularised unauthorised absence from duty by granting an employee leave without pay. In our view, thus, there is no conflict in this regard with the decision in Harihar Gopal's case.

A number of decisions rendered by different High Courts have been cited before us in *Tito Francisco Pereira vs. Administrator of Goa Daman and Diu & Ors.*, 1978 All India Service Law Journal 614; *G. Papaiahb vs. Assistant Director, Medical Services, Secunderabad*, AIR 1976 Andhra Pradesh 75; *Bhursinh Hamsinh Rajput vs. State of Gujarat & Anr.*, 1982 (1) All India Service Law Journal 697; *Satya Pal Yadav vs. Union of India & Ors.*, 1998 (71) Delhi Law Times 68; and *State of Punjab vs. Chanan Singh Chanan Singh*, 1988 (3) All India Service Law Journal 216. These decisions are contrary to Harihar Gopal's case and stand overruled.

Our attention is also drawn to certain other decisions of this Court in *Union of India & Ors. vs. Giriraj Sharma*, 1994 Supp. (3) SC 755; *G. Rajendra vs. M/s Vikrant Typres Ltd. & Anr.*, JT 2002 (Supp. 1) SC 438; *Virendra Kumar vs. The Chief of the Army Staff*, AIR 1986 SC 1060; *Jai Shanker vs. State of Rajasthan*, AIR 1966 SCC 492; *Union of India & Ors. vs. Ram Phal*, 1996 (7) SCC 546, and *Major Singh vs. State of Punjab & Ors.*, JT 2000 (9) SC 571. However, these decisions have no application to the facts of the present case.

The instant case fully falls within the ratio of the decision of this Court in Harihar Gopal's case and following the said decision, we uphold the view taken by the High Court. Hence, this appeal stands dismissed.

CIVIL APPEAL NOS. 4343/2000, 2915/2001, 2861/2001, 2884/2001, 2860/2001
AND SPECIAL LEAVE PETITIONS (C) Nos. 13896/2002 and 12/2003

Facts in these cases are similar to those arising in Harihar Gopal's case. However, an additional point is raised on the basis of Rule 16(2) of the Punjab Police Rules.

Relying on *State of Punjab & Ors. vs. Ram Singh Ex-Constable*, 1992 (4) SCC 54, one of the arguments advanced before us is that it is only in cases where the misconduct is of gravest kind an order of dismissal shall be made. This case was decided in the context of Rule 16.2(1) of the Punjab Police Manual, 1934, Vol. II. The said Rule reads as follows :-

"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."

After analysing the said provision, this Court in Ram Singh's case held that Rule 16.2(1) consists of two parts, firstly, dismissal shall be awarded for the gravest acts of misconduct and secondly, 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 should be taken into account in an appropriate case. The second part is referable to a misconduct which, by

itself, may not warrant an order of dismissal and may be a ground to take a lenient view of giving an opportunity to reform and even after giving such opportunities, if the delinquent officer proved to be incorrigible and found completely unfit to remain in service then in order to maintain discipline in the service appropriate punishments can be given. Therefore, when the charge against the appellants in each of these cases is habitual absence for long periods on several occasions unauthorisedly, the view taken by the disciplinary authority is justified.

Hence, these appeals and special leave petitions stand dismissed.

CIVIL APPEAL NOS. 3272/2001, 5057/2000, 3271/2001, 3270/2001, 3268/2001

These are appeals filed by State of Punjab arising out of certain civil suits. In these cases, though dismissal of each of the respondent is effected on the basis of habitual unauthorised absence for long periods, the High Court upheld the decision of the courts below that the principles of natural justice having been violated such order of dismissal is vitiated.

These appeals stand dismissed.

CIVIL APPEAL NO. 2946/2001, 3269/2001, 3273/2001, 2602/2000

These appeals arise out of civil suits decreeing the claim of the respondents that the disciplinary authority should not have terminated their services for unauthorised absence, which claim has been upheld by trial court or first Appellate Court or both and the High Court has not interfered with the same.

These appeals are covered by the decisions in Harihar Gopal's case and Ram Singh's case. Hence, these appeals are allowed and the order of the High Court and decisions of courts below stand set aside restoring that of the disciplinary authority.

CIVIL APPEAL NOS. 3274/2001 AND 3275/2001

These appeals be delinked and posted separately.