

## REPORTABLE

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. 4893 OF 2007

OM PRAKASH

Appellant (s)

VERSUS

STATE OF PUNJAB & ORS.

Respondent(s)

## O R D E R

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.

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 absencing 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.

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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.

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.

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.

6. Being dissatisfied with the aforesaid judgment and 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 of 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.

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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.

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.

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.

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 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.

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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:-

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
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
13.10.1984 to 22.11.1984	-	40 days

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.

.....J.  
(DR. MUKUNDAKAM SHARMA)

.....J.  
(ANIL R. DAVE)

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NEW DELHI  
SEPTEMBER 08, 2011.

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ITEM NO.102

Court No.11

SECTION IV

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS  
CIVIL APPEAL NO(s). 4893 OF 2007

OM PRAKASH

Appellant (s)

VERSUS

STATE OF PUNJAB & ORS.

Respondent(s)

(With office report )

Date: 08/09/2011 This Appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA

HON'BLE MR. JUSTICE ANIL R. DAVE

For Appellant(s)                    Mr. Harikesh Singh, Adv.  
  for     Mr. Yash Pal Dhingra, Adv.

For Respondent(s)  
  
  Mr.     Kuldip Singh, Adv.  
  Mr.     R.K. Pandey, Adv.  
  Mr.     H.S. Sandhu, Adv.  
  Mr.     Mohit Mudgil, Adv.

UPON hearing counsel the Court made the following  
  O R D E R

We hold that there is no merit in this appeal which is  
dismissed but leaving the parties to bear their own costs in  
terms of the signed reportable order.

(DEEPAK MANSUKHANI)

Court Master

(Signed reportable order is placed on the file)

(RENU DIWAN)

Court Master