

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 3567 OF 2008

PUNJAB STATE & OTHERS ... APPELLANT(S)
Versus
SURINDER SINGH ... RESPONDENT(S)

O R D E R

1. This appeal is filed by the State of Punjab against the judgment of the High Court whereby the appeal filed by the respondent herein was allowed and he was directed to be re-instated with continuity of service along with all consequential benefits w.e.f. 7.10.1985.

2. The brief facts of this case necessary for the disposal of the appeal are that the respondent was working as a constable with the Punjab Police. He was absent without any leave on various grounds including that he was arrested once and that he was ill-disposed thereafter. Be that as it may, he ultimately reported back only after a period of two years. A departmental inquiry was instituted against him in which his absence was found to be amounting to mis-conduct. It was also found that there was no reason for him to remain absent and he was ultimately

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dismissed. But, while dismissing him, the concerned authorities in the dismissal order merely observed that two years of absence from service would amount to leave without pay.

3. Against the order of dismissal, the respondent filed a suit before the learned Senior Sub-Judge, Amritsar which was

dismissed on 14.11.1987. Thereafter, the appeal against the judgment dated 14.11.1987 was also dismissed by the learned additional District Judge vide judgment dated 8.8.1988.

4. Aggrieved by the judgment of Ist Appellate Court, the respondent filed an appeal before the High Court which was allowed. Hence, the present appeal.

5. Despite service of notice, none appeared on behalf of the respondent.

6. We have heard learned counsel appearing for the appellant and gone through the record.

7. It was contended on behalf of the respondent before the High Court that since in the dismissal order, his absence was treated as a leave without pay, it amounted to holding that his absence was condoned. On that count, therefore, there could be no punishment nor the absence of respondent could be viewed as a mis-conduct.

8. The High Court allowed the writ petition filed by the respondent up-setting the two judgments by the courts below which had held against the respondent.

5. Before the High Court, the decision in the case of State

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of M.P. Vs. Hari Har Gopal, 1969 S.L.R. 274 S.C. was cited

wherein a view had been taken that the sanctioning of absence period as leave without pay was only for the purpose of maintaining correct record and it did not amount to regularising period of absence and the charge of un-authorized absence still survived.

6. The High Court, however, relying on the ruling of this Court in State of Punjab & others Vs. Bakshish Singh (1998) 8 SCC 222 came to the conclusion that as per the latter decision, the absence was bound to be viewed as having been condoned.

Unfortunately, the High Court did not realise that the judgment in Hari Har Gopal case (supra) was given by three Hon'ble Judges of this Court while the decision of Bakshish Singh (supra)

was

given by two Hon'ble Judges.

Be that as it may, the matter does

not stop here.

Ultimately, the decision of Hari Har Gopal was

approved by a subsequent decision of this Court

in Man Singh Vs.

Union of India and others (2003) 3 SCC 464 wherein this Court

taking stock of all the judgments including Bakshish Singh

(supra) came to the conclusion that merely because while passing

the dismissal order, if the absence period is treated to be leave

without pay, it would not amount to wiping out the mis-conduct

caused by the unauthorised absence.

Similar view was reiterated

by this Court in State of Punjab & others Vs. Charanjit Singh

(2003) 8 SCC 458.

It is, therefore, clear that the High Court

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judgment is erroneous wherein the High Court has held that merely

because in the dismissal order, period of absence has been viewed

as a leave without pay, the mis-conduct would stand wipe out.

8. Following the judgments of this Court in Man Singh and Charanjit Singh (supra), we set-aside the impugned judgment passed by the High Court and restore the judgments of the trial court and first appellate court.

9. The appeal stands allowed accordingly.

.....J.
(V.S.SIRPURKAR)

.....J.
(SURINDER SINGH NIJJAR)

New Delhi,
February 18, 2010.

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ITEM NO.102

COURT NO.8

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). 3567 OF 2008

PUNJAB STATE & ORS.

Appellant (s)

VERSUS

SURINDER SINGH

Respondent(s)

(With office report)

Date: 18/02/2010 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V.S. SIRPURKAR

HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR

For Appellant(s) Mr. Ranbir Yadav, Adv.
Mr. Charudatta Mahindrakar, Adv. for
Mr. Ajay Pal, Adv.

For Respondent(s)

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

The appeal is allowed in terms of signed order.

(Pardeep Kumar)
Court Master

(Shashi Bala Vij)
Court Master

[SIGNED ORDER IS PLACED ON THE FILE]