

State of Punjab & Ors.

Vs

Bakhshish Singh

(K.Ramaswamy, D. P. Wadhwa JJ)

05.05.1997

O R D E R

1. Though all steps have been taken to ensure the service of notice, the respondent could not be contacted for service. Even the last known address was tapped to effect the service; but that has also proved abortive. Under these circumstances, notice must be deemed to have been served.

2. Leave granted.

3. The respondent, who was a Constable in the police, service of the State of Punjab, absented himself from duty for a long period, i.e., from November 7, 1986 to March 1, 1988, without any leave. As a result disciplinary action was initiated against the respondent and enquiry was conducted. The disciplinary authority on the basis of finding of dereliction of non-reporting for duty, dismissed him from service. The trial Court dismissed the suit filed by the respondent. On appeal, the first Appellate Court remanded the matter for reconsideration by the trial Court on the point of punishment. The High Court has dismissed the Second Appeal No.155/96 summarily by its judgment and order dated August 21, 1996. Thus, this appeal by special leave.

4. The Appellate Court recorded the finding as under:

"I have gone through the above authorities and am of the considered opinion that although the plaintiff was admittedly guilty of misconduct in absenting himself but misconduct could not be classified as the gravest act of misconduct within the meaning of the sub-rule. The contention appears to be well-founded. It is true that, generally speaking, it is for the punishing authority to determine the seriousness of punishment and it is not within the ambit of the powers of this Court to interfere with the direction of the authority. But then there is an important exception to this rule and that is that the Court will strike down an order which has been passed illegal only and arbitrarily. In the present case, it was incumbent on the defendants, before he could award the punishment of dismissal, to come to a finding that the misconduct attributed to the respondent was a 'gravest act of misconduct'. It is true that in the context in which that expression is used it does not mean an act which is absolutely the worst act of misconduct and means, on the other hand, an act denoting a very high degree of misconduct as opposed to a merely grave or a very grave act of misconduct. But then it appears that the defendants when awarding the punishment were not alive to the provisions of the sub-rule otherwise he would not only not have awarded the punishment of dismissal without coming to a finding that the misconduct attributed to the respondent was of the Gravest type but would perhaps not have awarded that punishment at all for the reasons that the misconduct even though grave was not of the Gravest type. The lack of finding about the misconduct

being of the requisite type makes the impugned order arbitrary in nature and, therefore, liable to be quashed."

5. It is settled legal position that it is for the disciplinary authority to pass appropriate punishment; the Civil Court cannot substitute its own view to that of the disciplinary as well as Appellate authority on the nature of the punishment to be imposed upon the delinquent officer. In view of the finding of the Appellate Court that it is a grave misconduct, the Appellate Court ought not to have interfered with the decree of the trial Court. The High Court dismissed it without application of the mind and ignoring the settled legal principles.

6. The appeal is accordingly allowed. The orders of the High Court and the Appellate Court stand set aside and that of the trial Court stands confirmed. No costs.