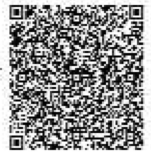

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(205)

**RSA No. 3195 of 1998 (O&M)
Reserved on :- 29.01.2026
Pronounced on: 16.02.2026
Uploaded on: 16.02.2026**

State of Punjab & Another **… Appellants**

Versus

Sukhmander Singh **… Respondent**

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Mr. I.S.Kingra, Senior DAG, Punjab
for the appellants

Mr. D.S.Bhinder, Advocate
for the respondent.

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VIRINDER AGGARWAL, J.

1. The present Regular Second Appeal (hereinafter referred as "appeal") has been preferred by the defendant-appellant challenging the judgment and decree dated 24.04.1998 passed by the learned District Judge, Bathinda, whereby the suit of the respondent-plaintiff was decreed by setting aside the order of dismissal from the service passed by the competent authority and the judgment and decree dated 14.09.1996 of the learned Civil Judge (Junior Division), Bathinda was reversed.

BACKGROUND FACTS

2. The respondent-plaintiff was appointed as a Constable (No.1032/Bathinda) in the Punjab Police and was serving in the department at the relevant time. During the course of his service, the respondent-plaintiff remained wilfully absent from duty for 4 Months and 19 days on different periods without obtaining prior permission or sanction from the competent

authority. As the unauthorised absence continued, the department initiated disciplinary proceedings against the respondent-plaintiff under the Punjab Police Rules, 1934. A charge-sheet was served upon him alleging unauthorised absence from duty. The respondent-plaintiff participated in the departmental enquiry. Upon completion of the enquiry, the Enquiry Officer submitted a report holding the charge of unauthorised absence to be proved against the respondent. After considering the enquiry report and the explanation furnished by the respondent-plaintiff, the competent disciplinary authority (appellant no.2/defendant no.2-Senior Superintendent of Police, Bathinda) passed an impugned order (Order No.38-42/802 dated 15.01.1992) imposing the penalty of dismissal from service. While passing the said order, the authority also directed that the period during which the respondent-plaintiff remained absent shall be treated as non-duty period, keeping in view the respondent-plaintiff's pensionary entitlements. Aggrieved by the impugned order of dismissal, the respondent-plaintiff availed of the departmental remedies available to him by filing an appeal and thereafter a revision. Both the departmental appeal and revision were dismissed by the competent authorities, thereby affirming the order of dismissal.

3. Thereafter, the respondent-plaintiff instituted a civil suit challenging the impugned order of dismissal as well as the orders passed in departmental appeal and revision. In the suit, the respondent-plaintiff contended that once the period of absence had been treated as non-duty period, the department could not have imposed the extreme penalty of dismissal, as such treatment amounted to condonation or regularisation of the absence. On the basis of these assertions, the respondent-plaintiff sought setting aside of the dismissal order along with consequential service benefits. The appellants-defendants contested the suit by

filing a written statement, asserting that the respondent-plaintiff had remained unauthorisedly absent, that a regular departmental enquiry had been conducted in accordance with law, and that the punishment of dismissal was justified. It was further pleaded that the treatment of the absence period as non-duty did not amount to condonation or regularisation and was only intended to regulate service and pensionary consequences.

4. Upon a meticulous examination of the pleadings and the competing claims of the parties, the learned Trial Court proceeded to frame the following issues for determination, with a view to secure a precise, coherent, and legally structured adjudication of the controversies arising in the matter:-

> *1. Whether The Order No.38-42/802 Dated 15.1.92 issued by the Defendent No.2 And further Order Of D.I.G-Ferozepur bearing No.3730 dated 30.4.92 and further Order of I.G.Punjab Chandigarh dated 19.4.93 conveyed to the plaintiff Vide No.14526 Dated 19.5.93 Are Illegal, Null And Void, arbitrary? OPP*
>
> *2. Whether The Plaintiff Is Entitled To Declaration Prayed For ? OPP*
>
> *3. Whether The Suit Is Not Maintainable In the Present Form? OPP*
>
> *4. Relief.*

5. Both parties were afforded full and adequate opportunity to adduce evidence in substantiation of their respective claims and defences. Upon the culmination of the evidentiary proceedings, and after hearing learned counsel for the parties at length, The learned Trial Court, upon consideration of the pleadings and evidence, dismissed the suit.

6. Aggrieved by the judgment and decree so rendered by the learned Trial Court, the respondent-plaintiff preferred an appeal before the learned District Judge, Bathinda. The learned First Appellate Court reversed the judgment and

decree of the learned Trial Court and allowed the suit of respondent-plaintiff. Dissatisfied with the same, the appellant-defendants have filed the present appeal for seeking dismissal of the suit.

CONTENTIONS

7. Learned State counsel for the appellants submits that the respondent-plaintiff had remained unauthorisedly absent from duty for a period of four months and nineteen days. It is further contended that the learned First Appellate Court has committed a grave error of law in holding that the treatment of the said period amounted to regularisation or condonation of the misconduct. According to learned counsel, the absence period was not regularised in any manner; rather, it was expressly treated as non-duty period, and such treatment was accorded only for the limited purpose of service related pensionary benefits. It is argued that the impugned order does not, either expressly or impliedly, condone the unauthorised absence or absolve the respondent of the misconduct proved against him, and that safeguarding pensionary benefits while imposing punishment is legally permissible. Consequently, the finding recorded by the learned First Appellate Court on this aspect is stated to be unsustainable in law.

8. Per contra, learned counsel for the respondent submits that once the competent authority itself treated the period of absence as non-duty period, the very foundation of the charge of unauthorised absence stood eroded, rendering the punishment of dismissal unsustainable in the eyes of law. It is contended that such treatment amounts to implied condonation of the alleged misconduct, and therefore, the extreme penalty of dismissal could not have been imposed. It is further argued that, in the facts and circumstances of the case, the respondent has been subjected to double punishment and the punishment imposed upon the

respondent deserves to be substituted with a lesser penalty, such as premature or compulsory retirement.

OBSERVATIONS AND FINDINGS

9. I have heard learned counsel for the appellants and respondent with due thoroughness and have undertaken a meticulous and comprehensive examination of the entire record.

10. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of Punjab Courts Act, 1918 and not under Section 100 of CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of '***Pankajakshi (Dead) through LRs and others V/s Chandrika and others', (2016)6 SCC 157***, followed by the judgments in the case of ***'Kirodi (since deceased) through his LR V/s Ram Parkash and others' (2019) 11 SCC 317*** and ***'Satender and others V/s Saroj and others', 2022(12) Scale 92***. Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

Effect of treating unauthorised absence as leave without pay/non-duty period

11. Before proceeding further, it is necessary to examine the nature and effect of the impugned order dated 15.01.1992 insofar as it relates to the period of absence of the respondent-plaintiff from duty. It is not in dispute that the respondent-plaintiff remained absent from duty for period of 4 Months and 19 days, that the allegations of unauthorised absence were duly proved in the departmental enquiry, and that on the basis thereof, the competent authority imposed the penalty of dismissal from service. The period of absence was, however, sanctioned as leave without pay which means it was treated as *non-duty period*.

12. The contention raised on behalf of the respondent-plaintiff that such treatment amounts to regularisation or condonation of the absence cannot be accepted. A careful reading of the impugned order makes it abundantly clear that the competent authority did not regularise or condone the absence of the respondent-plaintiff. The absence period was expressly treated as *non-duty period*, and such treatment was accorded only keeping in view the pensionary consequences flowing from the order of dismissal. The learned First Appellate Court has proceeded on the assumption that once the period of unauthorised absence was treated as leave without pay/non-duty period, the misconduct stood condoned or regularised, thereby invalidating the punishment of dismissal. This approach is legally unsustainable as it is alien to service jurisprudence. Leave without pay, particularly when imposed after a finding of misconduct, serves a dual and limited purpose:

> *(i) it penalises the delinquent employee financially by denying wages for the period not worked, and*
>
> *(ii) it enables correct maintenance of service records, so that statutory benefits such as gratuity or pension, if otherwise admissible, are calculated without introducing an artificial break in service.*

13. Leave without pay is thus neither an act of forgiveness nor an act of exoneration. It is an administrative regularisation for record-keeping, not a disciplinary condonation of misconduct. It operates to the disadvantage of the employee by denying wages for the period during which no service was rendered. Its object is confined to administrative regulation of service records so as to avoid an artificial break in service for the limited purpose of calculating pensionary or other statutory benefits, if otherwise admissible. If leave without pay were to be construed as condonation, every disciplinary authority would be precluded from regulating service records post-enquiry without nullifying the

punishment itself, an interpretation which would strike at the very root of disciplinary control. Moreover, accepting such a proposition would lead to absurd consequences that a delinquent employee could wilfully absent himself, face disciplinary proceedings, and then contend that mere adjustment of the absence period wipes out the misconduct. Such an interpretation would defeat natural justice, undermine discipline, and render service rules unworkable.

Misapplication of Precedents

14. The authorities relied upon by the learned First Appellate Court to conclude that the unauthorised absence of the respondent-plaintiff stood condoned or regularised are clearly distinguishable and have no application to the facts of the present case. In the present matter, the issue is required to be examined primarily in the light of the impugned order itself, as it is the contents and tenor of the said order which alone determine whether the absence was regularised or merely regulated for limited purposes of pensionary benefits. The relevant and operative part of the impugned order dated 15.01.1992 reads as under:

> *"So, in the interest of justice I dismiss the delinquent Constable Sukhmander Singh No.1032/Bathinda, today that is on 15.01.1992 afternoon in light of the aforesaid charges. The aforesaid absence period of 4 months and 19 days is accordingly considered/accepted as non-duty period, without pay."*

15. A plain reading of the above extract leaves no manner of doubt that the competent authority, while imposing the punishment of dismissal, consciously treated the period of absence as non-duty period without pay. Such treatment cannot be construed as regularisation or condonation of unauthorised absence as aforesaid stated. In this regard, the learned First Appellate Court attempted to distinguish the judgment of the Hon'ble Supreme Court in ***State of M.P. v.***

Harihar Gopal, 1969 SLR 274, on the ground that in the present case leave without pay was adjusted in the same order of dismissal, whereas in that case it was done in the subsequent order. This distinction is artificial and devoid of legal substance. The Hon'ble Supreme Court in ***Harihar Gopal (supra)*** recognised that post-termination adjustment of leave or absence is intended for maintaining correct service records and does not invalidate or dilute the order of termination. The timing of such adjustment whether in the same order or subsequently is immaterial. What is relevant is the intent, which is administrative and not condonatory. In the present case, the intent behind treating the absence period as non-duty without pay is clearly administrative. The Hon'ble Supreme Court in ***Harihar Gopal (supra)*** held in no uncertain terms that :

> *"Para 7. It was urged before the High Court on behalf of the State that the order granting leave was only for the purpose of regularising the absence from duty and for maintaining a true account of absence from duty and had not the effect of first sanctioning leave to the respondent in which he was entitled and then removing him from service for absence from duty. The High Court rejected this contention observing.*
>
> > *"......... When the leave was granted even though belatedly, it had the effect of authorising with retrospective effect the petitioner's (respondent's) absence from duty during the period for which it was sanction. Having thus authorised the petitioner's (respondent's) absence from duty, it was not open to the State Government to proceed on the basic that his absence was unauthorised."*
>
> *These observations proceed upon a misconception of the sequence of the orders passed by the State Government and the true effect of the order granting leave.* ***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 respondent and for regularising his absence from duty. Our attention has not been invited to any rules governing the respondent's service conditions under which an order regularising absence from duty subsequent to termination of employment has the effect of invalidating termination.*** *Both the orders, one terminating the employment of the respondent and the other granting leave are made by order and in the name of the Governor of Madhya Pradesh" and they are signed by L.B. Sarje, Deputy Secretary to the Government of Madhya Pradesh, General Administration Department.* ***We are unable to hold that the authority after terminating the employment of the respondent intended to pass an order invalidating the earlier order by sanctioning leave to that the respondent was to be deemed nor to have remained absent from duty without leave duly granted.***"

16. Hence, the dicta laid down by the Apex Court in ***Harihar Gopal (supra)*** is unambiguous and still holds the field, namely, that it is open to the Punishing Authority to direct the Record Keeper to complete the service record by treating the period of absence as one without pay. The impugned order was to be read as a whole and harmoniously construed to ascertain the real intention of the impugned order. Merely because in the last line of the order the disciplinary authority has directed the absence period to be treated as "leave without pay" cannot be read to mean that the disciplinary authority intended that the petitioner should be continued in service,. Further, the distinction sought to be drawn to the effect that the order regularising the absence from duty as "leave without pay" is not a separate order, as was in the ***Harihar Gopal (supra)*** cannot be accepted. It does not stand to reason that in said case the termination order was upheld only because the order of regularising leave was passed subsequently. A reading of the judgment does not give such an impression. Further, the Hon'ble Supreme Court has re-affirmed the law laid

down in ***Harihar Gopal (Supra)*** in ***Maan Singh v. Union of India, 2003 (3) SCC 464*** and ***State of Punjab v. Charanjit Singh 2004 (1) SCT 283,*** wherein it was also held that regularisation of unauthorised absence was to ensure that there is no break in service and thus, empowers the disciplinary authority to continue with the disciplinary proceedings. Therefore, in the present case, the First Appellate Court misread and misapplied the binding precedent.

17. On the contrary, the reliance placed by the learned First Appellate Court on authorities is wholly misplaced. In ***Om Parkash v. Presiding Officer, Labour Court, Amritsar, 1992 (1) SCT 166***, the order of dismissal was subsequently "converted" by the employer into leave without pay by a separate and later order, which had the effect of condoning the dismissal itself. It was in those peculiar facts that the Court held that once the dismissal stood condoned by the employer's own subsequent conduct, the punishment could not be sustained which shows the intent of court. The said ratio has no application to the present case, where the respondent was dismissed from service by a final and operative order, and there is neither any subsequent order nor any act on the part of the competent authority "converting or condoning/withdrawing" the dismissal. The treatment of the period of absence as non-duty without pay in the very order of dismissal was only for the purpose of regulating service consequences and maintaining correct service records, and not for condoning the misconduct or the punishment imposed. Likewise, the judgment in ***Union of India v. Ram Phal, 1996(2) SCT 638*** does not advance the case of the respondent. In that case, the Court found that the Commandant/authority had not rendered the order of dismissal internally inconsistent by treating the period of unauthorised absence as extraordinary leave of respondent in that case, and on that ground the appeal preferred by the State was allowed. The said decision,

therefore, itself reinforces the principle that administrative treatment of absence cannot be construed to dilute or negate a valid order of dismissal. Far from supporting the respondent, the ratio of ***Ram Phal (Supra)*** affirms that unless the dismissal itself is withdrawn or condoned, mere adjustment of the absence period does not invalidate the punishment. The learned First Appellate Court, therefore, committed a manifest error in relying upon the aforesaid judgments, which are clearly distinguishable on facts and, in fact, support the legal position that treatment of unauthorised absence for service record purposes does not amount to condonation of dismissal. The learned First Appellate Court, therefore, erred in law in relying upon inapplicable precedents to set aside the punishment of dismissal. The said finding is legally unsustainable and deserves to be set aside.

Application of Rule 16.2(1) of the Punjab Police Rules, 1934

18. Rule 16.2(1) of the Punjab Police Rules, 1934 embodies the strict disciplinary regime applicable to members of the police force. The rule permits dismissal for the gravest acts of misconduct, even on the basis of a single act, keeping in view the nature of police service and the paramount importance of discipline. The Hon'ble Supreme Court in ***State of Punjab v. Ram Singh, 1992 (4) SCC 54***, has held that 16.2(1) contemplates dismissal both for grave misconduct and for incorrigibility. Prolonged and wilful unauthorised absence strikes at the very root of discipline and squarely falls within the category of grave misconduct. In the present case, the respondent remained unauthorisedly absent for a period of four months and nineteen days that directly impacted discipline and operational readiness, an aspect of paramount importance in police service. The departmental enquiry culminated in a clear finding that the absence was wilful. Once such wilfulness stands established, the misconduct is

complete, and the disciplinary authority is justified in imposing the punishment of dismissal. The subsequent treatment of the absence period as leave without pay does not dilute the application of Rule 16.2. The First Appellate Court completely failed to examine the applicability of Rule 16.2 and instead confined itself to the perceived effect of leave without pay, thereby ignoring the statutory mandate governing police discipline. Police discipline stands on a higher pedestal than ordinary civil service. Leniency in cases of wilful absenteeism undermines public confidence and operational efficacy. Equity, therefore, lies in favour of the employer, not the delinquent. The punishment of dismissal cannot be said to be disproportionate or shocking to the conscience.

19. In view of the above, the findings recorded by the First Appellate Court are based on conjectures rather than law. By assuming that leave without pay implies absence of misconduct, it ignored both factual findings and statutory discipline norms. Such findings are perverse and invite interference by this court. Resultantly, the judgment and decree dated 24.04.1998 passed by the learned First Appellate Court suffer from perversity and misapplication of law and are liable to be set aside. The judgment and decree dated 14.09.1996 passed by the learned Trial Court deserve to be restored.

20. Moreover, the contention raised by the respondent-plaintiff that he has been subjected to double punishment is equally misconceived. Declaring the period of unauthorised absence as non-duty without pay is not a punishment but a natural consequence of the principle of *no work, no pay*. It merely regulates service records and does not amount to a disciplinary penalty. The denial of pay for the period during which no service is rendered does not amount to double jeopardy. As the denial of wages for a period not worked is a service consequence and not a punishment unless the rules specifically provide

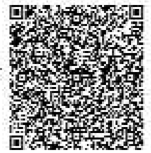
otherwise. The doctrine of *double jeopardy* has no application in service matters unless two distinct penalties are imposed for the same misconduct under the disciplinary rules. In the present case, the respondent-plaintiff has been subjected to only one disciplinary penalty, namely dismissal from service. The declaration of the absence period as non-duty without pay is not a punishment but a consequence flowing from the very nature of unauthorised absence. Therefore, the plea of double punishment is devoid of merit and is rejected. Loss of pay is based on the principle of "no pay no work". It is an action quite separate and distinct from a disciplinary proceeding, which may visit an employee for such misconduct. In ***State of U.P. and others v. Madhav Prasad Sharma, 2011 (2) SCC 212***, the Apex Court was considering the question whether the employer who had already sanctioned the leave, albeit without pay, was justified in terminating the service for the same charge and whether such an action is hit by the doctrine of double jeopardy. The Apex Court after noticing the relevant statutory service rules concluded by holding that leave without pay is not a punishment prescribed under the rules and thus, denial of salary on the ground of "no pay no work" cannot be treated as a penalty nor the doctrine of double jeopardy would be attracted in case the employee is inflicted with the punishment of dismissal for the same charge. The Apex Court in ***Madhav Prasad Sharma (Supra)*** observed as under:-

> *"Para 9. .... 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 punishments 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."

Para 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 v. Datta Linga Toshatwad, (2005)13 SCC 709*** *and* ***Maan Singh v. Union of India, 2003(2) S.C.T. 84 : (2003)3 SCC 464*** *fully apply in the facts and circumstances of the present case."*

21. Lastly, the contention of the respondent–plaintiff that the penalty of dismissal ought to have been converted into premature or compulsory retirement cannot be accepted. This Court does not sit as a disciplinary authority and lacks jurisdiction to substitute the punishment imposed by the competent authority with any other penalty. The power to alter or modify the punishment vests exclusively in the punishing authority in terms of the applicable service rules. In second appeal, the scope of interference is limited and does not extend to re-evaluating or substituting the punishment, unless it is shockingly disproportionate or patently illegal, which is not so in the present case.



22. However, it is evident from the impugned order itself that the competent authority had kept in mind the respondent-plaintiff's pensionary entitlements while treating the absence period as non-duty. In view thereof, and without expressing any opinion on merits, this Court deems it appropriate to direct that, if the respondent-plaintiff submits a representation seeking conversion of the order of dismissal into premature/compulsory retirement, the same shall be considered by the competent authority in accordance with law. Such consideration shall be undertaken independently and objectively, and a reasoned decision thereon shall be taken within a period of three months from the date of receipt of such representation.

23. In view of the foregoing discussion, the present Regular Second Appeal is **allowed**. The judgment and decree passed by the learned First Appellate Court dated 24.04.1998 is set aside, and the impugned order dated 15.01.1992 is upheld to the extent indicated above, subject to the limited direction issued herein.

24. Since the main appeals stand decided, the miscellaneous application(s), if any, stand also disposed of.

(VIRINDER AGGARWAL)
JUDGE

16.02.2026
Saurav Pathania

Whether reasoned / speaking? Yes / No
Whether reportable? Yes / No