

hold that the mortgage cannot be redeemed. In such circumstances a decree for joint possession is to be passed with further clarification that at the time of partition the present plaintiff would only be entitled to share of the land purchased by him out of the entire land including the mortgaged land.

(8) For the reasons recorded, finding no merit in the appeal the same is dismissed with costs. Judgment and decree of the lower Appellate Court are affirmed as above.

S.C.K.

Before : N. C. Jain, J.

STATE OF HARYANA,—Appellant.

versus

LAKHAN LAL,—Respondent.

Regular Second Appeal No. 784 of 1984.

8th March, 1991.

Punjab Police Rules, 1934—Rl. 16.2(1)—Scope of—Gravest acts of misconduct—Maintainability of.

Held, that even one act of misconduct would be sufficient to attract the applicability of rule 16.2 (1) provided the act is gravest. The gravest act, of course, is incapable of any strict definition. The distinction has to be drawn by the punishing authority between misconduct and grave misconduct. Misconduct should not be of an ordinary nature and it always has to be of a serious nature. The gravest act does not mean that the number of acts complained of should be more than one. The use of the word 'acts' in rule 16.2 (1) can be said to include a single gravest act of misconduct. But the punishing authority must record a firm finding that the act complained of was of such a grave nature that it proved incorrigibility and complete unfitness for police service before the punishment of dismissal was awarded.

((Para 7)

Regular Second Appeal from the order of the Court of Shri V. K. Jain (II) Addl. Distt. Judge, Hissar, dated 12th December, 1983, reversing that of Shri R. K. Kashyap, HCS, Sub Judge, IInd Class, Hissar, dated 24th December, 1982 decreeing the suit of the plaintiff for declaration as prayed with costs throughout.

State of Haryana v. Lakhian Lal (N. C. Jain, J.)

CLAIM : Suit for declaration that the order dated 27th April, 1981, passed by the Senior Superintendent of Police, Hissar by which the plaintiff was dismissed from service is unconstitutional bad in law and is not binding on the plaintiff that he continues to be in service of the state and entitled to all pay and allowances, on the basis of documentary and oral evidence.

CLAIM IN APPEAL : For reversal of order of the Appellate Court.

B. S. Rana, Advocate, for the Appellants.

Gurjeet Singh Bawa, Advocate with P. S. Bawa, Advocate, for the Respondents.

JUDGMENT

N. C. Jain, J. (Oral)

(1) The precise question of law involved in this appeal is as to what is the correct and true interpretation of Rule 16.2 (1) of the Punjab Police Rules, 1934 (hereinafter referred to as the Rules). Before interpreting Rule 16.2 (1) of the Rules, *ibid.* it is necessary to have a look at the facts of the case giving rise to the appeal filed by the State of Haryana.

(2) The plaintiff-respondent filed a suit for declaration against the Haryana State, by averring that he joined as a constable in the Police of Haryana, in the year 1962, and that on 3rd of February, 1978, an inquiry was conducted against him and in consequence of the finding of the inquiry, he has been dismissed from service by the Senior Superintendent of Police, Hissar,—*vide* order dated 24th July, 1978. The dismissal was challenged on various grounds. The suit was contested by the defendant. On the pleadings of the parties, the following issues were framed:—

- (1) Whether the order of the S.S.P., Hissar, dated 24th July, 1978, is null and void and unconstitutional and not binding on the plaintiff? O.P.P.
- (2) Whether any valid notice is served to the defendant State? O.P.D.
- (3) Whether the suit is not maintainable in the present form? O.P.D.

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- (4) Whether the Civil Court has no jurisdiction to entertain and try the present suit ? O.P.D.
 - (5) Whether the plaintiff is estopped by his own and conduct to file the present suit ? O.P.D.
 - (6) Whether the suit is time barred ? O.P.D.
 - (7) Relief.

(3) The trial Court decided issue No. 1 in favour of the defendant and against the plaintiff. The rest of the issues were decided in favour of the plaintiff and against the defendant. The suit having been dismissed, an appeal was preferred by the plaintiff before the appellate Court. In appeal, the judgment and decree of the trial Court has been reversed. It was found by the appellate Court that the act of misconduct on the part of the plaintiff was not an act of gravest misconduct, i.e., absence from duty, and that according to Rule 16.2 (1), dismissal could be awarded only for the gravest act of misconduct. It was further held by the appellate Court that there was no finding recorded by the inquiry officer that the act of misconduct proved incorrigibility and complete unfitness of the plaintiff for police service. Reliance was placed upon a pronouncement of this Court in *Sukhdev Singh v. State of Punjab and others*, 1983 (2) S.L.R. 645. The State of Haryana has filed the present appeal against the judgment and decree of the appellate Court.

(4) It has been argued by the counsel for the State of Haryana that even one act of misconduct of gravest nature is good enough and that it is not necessary for the punishing authority to mention the length of service in the impugned order of dismissal for the purpose of invoking rule 16.2 of the Rules, *ibid*. In support of his contention, he has relied upon *State of Haryana and others v. Gurdev Singh* (1) and *Ex-Constable Joginder Singh v. State of Haryana* (2). On the other hand, it has been argued by Mr. G. S. Bawa that even if arguments of the counsel for the State were to be accepted by this Court, the dismissal of the plaintiff-respondent cannot be upheld and the same must be set aside on the short ground that the punishing authority did not record in his order that the act of misconduct proved incorrigibility and unfitness for police service. He has relied upon *Ram Krishan Constable No. 141 v. State of Haryana and others* (3), *Phool*

(1) 1981 (3) S.L.R. 130.

(2) 1990 (2) R.S.J. 757.

(3) 1990 (1) R.S.J. 637.

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Singh v. State of Haryana and others (4) and *Sukhdev Singh v. State of Punjab and others* (5). Before appreciating the arguments advanced at the Bar, it is necessary to have a look at Rule 16.2 (1) which reads as under:—

“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.”

(5) The aforementioned rule on its plain reading, envisages the dismissal of a police constable only for the gravest acts (i.e. more than one act) of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service. It is further necessary that the gravest acts must prove incorrigibility and complete unfitness for police service. The authority while taking action must keep in mind the length of service the police official has put in and his claim to pension. This plain meaning which can be deduced from a perusal of the rule, had, however, been the subject matter of interpretation of this Court. As far back as in the year 1983, in *Sukhdev Singh's case* (supra), I. S. Tiwana, J., while dealing with the case of a police officer found drunk on duty, set aside the dismissal on the ground that it was nowhere recorded by the authorities that the officer was guilty of such acts of misconduct, cumulative effect of which could go to prove incorrigibility and complete unfitness for police service. In the view of I. S. Tiwana, J., resort to the punishment of dismissal in the absence of such a finding could not be had. Rule 16.2 was held to be mandatory in nature. It is this authority which has been primarily relied upon by the appellate Court while decreeing the suit of the plaintiff-respondent. At this stage, it is necessary to have a look at Division Bench ruling in *State of Haryana's case* (supra) in which single act of police officer being drunk while on duty, was held to amount to an act of the gravest misconduct, within the meaning of Rule 16.2 (1). It was further held that it was not necessary for the punishing authority to specifically mention in the impugned order about the length of service

(4) 1989 (6) S.L.R. 138.

(5) 1983(2) S.L.R. 645.

put in by the delinquent officer which, in the view of the Division Bench, was already a part of the record and was well known.

(6) J. S. Sekhon, J., on 15th September, 1989, while dealing with the case of a police official in *Phool Singh case* (supra), who was dismissed from service on the ground of absence from duty for a period of 18 days, took into consideration 12 years service of the police official. J. S. Sekhon, J., after placing reliance upon another decided case, C.W.P. No. 4680 of 1987 (*Dharam Pal Ex-Constable v. State of Haryana and others*) decided on 10th March, 1989 set aside the dismissal. In *Ram Krishan Constable's case* (supra), the dismissal of a police constable who was found under the influence of liquor on duty, was set aside, after it was held that the mandate of the rule making authority was clear that the punishment of dismissal from service is not to be awarded in a misconduct of ordinary nature. The relevant observations of M. R. Agnihotri, J., in *Ram Krishan Constable's case* (supra) read as under:—

“No doubt, even a single act of misconduct can, in a given situation, amount to the gravest act of misconduct but the mandate of the rule making authority is clear that the punishment of dismissal from service has not to be awarded in a misconduct of ordinary nature. In the present case, admittedly,—

- (1) it was only a single stray case of taking liquor by the petitioner;
- (2) it is disputed by the petitioner as to whether he was on duty at 1.30 A.M. (night) on 12th February, 1983, as according to him, he was off duty;
- (3) there is no evidence whatsoever that he created nuisance under the influence of liquor;
- (4) the petitioner had put in nine years, six months and eleven days service, that is, less than ten years service, which is the minimum period of qualifying service for the grant of pension under the Punjab Civil Services Rules, Volume II; and

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- (5) there is no finding by the punishing authority to the effect that the alleged misconduct was proving incorrigibility and complete unfitness for the police service nor was regard shown to the length of service of the offender and his claim to pension.

In view of the aforesaid factual and legal position, the impugned order of dismissal from service is wholly arbitrary and hence liable to be quashed."

(6-A) Ashok Bhan, J., in a recently decided *Ex-Constable Joginder Singh's case* (supra), after making a reference to two Single Bench decisions and a Division Bench judgment of this Court in *State of Haryana's case* (supra) held that the act of a police officer being drunk while on duty was an act of the gravest misconduct, under Rule 16.2 of the Rules *ibid.*

(7) Having gone through the entire case law cited at the Bar and having given thoughtful consideration to the entire matter, this Court is of the considered view that even one act of misconduct would be sufficient to attract the applicability of rule 16.2 (1) provided the act is gravest. The gravest act, of course, is incapable of any strict definition. The distinction has to be drawn by the punishing authority between misconduct and grave misconduct. Misconduct should not be of an ordinary nature and it always has to be of a serious nature. The use of the word 'gravest' only means that it has to be of a superlative degree than what a particular act can just be described to be 'grave'. The gravest act does not mean that the number of acts complained of should be more than one. The use of the word 'acts' in rule 16.2 (1) can be said to include a single gravest act of misconduct. It has to be held in order to give effect to the legislative intent that the word used in plural in rule 16.2 (1) would be deemed to include the 'singular'. If the punishing authority comes to the conclusion that a particular act of the police official was one of the gravest, surely it would not be necessary to wait for the commission of a second act of grave nature by the police official. If such an interpretation is to be taken to the words 'gravest acts of misconduct', the delinquent police official would commit a heinous crime in order to contend that he does not fall within the mischief of rule 16.2 (1). In view thereof a single act of misconduct of gravest nature is good enough for invoking the aid of rule 16.2 (1) to award punishment of dismissal. However, a single act or number of acts

of misconduct of a police official must prove incorrigibility and complete unfitness for police service. This seems to be the mandate of rule 16.2 (1). A particular act may be grave or the gravest but the act complained of may not be such that it must necessarily prove incorrigibility and complete unfitness for police service. The dictionary meaning of the word 'incorrigibility' is bad, beyond correction or reform. Only such a person can be said to be incorrigible who cannot be reformed or corrected. When the word 'incorrigible' is used as an adjective, it relates to a person who is not capable of correction, amendment, improvement or reform. A person in a particular given situation may be held guilty of commission of one of the gravest acts but the punishing authority may still be of the view that such a person is not incorrigible and he can be reformed or corrected. The punishing authority may also be of the view that such a person cannot be described to be one who is completely unfit for police service. In other words, the gravest act complained of against the police official may not prove incorrigibility and complete unfitness which is mandatory requirement for attracting the applicability of rule 16.2 (1). In view thereof this Court is of the firm view that unless and until the punishing authority comes to a firm conclusion and records a firm finding that the act complained of was of such a grave nature that it proved incorrigibility and complete unfitness for police service, the extreme punishment of dismissal, in my view, cannot be resorted to particularly when a Division Bench of this Court in *State of Haryana's case* (supra) has come to the conclusion that it was not necessary for the punishing authority to specifically mention in the impugned order about the length of service which was a part of record and was well known.

(8) Adverting to the facts of the instant case, it has remained undisputed before this Court that the punishing authority did not record any finding that the act complained of proved incorrigibility and complete unfitness for police service of the plaintiff-respondent. In view thereof this Court has no option but to uphold the judgment and decree of the appellate Court. As a result thereof, the appeal of the State of Haryana is dismissed with no order as to costs.