

PETITIONER:
STATE OF PUNJAB & ORS.

Vs.

RESPONDENT:
DHARAM SINGH

DATE OF JUDGMENT: 16/12/1996

BENCH:
K. RAMASWAMY, G.T. NANAVATI

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

We have heard learned counsel on both sides.

This appeal by special leave arises from the order of the Punjab & Haryana High Court, made on October 4, 1995 in Writ Petition No. 9718 of 1994. Action was taken under Punjab Police Rules for taking disciplinary action against the respondent for his failure to report for duty during period from November 21, 1991 to October 31, 1992. An inquiry was conducted against the respondent and it was conducted against the respondent and it was found that his absence was wilful. The High Court has set aside his removal from service on the ground that subsistence allowance was not paid to him and, therefore, his absence was not wilful. Rule 16.21 reads as under;

"16.21 - Status and treatment of officer under suspension - (1) A police officer shall not by reason being suspended from office cease to be a police officer.

During the term of such suspension the powers, functions and privileges vested in him as a police officer shall be in abeyance, but he shall continue subject to the same responsibilities, discipline and to the same authorities, as if he had not been suspended."

A reading of it would clearly indicate that even during the period of suspension the police officer is required to attend to roll call and be available to the authorities. The payment of subsistence allowance, as ordered, under the suspension rule is one facet of it and his duty to be present is another. No-payment of subsistence allowance does not entitle a delinquent officer to be absent from duty. It is his duty to claim subsistence allowances and if it is not paid, necessary representation to the higher authorities and, if the grievance is not redressed, to the appropriate forum seeking payment, may be made. But that does not mean

that the delinquent officer, in the face of the express rule, can absent himself from duty. Under these circumstances, the conclusion reached by the disciplinary authority that he was wilfully absent from duty is well justified. However, on the quantum of punishment imposed, on the facts and circumstances of the case, we are of the view that instead of the removal, compulsorily retirement from service would be an appropriate punishment.

The appeal is accordingly allowed. The order of the High Court stands set aside. Instead of the order of removal, the authorities are directed to consider passing an order compulsorily retiring him from service so that he will be eligible to the pensionary benefits and other benefits under the rules, No costs.

JUDIS