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the panchayat samities of erstwhile district Faridkot. In my opinion, the services of the plaintiff should not have been terminated when the post he was holding had not been abolished and when in his place, one Binder Kaur was appointed.

(10) For the reasons given above, this appeal succeeds and is allowed. Judgment and decree of learned Additional District Judge, Faridkot, Dated 22nd October, 1993 are set aside and those passed by the Sub Judge 1st Class, Moga dated 11th January, 1991 are restored. It may be mentioned here that this decree is not intended to effect anyone including Jassa Singh, Binder Kaur who joined in the panchayat samitis of erstwhile district Faridkot. If there is no post available in Panchayat Samiti Nihal Singh Wala for accommodation Parshotam Lal, he shall be accommodated by Zila Parishad, Moga in any panchayat samiti under its jurisdiction. He shall be entitled to 50% of the back wages. He shall be entitled to continuity of service. No. costs.

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**R.N.R.**

*Before M.L. Singhal, J*

STATE OF PUNJAB & OTHERS—*Appellants*

*versus*

JAGIR SINGH—*Respondent*

RSA No. 1430 of 1998

13th July, 2001

*Punjab Police Rules, 1934—Rl. 16. 38—Constitution of India, 1950—Arts. 14 & 16—Charges against a constable of taking liquor while on duty and misbehaviour with a Senior Officer—Gravest acts of misconduct & indiscipline—Dismissal from service—1st Appellate Court finding dismissal a harsh punishment & substituting with the stoppage of 5 annual increments with cumulative effect—Whether the Courts has jurisdiction to done down the punishment—Held, no—Court has limited jurisdiction to review the orders passed by the Executive authorities to see whether the departmental enquiry is in tune with the law & procedure and conducted in accordance with*

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*the principles of natural justice & fair play—No violation of 1934 Rules—Dismissal from service after complying with the requirements of law & procedure—Order of 1st appellate Court set aside.*

Held, that Court has limited jurisdiction. All that the Court was required to see whether the departmental inquiry conducted against the delinquent on the chargesheet drawn up against him was in tune with the law and procedure governing the conduct of inquiries and also whether it conduced to the principles of natural justice and fair play and if the Court comes to the conclusion that the inquiry was in tune with law and procedure and conduced to the principles of natural justice and fair play, Court will maintain the order irrespective of what punishment had been imposed. Court cannot tone down the punishment. Imposition of punishment is within the domain of the executive authority which passed the impunged order. Court cannot go into the evidence produced in inquiry. It is within the domain of the executive authority to see whether the evidence produced was or was not sufficient to sustain the charge. If the executive authority has stated that the evidence produced in the departmental inquiry was sufficient enough to sustain the charge, Court cannot enter into reappraising the evidence and say that on the evidence produced the charge did not stand proved against the delinquent. Court has, thus limited jurisdiction.

(Paras 8 & 9)

Further held, that there was full compliance with the requirements of law and procedure so far as the inquiry was concerned. Respondent was given full opportunity during the inquiry. SSP dismissed him from service after considering his reply to the show cause notice whereby he had been called upon the show cause why he be not dismissed from service.

(Para 14)

H. S. Gill, Deputy Advocate General for the appellants.

Arun Palli, Advocate for the respondents.

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**JUDGMENT**

*M. L. Singhal, J.*

(1) Jagir Singh was constable on the rolls of Ludhiana Police. While posted at PS Sidhwan Bet, it was alleged that on 14th January, 1990, he gave patta blow on the head of one Kuldip Singh who was under interrogation in a hurt case. It was further alleged that he misbehaved with SHO Manmohan Singh of PS Sidhwan Bet and he was also under the influence of liquor. Charge sheet was issued to him on the said allegations. He gave reply to the chargesheet which was not taken into account. Show cause notice was issued to him calling upon him to show cause why he be not dismissed from service. He gave reply to the show cause notice which was not considered and he was dismissed from service,—*vide* order bearing No. 400-3/ST/C dated 21st September, 1990 by Senior Superintendent of Police, Ludhiana. There was no compliance with the provisions of Rule 16.38 of the Punjab Police Rules (in short PPR) before ordering inquiry against him. He challenged his dismissal through appeal filed by him before Deputy Inspector General of Police, Patiala Range, Patiala which was dismissed without application of mind to the facts projected in the appeal. He was not afforded personal hearing before the appeal was disposed of. He filed revision against the order of dismissal of his appeal before Director General of Police, Punjab, Chandigarh which was dismissed by Inspector General of Police, Chandigarh on 10th February, 1992 without application of mind to the facts of the case. He was not called for personal hearing before his revision was disposed of. He filed suit for declaration challenging his dismissal from service ordered by SSP, Ludhiana,—*vide* order dated 21st September, 1990 as also the orders dismissing his appeal and revision by the DIG of Police, Patiala Range, Patiala and the DGP, Punjab respectively being illegal, ultra-vires, unconstitutional, against equity, fair play, principles of natural justice, null and void and not binding on him and that he was entitled to all service benefits with pay, allowances as if the said orders had never been passed.

(2) Defendants contested the suit. It was urged that on 14th January, 1990 he under the influence of liquor gave injuries to one Kuldip Singh who had been called to the police station in connection with a hurt case. He was neither dealing with that case nor had he

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been ordered by any officer to interrogate him. He misbehaved with SI Manmohan Singh, SHO, PS Sidhwan Bet when he asked him not to exceed his limits. He was got medically examined through Medical Officer, Primary Health Centre, Sidhwan Bet. He found that there was smell of alcohol in his breath. He was placed under suspension *vide* DDR No. 12 dated 14th January, 1990 by SHO, PS Sidhwan Bet. His suspension was approved by SSP, Ludhiana. Inspector Mukhtiar Singh was ordered to conduct regular inquiry under PPR 16.24. Departmental inquiry was entrusted to Inspector Amarjit Singh, SHO, PS Focal Point because of the transfer of Inspector Mukhtiar Singh. He was served with summary of allegations along with copy of the list of witness. Statements of PWs were recorded in his presence. He was given full opportunity to cross examine them and he availed that opportunity to the fullest. Charge sheet was issued to him. He was given opportunity to produce his evidence and he produced two DWs. He was given 7 days time to submit his written reply. He did not submit reply in respect to the charge sheet till 17th June, 1990. Thereafter, the inquiry officer submitted his findings holding him guilty of the charges levelled against him. He was served with show cause notice alongwith the copy of the findings of the inquiry officer which he received on 18th July, 1990. He submitted his written statement in response to the show cause notice which was duly considered by the punishing authority and he was eventually dismissed from service. It was denied that he submitted any reply to the charge sheet. Provisions of PPR 16.38 were not attracted in this case. He was dealt with departmentally on the charge of taking liquor in the police station while on duty, misbehaving with SHO and beating one Kuldip Singh. In such matters, no sanction under PPR 16.38(1) is required from the District Magistrate. There was no infraction of any rule while conducting departmental inquiry. There had been full compliance with the principles of natural justice, equity and fair play while dealing him departmentally. It was an act of indiscipline that he took liquor while on duty. It was again an act of indiscipline and insubordination that he misbehaved with officer incharge of the police station when he was subordinate to him. It was a gravest act of misconduct on his part to have taken liquor while on duty and misbehaved with the officer incharge of the police station and giving beating to a person who had been called in the police station in a hurt case, with the investigation of which, he was not

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concerned. On these pleadings of the parties the following issues were framed by the trial court :—

1. Whether the impugned order No. 400-3/ST/C, dated 21st September, 1990 is illegal, null and void ? OPP
2. Whether this court has no jurisdiction to try the present suit ? OPD
3. Whether no legal and valid notice u/s 80 CPC was served upon the defendants ? OPD
4. Whether the plaintiff has no cause of action to file the present suit ? OPD
5. Relief.

(3) *Vide* order dated 8th August, 1994, Subordinate Judge, Second Class, Gurdaspur dismissed the plaintiff's suit in view of his finding that there was no infraction of any rule so far as the conduct of departmental inquiry against him was concerned. Conduct of departmental inquiry concerned to the principles of equity, justice and fair play. It was found that the acts attributed to him were the gravest act of misconduct and the SSP was within his right to impose upon him the punishment of dismissal from service.

(4) Not satisfied with the order dated 8th August, 1994 of Sub Judge Second Class, Gurdaspur, plaintiff went in appeal. *Vide* order dated 25th July, 1997. Additional District Judge, Gurdaspur set aside his dismissal from service and substituted the punishment of dismissal from service with the punishment of stoppage of 5 annual increments with cumulative effect in view of his finding that if he was found under the influence of liquor while on duty that was not the gravest act of misconduct on his part calling for dismissal from service. It was found that in this case the provisions of PPR 16.38 were attracted and the holding of departmental inquiry without complying with the mandatory provisions of Rule 16.38 of the PPR rendered the order of dismissal illegal. It was found that the dismissal from service was too harsh a punishment be countenanced.

(5) To say the least, the findings of the Additional District Judge are utterly confusing and self contradictory.

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(6) Not satisfied with this order of the learned District Judge, Gurdaspur, State of Punjab has come up in this RSA to this court.

(7) It was submitted by the learned Deputy Advocate General, Punjab that constable Jagir Singh was rightly dismissed from service by the Senior Superintendent of Police, Ludhiana. As a result of inquiry, he was found guilty of misconduct which was that on 14th January, 1990, he gave patta blow to one Kuldip Singh at PS Sidhwan Bet, who had been brought in connection with the investigation of a case FIR No. 12/90 under section 325/323/324/34 IPC of PS, Sidhwan Bet when he had nothing to do with the investigation of that case and that case was being investigated by ASI Harbhajan Singh and further he under the influence of liquor misbehaved with SI/SHO Manmohan Singh who had asked him that he should not have given patta blow to Kuldip Singh. It was submitted that the charge sheet was drawn up against him. Department examined SI Manmohan Singh, SHO, PS, Sidhwan Bet and others in support of the charge sheet. He examined Dr. Balwant Singh Senior Medical Officer, Ropar and constable Jagdish Chand in his defence. At the conclusion of the inquiry, inquiry officer found the charge levelled against him fully proved. SSP agreed with the findings of the inquiry report. Show cause notice was accordingly given to him calling upon him to show cause why he be not dismissed from service. He gave reply to the show cause notice. After considering his reply to the show cause notice, he was dismissed from service. It was submitted that there was no infraction of any rule in the conduct of inquiry by the inquiry officer. It was submitted that the power of judicial review lies with the courts so far as the orders passed by the executive authorities are concerned but this power does not authorise the court to sit in appeal against the order of punishment. Court can set aside the order of punishment saying that it is illegal, null and void, nonest, not concurring to the principles of natural justice and fair play but the court cannot say that the punishment imposed by the executive authority is harsh and this punishment will meet the ends of justice.

(8) In my opinion, court has limited jurisdiction. All that the court was required to see whether the departmental inquiry conducted against the delinquent on the charge sheet drawn up against him was in tune with the law and procedure governing the conduct of inquiries and also whether it conduced to the principles of natural justice and

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fair play and if the court comes to the conclusion that the inquiry was in tune with law and procedure and conduced to the principles of natural justice and fair play court will maintain the order irrespective of what punishment had been imposed. Court cannot tone down the punishment. Imposition of punishment is within the domain of the executive authority which passed the impugned order.

(9) Court cannot go into the evidence produced in inquiry. It is within the domain of the executive authority to see whether the evidence produced was or was not sufficient to sustain the charge. If the executive authority has stated that the evidence produced in the departmental inquiry was sufficient enough to sustain the charge, court cannot enter into reappraising the evidence and say that on the evidence produced, the charge did not stand proved against the delinquent. Court has thus limited jurisdiction.

(10) Faced with this position, learned counsel for the respondent submitted that the inquiry was bad as there was no compliance with the provisions of rule 16.38 PPR before the inquiry was initiated. It was submitted that permission of the District Magistrate was required to be obtained before the initiation of the inquiry against the respondent and the inquiry was bad in law in the absence of the permission from the District Magistrate. Rule 16.38(1) PPR reads as follows :—

“Immediate information shall be given to the District Magistrate of any complaint received by the Superintendent of Police which indicates the commission of a Police Officer of a criminal offence in connection with his official relations with the public. The District Magistrate will decide whether the investigation of the complaint shall be conducted by a Police Officer, or made over to a selected Magistrate having 1st class powers”.

(11) It was submitted that this rule is mandatory for the investigation of cases pertaining to departmental inquiries and holding of departmental inquiries in accordance with the procedure prescribed thereunder. In *Hari Shyam ASI v. The State of Punjab and others* (1) it was held that where a complaint was lodged against a Police Officer in Roznamcha at police station for initiating departmental

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inquiry, sanction was required to be obtained from the District Magistrate. ASI Hari Shyam was posted at Police Recruitment Training Centre, Jahan Khelan, District Hoshiarpur. He was directed to attend the office of respondent No. 5 on 19th April, 1989, in connection with departmental inquiry. He presented himself in the office of respondent No. 5 on 26th May, 1989, where a summary of allegations was given to him under Rule 16.24(1) PPR. Charge against him was that on 9th February, 1989, he alongwith other officials was deputed to escort two prisoners for producig them in the Court of Judicial Magistrate First Class, Gidderbaha. After the hearing of the case, he consumed liquor along with the prisoners as a result of which the officers of Zila Jail, Faridkot refused to accept the prisoners. Thereafter, he took the prisoners to his official quarter to enable them to spend the night with him. The Line Officer, Faridkot took him and two prisoners from his quarter to the Medical Officer, Faridkot for getting them medically examined. Subsequently, the Line Officer, Faridkot SI Des Raj took the under-trials to police Station Sadar, Faridkot and put them in lock up. Then he lodged a complaint against Hari Shyam in the Roznamcha at Police Station Sadar, Faridkot and Police Lines. Later on, he sent a report of the entire incident including a copy of the complaint to respondent No. 2, who ordered a regular departmental enquiry against him under rule 16.24 of the Rules. In CWP No. 7979 of 1989 [(1991-1) PLR 222] (supra), the departmental proceedings were quashed.

(12) He drew my attention to *Ashok Kumar Vs. State of Punjab* (2) where it was held that non compliance with the provisions of Rule 16.38 PPR renders the order of dismissal illegal and unsustainable. Ashok Kumar No. 471/J posted in the Detective Staff, Amritsar was reported to be in league with smugglers/anti-social elements of Amritsar and passing on secret and classified information of vital importance to them to carry out their anti-social activities and after going through the facts and circumstances of the case and giving full consideration, SSP, Amritsar felt satisfied that it was not reasonably practicable to hold an enquiry because no witness was likely to depose against him due to fear for injury to his life, as envisaged by Rule 16.24 PPR. He passed an order dismissing him from service feeling that in the interest of maintenance of law and order and also in public interest, his retention in service was undesirable.



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(13) In the case in hand, however, there is no violation of Rule 16.38 PPR because no offence was committed by Jagir Singh *qua* Kuldip Singh in connection with his official relations with him. Constable Jagir Singh had nothing to do with the hurt case in which Kuldip Singh had been brought to the police station. Hurt case being investigated by ASI Harbhajan Singh. *Qua* Kuldip Singh, Constable Jagir Singh was totally unconcerned.

(14) Rule 16.38 PPR requires immediate information to be given to the District Magistrate by the Superintendent of Police of any complaint which he receives against a police officer and which discloses the commission of a criminal offence against him in connection with official relations with the public so that the District Magistrate could decide whether the investigation of the complaint shall be conducted by police officer or made over to a selected Magistrate having first class powers. Superintendent of Police is not required to inform the District Magistrate of every dereliction of duty committed by constable, head constable, etc. under his control in the discharge of their duty or otherwise. In this case, there was full compliance with the requirements of law and procedure so far as the inquiry was concerned. He was given full opportunity during the inquiry. SSP dismissed him from service after considering his reply to the show cause notice whereby he had been called upon to show cause why he be not dismissed from service.

(15) It was grave audacity on his part to have given patta blows to Kuldip Singh in Police Station Sidhwan Bet with whom he had nothing to do. Giving of patta blows to Kuldip Singh was an act of grave high-handedness on his part. Instead of feeling repentant over his conduct, when SI Manmohan asked him not to have done it, he misbehaved with him saying that he had seen many Thanedars the like of him. Constable Jagir Singh was a member of the disciplined force. He should have remained within the bounds of discipline. He committed the gravest act of indiscipline when he challenged the authority of SI, SHO, Police Station Sidhwan Bet under whom he was working. His behaviour assumed graver proportions because he was under the influence of liquor. Taking of liquor while on duty was an act of grave indiscipline on his part coupled with his misbehaviour with the SHO.

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(16) For the reasons given above, judgment and decree of Additional District Judge, Gurdaspur dated 25th July, 1997 are set aside and those of Sub Judge IInd Class, Gurdaspur dated 8th August, 1994 are restored. In consequences, the plaintiff's suit is dismissed but without any order as to costs.

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**R.N.R.**

*Before S.S. Sudhalkar, J*

G. S. JHAJ—*Petitioner*

*versus*

STATE OF PUNJAB & ANOTHER—*Respondents*

C.W.P. No. 5379 of 1999

29th March, 2001

*Constitution of India, 1950—Arts. 14 & 226—High Court Rules & Orders, Vol. V (Chapter-9), Rl. 7 (ii)—Compulsory retirement—Order by Full Court against an Addl. District Judge based on adverse report of Inspecting Judge—Designation as Inspecting Judge by Full Court—Decision taken by the Inspecting Judge deemed to be of Full Court—Placing of adverse report by Inspecting Judge before the next higher authority not necessary—No mala fides on the part of High Court—Necessary opportunity for representation against order of the Inspecting Judge given to the petitioner—Neither a disciplinary enquiry ordered nor any charge sheet issued to the petitioner—Question of lifting veil would not arise—Order of compulsory retirement not punitive—Petitioner being a member of Superior Judicial Service, Rule 7 of Chapter 9, Part A not applicable.*

Held, that the remarks regarding the petitioner's integrity are not found on inspection of one occasion only. They are because of visits to Faridkot and also because of contradictory decisions given in two bail applications within a very short span of time and when the raid against both the accused were carried out at the same time when both were going on in the same vehicle.

(Para 35)