

Before Mehtab S. Gill & Rakesh Kumar Jain, JJ.

HARVINDER SINGH EX. CONSTABLE 1111/R,—Petitioner

versus

STATE OF PUNJAB & OTHERS,—Respondents

C.W.P. No. 2275 of 2008

15th February, 2008

Constitution of India, 1950-Arts. 14, 16 & 226-Punjab Police Rules, 1934—Rls. 16.2 & 16.24—Absence of a constable from duty for about 2 months—Dismissal from service—Petitioner remained absence 32 times for a period of 404 days—Cumulative effect of continued misconduct—Petitioner failing to justify his absence by producing cogent evidence on record—Petition dismissed being without merit.

Held, that the petitioner had remained absent for 32 times for a total period of 404 days and also could not justify his absence by producing any cogent evidence on record. The judgment in *The State of Punjab vs. Parkash Chand, Constable, 1992(1) SLR 174* does not come to the rescue of the petitioner because a categorical finding has been recorded by the punishing authority in which his absence and the punishments earned thereto have been specifically mentioned and it has been held that the petitioner cannot desist from absenting from duty inspite of giving repeated opportunities and has no interest in his service. Further, *Siri Ram vs. State of Punjab, 1967 S.L.R. 678* is also not applicable because although the authorities have given opportunities of hearing to the petitioner muchless the enquiry officer before whom he has refused to leave evidence in his defence and had rather opted for filing the written reply. He was heard before inflicting the punishment by the punishing authority and was even heard personally by the Inspector General, Patiala Zone, Patiala.

(Para 15)

G.S. Mann, Advocate, *for the petitioner.*

RAKESH KUMAR JAIN, J.

(1) Ex-Constable Harvinder Singh No. 1111/R has filed the present writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of Certiorari for quashing show cause notice dated Nil (Annexure P-1), proposing therein dismissal of the petitioner from service, order dated 22nd June, 2005 (Annexure P-3) passed by the Senior Superintendent of Police Rupnagar, dismissing the petitioner from service, order dated 31st August, 2005 (Annexure P-5) passed by the D.I.G. Police Ludhiana Range, Ludhiana dismissing the appeal of the petitioner against the order dated 22nd June, 2005, order dated 10th April, 2006 (Annexure P-6) passed by the Inspector General of Police, Patiala Zone, Patiala, rejecting the revision petition filed by the petitioner, and order dated 6th June, 2007 (Annexure P-7) passed by the Director General of Police, dismissing the appeal-cum-mercy petition filed by the petitioner and also for a writ in the nature of mandamus, directing the respondents to reinstate the petitioner into service from the date of termination with all consequential benefits.

(2) Briefly the facts pleaded in the writ petition are that the petitioner had joined Punjab Police as a Constable on 22nd April, 1992 at Ludhiana. He absented from duty from 30th September, 2004 to 10th December, 2004 for a period of 2 months and 11 days while posted at Police Lines, Rupnagar. A departmental enquiry was conducted against him for his wilful absence from duty which was proved. So notice dated Nil (Annexure P-1) for his dismissal from service was issued to which he replied on 31st May, 2005 *vide* Annexure P-2. On 22nd June, 2005, S.S.P., Ropar, passed the order of dismissal which challenged by petitioner in appeal before the D.I.G., Ludhiana Range, Ludhiana, but the same was dismissed on 31st August, 2005. The petitioner had further filed revision under Rule 16.28 read with Rule 16.32 of the Punjab Police Rules, 1934 (for short, 'the Rules') to the Inspector General, Police which too was dismissed on 10th April, 2006. Feeling aggrieved, the petitioner filed a mercy petition to the Director General, Police (respondent No. 2), which also met the same fate *vide* order dated 6th June, 2007 (Annexure P-7).

(3) The petitioner alleged that he had explained his absence on the ground that he was ill and also his younger brother had died but the authorities did not take into consideration these compelling circumstances and passed the order of dismissal, although his absence was not intentional and had caused due to the family circumstances. He also objected to the enquiry proceedings and alleged that other employees who were similarly absent from duty have been reinstated even after their dismissal from service.

(4) In nutshell, the orders Annexure P-1, P-3, P-5, P-6 and P-7 are challenged on the ground that the enquiry has not been conducted in accordance with Rule 16.24 and no opportunity of personal hearing was given and the mandate of rule 16.2 has not been followed. The Appellate Authority as well as Revisional Authority have not dealt with the grant of leave and that the impugned orders are violative of Articles 14, 16 and 311 of the Constitution of India.

(5) We have heard Mr. G.S. Mann, Advocate, for the petitioner at some length and have perused the record.

(6) The S.S.P. Rupnagar, in his order dated 22nd June, 2005, has recorded that departmental enquiry was entrusted to Inspector Gulzar, Incharge Traffic, Ropar. The charge sheet and list of prosecution witnesses were delivered to the petitioner, who denied the same and wanted to place defence version. Thereafter, the enquiry officer allowed him to join departmental enquiry and in his presence, recorded the statements of the prosecution witnesses. The enquiry officer afforded full opportunity to cross examine the prosecution witnesses, but the petitioner did not do so.

(7) After recording the statements of the prosecution witnesses, the charge sheet was prepared and a copy thereof was delivered to the petitioner after approval. He denied the charges as he wanted to produce defence version for which the enquiry officer gave him sufficient time to submit his list of defence witnesses. Thereafter, the petitioner submitted in writing before the enquiry officer that he does not want

to produce any defence witness but wants to produce in writing. The enquiry officer had given sufficient time to the petitioner to submit in writing which he submitted.

(8) After perusing the statements of the prosecution witnesses, written reply and entire evidence available on the departmental enquiry file, the charges were found to have been proved and the enquiry file was sent to the S.S.P. Ropar, for final decision.

(9) In his order Annexure P-3 dated 22nd June, 2005, the S.S.P. found that before inflicting the punishment of dismissal, an opportunity be given to the petitioner to show cause and in that process, notice was prepared and delivered to him along-with a copy of enquiry report on 17th May, 2005 under receipt. The petitioner was given 15 days time to submit his reply or his defence version. The petitioner reacted to the show cause notice and submitted his reply to the S.S.P, Ropar dated 1st June, 2005 which he had taken on record and found that the petitioner was liable to be served with punishment of dismissal.

(10) The S.S.P, Ropar also noticed that in the past, the petitioner has been given punishments many a times due to his absence from duty which are reproduced below :-

- i. taking alcohol during duty, his two years' service was permanently forfeited *vide* O.B. No. 3054 dated 30th Devember, 1997;
- ii. for remaining absent from 1st June, 1999 to 1st August, 1999, his two years' service was forfeited permanently *vide* O.B. No. 134 dated 19th January, 2001;
- iii. for remaining absent from 31st October, 1999 to 10th December, 1999, his one years' earned service was permanently forfeited *vide* O.B. No. 135 dated 19th January, 2001;
- iv. for remaining absent from 19th April, 2001 to 11th June, 2001, his one year's service was forfeited with permanent effect *vide* O.B. No. 440 dated 15th March, 2002;

- v. on the allegation of remaining absent from 3rd March, 2003 to 2nd April, 2003, his two years' earned service was forfeited *vide* O.B. No. 350 dated, 20th February, 2004;
- vi. two years' service was permanently forfeited *vide* O.B. No. 537 dated 24th March, 2004 for remaining absent from 17th December, 2002 to 3rd January, 2003. The period of absence was treated as the period without duty.

(11) Besides the above, it was found that the petitioner had remained absent for 32 times totalling 404 days and had become incorrigible. Therefore, it was found that he is not interested in service and his repeated absence was against norms of disciplined force, therefore, the order of dismissal was passed.

(12) While passing the Appellate Authority order dated 31st August, 2005, The D.I.G, Ludhiana Range, Ludhiana, had also found that the petitioner had failed to produce any documentary evidence in support of his above allegations, nor submitted any medical certificate. He was found to be habitual absentee and unfit to be kept into disciplined force. In the order dated 10th April, 2006, the Inspector General, Patial Zone, has recorded that he had heard the petitioner personally on 5th April, 2006 and found that the petitioner had become incorrigible as he is a habitual absentee. His mercy petition was also dismissed by D.G.P, on 6th June, 2007 being meritless.

(13) Rule 16.2 of the Rules as applicable to the State of Punjab, provides that order of dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect of continued misconduct proves incorrigibility and complete unfitness for police service. The petitioner falls in second category as the cumulative effect of his continued misconduct of remaining absent for 32 times for a total period of 404 days coupled with his absence from 30th September, 2004 to 10th December, 2004 for a period of two months, 10 days and 21 hours, without any reason proves incorrigibility in his habit of remaining absent without informing or without getting the leave sanctioned.

(14) Learned counsel for the petitioner in support of his contentions has cited some decisions in the cases of **Shri Bhagwan Lal Arya versus Commissioner of Police Delhi & Ors (1)**, **The State of Punjab versus Parkash Chand Constable (2)**, **Siri Ram versus The State of Punjab (3)**.

(15) We have gone through the cited case laws and find that they are on different footings and are not applicable to the facts of the case in hand. In **Shri Bhagwan Lal's Case** (supra), it was held that mere one incident of absence and that too because of bad health and valid and justified grounds/reasons cannot become basis for awarding such a punishment. Though, it was further held therein that punishment of dismissal/removal from service can be awarded only for the acts of grave nature or as cumulative effect of continued misconduct proving incorrigibility of complete unfitness for police service. In the present case, it has been found that the petitioner had remained absent for 32 times for a total period of 404 days and also could not for justify his absence by producing any cogent evidence on record. The other case law cited by the learned counsel for the petitioner in **Parkash Chand's Case** (supra) is to the effect that the punishing authority has not applied his mind while awarding the punishment of dismissal. This judgment too does not come to the rescue of the petitioner because a categorical finding has been recorded by the punishing authority in which his absence and the punishments earned thereto have been specifically mentioned and it has been held that the petitioner cannot desist from absenting from duty inspite of giving repeated opportunities and has no interest in his service. Further, **Siri Ram's Case** (supra), is also not applicable in the present case because although the authorities have given opportunities of hearing to the petitioner much-less the enquiry officer before whom he has refused to lead evidence in his defence and had rather opted for filing the written reply. He was heard before inflicting the punishment by the punishing authority and was even heard personally by the Inspector General, Patiala Zone Patiala.

(16) In view of above discussion, we find no merit in this petition and the same is hereby dismissed in limine.

R.N.R.

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- (1) J.T. 2004(3) S.C. 384
(2) 1992(1) S.L.R. 174
(3) 1967 S.L.R. 678