

Court No. - 10

Case :- WRIT - A No. - 55703 of 2005

Petitioner :- Hari Ram Yadav

Respondent :- State of U.P. and Others

Counsel for Petitioner :- Arvind Agrawal, Indramal Yadav, Narendra Kumar Pathak

Counsel for Respondent :- C.S.C.

Hon'ble Kshitij Shailendra, J.

1. Heard Sri Narendra Kumar Pathak, learned counsel for the petitioner, learned Standing Counsel for the respondents.
2. The petitioner was appointed as constable in Civil Police. He is aggrieved by two orders. By the first order dated 20.7.2001, the petitioner was dismissed from service whereas by the second order dated 30.1.2002, the departmental appeal filed by him has been dismissed.
3. Admittedly no revision was preferred against the order of the appellate authority. Nevertheless, by-passing the remedy of revision, the Court has proceeded to consider the writ petition on merits as affidavits have been exchanged.
4. The submission of learned counsel for the petitioner is that the only charge levelled against the petitioner was his intermittent absence from his duty. The said absence was on account of sufferance of the petitioner from mental disorder which has been explained by learned counsel for the petitioner as the disease under which the patient sometimes behaves normally and sometimes abnormally. It is contended that without following the due procedure of law and the proceedings, in an ex-parte manner, the impugned punishment order has been passed.
5. Learned standing counsel submits that the petitioner avoided answering the charges levelled against him by the department time and again. He has referred to various annexures to the counter affidavit to show that time and again various notices were served either upon the wife of the petitioner or his son and even on the petitioner on 27.1.2001 by special messenger and various show cause notices were issued asking the petitioner to submit his reply to the charge but the petitioner never turned-up. He has also referred to the report which shows that the statements of witnesses from the department side were recorded and it was also observed

that the petitioner being a drunker occasionally appears on the duty as per his own wishes and remains absent without intimating the department.

6. Learned counsel for the petitioner has referred to various certificates issued by the doctor concerning his alleged ailments and only arguments advanced are that the said medical evidence could not be produced before the authorities and the service of notice was not made on the petitioner except on one occasion but it was served on his son at the time when the petitioner had gone to take medicines.

7. I have perused the entire record of writ petition and various affidavits filed from both the sides. It is not the case that merely because the petitioner did not respond to the show cause notice, an order of punishment has been passed. Although holding an inquiry has not been clearly mentioned in the impugned order making a recital that during the course of departmental proceedings, the notice dated 24.6.2001 was served upon the petitioner through special messenger, the counter affidavit is supported by a detailed inquiry report. It is, therefore, clear that the department has proceeded in accordance with rules of 1991 and the petitioner avoided participation in the inquiry proceedings. The medical unfitness of the petitioner, even otherwise does not impress the Court. Various affidavits in this writ petition have been filed by the petitioner himself and it appears that the petitioner tried to create an artificial ground justifying his absence.

8. In view of the above, as the petitioner has already retired from his post, in the entire facts and circumstances of the case, the Court is not inclined to interfere in the matter.

9. The writ petition fails and is, accordingly, **dismissed**.

Order Date :- 5.12.2023
Gaurav Kuls