

Court No. - 10

Case :- WRIT - A No. - 66547 of 2008

Petitioner :- Baikuntha Nath Rai

Respondent :- State of U.P. and Others

Counsel for Petitioner :- Shailendra Sharma

Counsel for Respondent :- C.S.C.

Hon'ble Kshitij Shailendra,J.

1. Heard Sri Shailendra Sharma, learned counsel for the petitioner, Sri Deepak Chauhan, learned Additional Chief Standing Counsel for the State-respondents and perused the record.

2. The petitioner was appointed on the post of 'Constable' (Armed Police Force) in the year 1978 and by the order impugned dated 3.12.2007, he was dismissed from services. The departmental appeal and the revision preferred by the petitioner against the punishment order have also been dismissed.

3. The charge against the petitioner was to the effect that he unauthorisedly absented himself from duty for a period of 60 days with effect from 15.4.2006 and then for a period of 13 days with effect from 3.8.2006 and again for a period of 31 days with effect from 11.10.2006.

4. It is contended by learned counsel for the petitioner that on account of marriage of his elder daughter, which was solemnized on 29.4.2006, the petitioner applied for leave by moving an application on 12.4.2006. However, after a period of 2 days on 14.4.2006, he was transferred from one office to another in the same district and then again moved an application on 17.4.2006 which, according to the petitioner, was granted. It is further contended that over a period of 30 years of service, the petitioner was never charge-sheeted and it was for the first time when, pointing out certain absence, the petitioner has been punished. He further submits that even if the petitioner was found absent from duty, such absence cannot be termed as intentional or wilful and the Department was not justified in terminating the services of the petitioner. Learned counsel has referred to page no. 33 of the writ petition and submits that after the conclusion of inquiry and before awarding the punishment, the petitioner requested the Authorities to provide him opportunity to submit explanation, but they did not

provide the same. In support of his submission, learned counsel has placed reliance upon the following authorities :

"1. *Satya Narain Tripathi Vs. State of U.P. and others* 2016 2 ADJ 636; 2. *Syed Amirul Haq Vs. State of U.P. and others* 2016 2 ADJ 107; 3. *Krushnakant B. Parmar Vs. Union of India & Another* 2012 (2) Supreme 254."

5. Learned Standing Counsel, on the other hand, submits that the charge levelled against the petitioner was serious in nature and it was not only once, but consistently the petitioner absented himself without intimating the department. He has referred to the record of inquiry proceedings and submits that proceedings, in accordance with law, have been carried out against the petitioner, but he not only failed to respond to the charge-sheet but also avoided participation in the inquiry proceedings and, therefore, the orders impugned do not warrant any interference.

6. Having heard learned counsel for the parties, I find that the Department made all efforts to ensure petitioner's participation in the inquiry proceedings, however, in one way or the other, the petitioner somehow avoided his appearance in the inquiry. Under the circumstances, ex-parte inquiry was conducted against the petitioner and witnesses were examined. For the first time, the petitioner came up with his little defense before the Appellate Authority but even that was found to be without any substance and even if argument of the petitioner, to some extent, is accepted that on account of marriage of his elder daughter, the petitioner applied for some leave, there being nothing on record to establish that the leave application was ever allowed and even if it was deemed to have been allowed, it was related to the month of April, 2006 only. There is nothing on record to show as to for what reason the petitioner again absented himself in August and October, 2006. The Authorities have recorded that in certain proceedings, the petitioner was deputed for getting his statement recorded but he did not record the statement and also did not come back to the office and deliberately absented himself from the Department.

7. Clear findings have been recorded on intentional and deliberate absence of the petitioner, time and again. The petitioner being a member of 'Disciplined Armed Force', he cannot be expected to take his services very casually. The Department proceeded in accordance with law against the petitioner and in absence of any response to the charge-sheet, it is not a case that the Department did not, at all, conduct any inquiry in the matter, rather it was justified to conduct ex-parte proceedings against the petitioner.

Insofar as, the request of the petitioner to submit his explanation, before awarding punishment is concerned, I find that the punishment order was passed on 3.12.2007 and just before that in 2007, the petitioner approached the Authorities to accept his request sympathetically and was granted successive opportunities to submit explanation but despite time granted for this purpose, repeatedly, the petitioner did not submit response

8. The entire record of inquiry as well as the findings recorded in the order impugned do not suffer from any perversity or illegality.

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

Order Date :- 30.11.2023

CS/-