

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Civil Writ Petition No. 3457 of 2025

Date of Decision: 22.12.2025

Sh. Satish Chander

.....Petitioner

Versus

State of Himachal Pradesh and Anr.

.....Respondents

Coram

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? Yes.

For the Petitioner: Mr. Nikhil Katwal, Advocate.

For the respondents: Mr. Anup Rattan, Advocate General, Mr. Rajan Kahol & Mr. Vishal Panwar, Additional Advocates General and Mr. Ravi Chauhan & Mr. Anish Banshtu, Deputy Advocates General.

Sandeep Sharma, J. *(Oral)*

Precisely, the question which needs to be determined in the case at hand, is that “whether allegation of unauthorized absence of an employee from service can be sustained without proving that unauthorized absence was willful or not?”

2. Precisely, facts of the case as emerges from the pleadings adduced on record by the respective parties are that on 12.5.1997 petitioner was appointed as Junior Engineer at HPPWD, Chenab Valley Division Udaipur, Lahaul and Spiti, on regular basis. After his having put in more than 27 years of service as Junior Engineer, he was promoted to the post of Assistant Engineer (SDO) vide order dated

21.5.2022 and thereafter, was given posting at National Highway Sub-Division HPPWD, Shahpur Kangra. Finally, after having rendered more than 30 years of service, petitioner superannuated on 30.11.2023 from the office of Superintending Engineer, HPPWD 5th Circle Palampur, Kangra. Since despite his having rendered more than 30 years' service, petitioner has been denied pensionary benefits, he has approached this Court in the instant proceedings, praying therein for following main reliefs:

“A. That a writ in the nature of Mandamus or any other appropriate writ order or directions may kindly be issued directing the Respondents for extending the pensionary benefits, Gratuity, leave encashment alongwith all consequential benefits to the petitioner for the service rendered by him.

B. That a writ in the nature of Mandamus may kindly be issued directing the respondents to verify the service of petitioner pertaining to year 01.07.2008 to 31.01.2011.

C. That a writ in nature of Mandamus may kindly be issued directing the respondents to treat the absent period of the petitioner as leave without pay or any other suitable relief in favour of petitioner for such period.”

3. Pursuant to notices issued in the instant proceedings, respondents have filed reply, wherein facts as have been noticed herein above, have not been disputed, rather an attempt has been made to refute the claim of the petitioner on the ground that he remained absent from the duty for total period of 1957 days during his service career upto the retirement. While fairly admitting the

factum with regard to petitioner's appointment as Junior Engineer (Civil) in Public Works Department in the year 1997 on regular basis, it has been claimed by the respondents that petitioner herein misrepresented to the department and succeeded in getting promotion to the post of Assistant Engineer. If the reply filed by the respondents is perused in its entirety, there is nothing to suggest that action was ever taken by the respondents qua willful absence of the petitioner, which though in total comes out to be 1957 days, but same pertains to different period. At this stage it would be apt to take note of para 3 of the reply filed by the respondents, which reads as under:

3. That during the posting of the petitioner at different places, he remained willfully absent from duty without any intimation or leave from the competent authority. The complete details of absence of the petitioner during his service carrier are as under:

From	To	Place of posting	No. of days.
01.07.2002	05.08.2002	7 th Circle HPPWD Dalhausie	36 days
01.07.2008	31.01.2011	Mandi Division No.1	945 days
01.04.2015	30.04.2016	Rohru Division	396 days
01.05.2016	31.10.2017	Tanda Division	549 days
01.08.2018	31.08.2018	Tanda Division	31 days

4. As per aforesaid table, petitioner remained absent from duty without leave for total period of 1957 days. Since afore service period never came to be verified by any officer, respondents treated the same to be unauthorized absence period, but there is no explanation in the reply that if petitioner remained absent from duty without any

leave for total period of 1957 days then why and under what circumstances, he was considered for promotion to the post of Assistant Engineer that too in the year 2022. If aforesaid period was never verified by the competent authority, there was otherwise no occasion for the respondents to regularize the services of the petitioner. This Court has reason to presume and believe that while considering the case of the petitioner for promotion to the post of Assistant Engineer from the post of Junior Engineer, his ACRs must have been taken into consideration. If petitioner remained willfully absent for 1957 days, adverse entry ought to have been made in the ACRs. Leaving everything aside, there is nothing on record suggestive of the fact that disciplinary proceedings, if any, ever came to be initiated against the petitioner for his having remained absent from duty without any leave.

5. Needless to say, unauthorized absence is required to be proved by the department and that can only be done in disciplinary proceedings, if any, initiated against Delinquent Officer. Firstly, while issuing show cause notice, department calls upon the delinquent employee to explain that why and for what reasons, he remained willfully absent from office and in case, delinquent employee disputes afore claim of the department, department is under obligation to appoint inquiry officer to inquire into the matter. Thereafter, after having afforded due opportunity of hearing to the Delinquent Officer

as well as other stake holders, Enquiry Officer shall proceed to submit inquiry report. It is only on the basis of inquiry report, Disciplinary Authority will proceed to award penalty, if any.

6. Reliance in this regard is placed upon judgment rendered by the Hon'ble Apex Court in **Krushnakant B. Parmar v. Union of India and Anr.** (2012) 3 SCC 178, wherein it categorically came to be held that for sustaining allegation of willful absence, it must be proved that unauthorized absence was willful. Relevant paras of the afore judgment read as under:

"15. Rule 3(1) (ii) and Rule 3(1)(iii) of Central Civil Services (Conduct) Rules, 1964, relates to all time maintaining integrity, devotion to duty and to do nothing which is unbecoming of a Government servant and reads as follows:

"Rule 3 - General. (1) Every Government servant shall at all times—

- (i) maintain absolute integrity;
- (ii) maintain devotion to duty; and
- (iii) do nothing which is unbecoming of a Government servant."

16. In the case of appellant referring to unauthorised absence the disciplinary authority alleged that he failed to maintain devotion of duty and his behaviour was unbecoming of a Government servant. The question whether unauthorised absence from duty' amounts to failure of devotion to duty or behaviour unbecoming of a Government servant cannot be decided without deciding the question whether absence is wilful or because of compelling circumstances.

17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such

absence cannot be held to be wilful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a Government servant.

18. In a Departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in absence of such finding, the absence will not amount to misconduct.

19. In the present case the Inquiry Officer on appreciation of evidence though held that the appellant was unauthorisedly absent from duty but failed to hold the absence is wilful; the disciplinary authority as also the Appellate Authority, failed to appreciate the same and wrongly held the appellant guilty.

20. The question relating to jurisdiction of the Court in judicial review in a Departmental proceeding fell for consideration before this Court in *M.B. Bijlani vs. Union of India and others* reported in (2006) 5 SCC 88, wherein this Court held:

"It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi- criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of transfer probability to prove the charges on the basis of materials on record. While doing

so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

21. In the present case, the disciplinary authority failed to prove that the absence from duty was wilful, no such finding has been given by the Inquiry Officer or the Appellate Authority. Though the appellant had taken a specific defence that he was prevented from attending duty by Shri P. Venkateswarlu, DCIO, Palanpur who prevented him to sign the attendance register and also brought on record 11 defence exhibits in support of his defence that he was prevented to sign the attendance register, this includes his letter dated 3.10.1995 addressed to Shri K.P. Jain, JD, SIB, Ahmedabad, receipts from STD/PCO office of Telephone calls dated 29-9-1995, etc. but such defence and evidence were ignored and on the basis of irrelevant fact and surmises the Inquiry Officer held the appellant guilty.

22. Mr. P. Venkateswarlu, DCIO, Palanpur, who was the complainant and against whom appellant alleged bias refused to appear before the Inquiry Officer in spite of service of summons. Two other witnesses, Shri Jivrani and Shri L.N. Thakkar made no statement against the appellant, and one of them stated that he had no knowledge about absence of the appellant. Ignoring the aforesaid evidence, on the basis of surmises and conjectures, the Inquiry Officer held the charge proved.

23. Though the aforesaid facts noticed by the Appellate Authority but ignoring such facts giving reference of extraneous allegations which were not the part of the charge, dismissed the appeal with following uncalled for observation:

"The appellant even avoided the basic training required for the job and asked JAD Ahmedabad to send all the training papers for his training at IB Training School, Shivpuri (Madhya Pradesh) to his residence at Ahmedabad. 'An untrained officer is of no worth to the department'."

24. In the result, the appeal is allowed. The impugned orders of dismissal passed by disciplinary authority, affirmed by the Appellate Authority; Central Administrative Tribunal and High Court are set aside. The appellant stands reinstated."

7. Admittedly, in the case at hand, no disciplinary proceedings were ever initiated against the petitioner for his having allegedly remained willfully absent for 1957 days, meaning thereby, at no point of time, respondent-department was able to prove that petitioner remained absent from the duty willfully. If it is so, afore period, on the basis which, subsequently petitioner came to be promoted against the post of Assistant Engineer, is required to be taken into consideration while computing pensionary benefits of the petitioner.

8. At this stage, Mr. Rajan Kahol, learned Additional Advocate General, attempted to argue that order dated 1.12.2023, passed by the respondents in compliance to order dated 18.9.2023, passed by this Court in CWPOA No. 6172 of 2020 filed by the petitioner for regularization of absence period has been not laid challenge. It emerges from the pleadings adduced on record by the respective parties that prior to filing of the petition at hand, petitioner

filed CWPOA No. 6172 of 2020, praying therein to issue direction to the respondents to regularize his period of absence, however, this Court vide order dated 18.9.2023, directed the respondents to take final decision on the representation of the petitioner. Vide order dated 16.12.2023 (Annexure P-9), respondents while rejecting the representation, reserved liberty to the petitioner to apply leave for absence period alongwith authenticated documentary proof of illness or any other reason to the controlling officer, which can be promptly processed by controlling officer as per rules.

9. Though Mr. Rajan Kahol, learned Additional Advocate General, attempted to persuade this Court to agree with his contention that petitioner ought to have laid challenge to afore order, in case, he was not satisfied with the same, but this court is of the view that once respondents have not been able to prove willful absence of the petitioner from duty, there is/was no occasion, if any, for the respondents to lay challenge to afore order passed by the respondents in compliance to mandate contained in the afore judgment.

10. Though this Court is fully convinced that 1957 days, for which petitioner allegedly remained absent without leave, cannot be excluded from the total service of the petitioner, but even if it is presumed that aforesaid period being unauthorized cannot be taken into consideration while calculating total service of the petitioner,

petitioner on account of his having rendered verified period of service of more than twenty years is otherwise entitled to pension.

11. Prayer made in the instant petition deserves to be allowed for two reasons; **i)** respondent department never proved that petitioner remained absent for 1957 days willfully; and **ii)** despite there being alleged unauthorized absence of the petitioner for 1957 days, he was granted promotion to the post of Assistant Engineer. It is only after petitioner's promotion to the post of Assistant Engineer, plea with regard to his being absent unauthorizedly came to be raised, probably to save the officials, who otherwise had failed to take cognizance of the matter at appropriate time. Alleged willful absence of the petitioner starts from year 2002 till 2018, but interestingly, during afore years, not even single Show Cause Notice, ever came to be issued to the petitioner to explain that why he remained absent for days detailed in para-3 of the reply. Virtually, by not initiating disciplinary proceedings for petitioner's having remained willfully absent for 1957 days coupled with the fact that subsequently, he came to be promoted to the post of Assistant Engineer, respondents themselves condoned the period of willful absence.

12. While referring to para-4 of the petition, which is duly supported by an affidavit, Mr. Rajan Kahol, learned Additional Advocate General, submitted that as per own case of the petitioner, he remained absent from the duty on account of illness of his mother

w.e.f. 1.4.2015 to 30.4.2016 and thereafter w.e.f. 1.5.2016 to 31.10.2017.

13. Having perused afore pleadings adduced on record by the petitioner, though allegation of respondent department that petitioner remained willfully absent w.e.f. 1.4.2015 to 30.4.2016 and thereafter w.e.f. 1.5.2016 to 31.10.2017 is substantiated, but as has been observed herein above, that to sustain such charge, department is under obligation to prove that absence was willful. Admittedly, in the case at hand, department never succeeded in proving that absence of the petitioner was willful, rather he has rendered plausible explanation on record for his having not joined the service during aforesaid period. In **Krushnakant B. Parmar** case (supra), Hon'ble Apex Court has categorically held that if absence is due to compelling circumstances under which it is not possible to report for or perform duty, such absence cannot be held to be willful and employee guilty of misconduct.

14. Consequently, in view of the above, present petition is allowed and respondents are directed to consider the period of petitioner's absence i.e. 1957 days as valid service and same may be counted towards total service rendered by the petitioner prior to his superannuation for all intents and purposes. Since petitioner has been fighting for his rightful claim for so many years, this court hopes and trusts that needful in terms of directions contained in the

judgment shall be done expeditiously, preferably, within two months.
In the aforesaid terms, present petition is disposed of alongwith
pending applications, if any.

December 22, 2025

manjit

**(Sandeep Sharma),
Judge**