

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.20561 of 2008
Decided on : 30.11.2015**

Ex-constable Vishwa Mitter

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Kamaldip Singh Sidhu, Advocate
for the petitioner.

Mr. L.S. Virk, Addl. AG, Punjab.

G.S. Sandhawalia , J. (Oral)

The petitioner challenges the order dated 17.03.2005 (Annexure P-2), whereby he was dismissed from service on account of absence from duty for 2 months and 4 days. The appellate order dated 22.10.2008 (Annexure P-3), whereby his appeal is also dismissed, is also under challenge.

The pleadings would go on to show that the petitioner had joined as a Constable in the Punjab Police Department on 08.03.1976 and on account of his absence from duty, he was dismissed on 24.10.1987. The order was further upheld on the departmental side leading to the petitioner challenging it by filing a civil suit, which was dismissed on 22.02.1995. The petitioner, thereafter, filed civil appeal before the Additional District Judge, Kapurthala, wherein his appeal was allowed on 06.11.2001 (Annexure P-1) and a fresh inquiry was ordered as per Punjab Police Rules. The said judgment and decree was challenged by

the State in RSA No.1495 of 2002 and vide order dated 19.05.2006, the operation of the decree was stayed.

In the meantime, since stay was granted after 4 years, prior to that the inquiry was got conducted by the State from the Deputy Superintendent of Police, Special Branch, Kapurthala, who submitted his report on 17.02.2005. The petitioner was also reinstated in the meantime on 22.02.2005, since there was no stay at that point of time. Thereafter, the termination order was passed, which is now subject matter of challenge.

Counsel for the petitioner vehemently argued that there was no inquiry even as per the directions of the Additional District Judge, Kapurthala and a specific averment has been made regarding this fact in paragraph No.5 of the pleadings.

In the reply filed by the State, it has been specifically controverted by pleading that fresh inquiry had been conducted by Deputy Superintendent of Police, Special Branch, Kapurthala and petitioner did not join the inquiry and he was proceeded *ex parte*. On the basis of inquiry report, the punishing authority issued the show cause notice and, thereafter, the dismissal order was passed. The said averments have not been controverted by the petitioner even by filing replication, though the reply was filed way back in 2009.

The punishing authority has examined the service

record of the petitioner and also pensionable service while imposing the punishment of dismissal. While recording the finding that the petitioner was unfit and incorrigible for the police department, the length of service has thus been kept in mind, which is mandatory requirement of the rule. The petitioner was also given a personal hearing, which would be clear from the order dated 17.3.2005. The relevant portion of the said order reads as under:-

“In this regard, this office had issued a letter No.2869/V.D. dated 16.03.2005 in compliance to which, he appeared in the office on 17.03.2005 and presented himself in person before me and submitted his defence version. He informed that he absented himself due to his domestic circumstances and pleaded for not terminating him. I carefully perused his written statement produced before me in person and have not found the same to be satisfactory and I do not agree with the same. In this connection, his previous service for the purpose of pension has also been examined carefully but his pensionable service is less than even 12 years. Due to this, he does not even qualify for the pension. Apart from this, his previous service record was also carefully examined and it was found that he had remained absent previous also and was awarded the following punishments:-

* In the year 1981, his three years' service was forfeited with permanent effect, as he was found drunk during duty hours.

* In the year 1986, his one year service was forfeited with permanent effect because he had remained willfully absent without permission and without leave.

* In the year 1987, 'censure' was awarded to him, as during checking he was found absent from duty.

* In the year 1987, he had remained willfully absent from duty for two months five days without leave and without permission.

On perusal of his previous service record, it has been found that earlier also, he is a habitual absentee and does not perform his duty with interest and in discipline. The cumulative effect of his said ill-behaviour, duty and continuous ill-behaviour/absenteeism, go to prove him fully unfit and incorrigible for the police department service. His pensionable service is yet to complete. Therefore, under the said circumstances, I hereby terminate his services from the police department immediately. The period of his absence recorded in the said departmental inquiry is treated as non duty period."

As noticed the said order has further been challenged in revision. The regular second appeal of the State was dismissed as infructuous on 27.04.2015, in view of the fact that the petitioner

was reinstated. It is settled principle that the absence for person in uniform is a serious charge and nothing could be brought on record to show what was the ground of absence for 2 months and 4 days. No justification has been given why the petitioner was absent or that on account of some medical ailment or for some other circumstances beyond his control, he could not attend his duties.

In such circumstances, the finding which has been recorded by the punishing authority regarding the unfitness of the petitioner to continue with the police department is not liable to be interfered. This Court in ***Mohinder Pal, Ex. Constable Vs. The State of Punjab and others'* 2003 (5) SLR 685** wherein absence was of 2 months 22 days considered the case law on the subject in detail and held that once the mis-conduct of willful absence from duty had been proved and the disciplinary authority had taken into consideration the length of service also for the purpose of pension, the dismissal on the said account from the police force, which was a disciplined force, could not be faulted with.

The Division Bench of this Court in ***'Amar Singh (Constable) Vs. State of Punjab and others'* 2006 (4) SLR 477**, while examining the issue of absence from duty of a person in uniform rejected the plea, wherein the absence was of 85 days. It was held that once there was forfeiture of service and the orders

have not been challenged and the length of service was as such, which could not earn pension after the forfeiture, the dismissal on the grounds of willful absence was justified.

Accordingly, there is no scope in the present writ petition and same is hereby dismissed.

NOVEMBER 30, 2015

Naveen

**(G.S. SANDHAWALIA)
JUDGE**