

CWP No.700 of 2012

#1# Manoj Kumar
2016.08.30 09:06
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IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.700 of 2012

Date of decision: 26.08.2016

Som Nath

....Petitioner

Vs.

State of Punjab and Ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Mohit Jaggi, Advocate for the petitioner.

Mz. Puneet Kaur Sekhon, Addl.A.G, Punjab.

Jaswant Singh, J

Petitioner, who was working as a Constable in the Police Department, Punjab, has sought for issuance of a writ of Certiorari for quashing the impugned order dated 14.1.2006 (**P.5**) passed by Senior Superintendent of Police, Jalandhar-respondent No.5 imposing the punishment of forfeiture of five increments, order dated 15.6.2006 (**P.6**) passed by Deputy Inspector General of Police, Jalandhar-respondent No.4 dismissing him from service and order dated 29.6.2007 (**P.8**) passed by Inspector General of Police, Jalandhar-respondent No.3 dismissing the revision and order dated 06.8.2010 (**P.9**) upholding the view by Director General of Police, Punjab-respondent No.2 in appeal.

Learned counsel for the petitioner contends that the absence of the petitioner from service was not intentional but due to the reasons beyond his control as he was medically not fit to resume his duties. It has also been argued that the past record of the petitioner has been taken into consideration while passing the impugned dismissal order dated 15.6.2006 (**P.6**), which amounts to

double jeopardy and as such deserves to be set aside.

Heard learned counsel for the parties and perused the paper book with their able assistance.

A perusal of the impugned order dated dated 14.1.2006 (P.5) reveals that the petitioner was charge sheeted on account of his wilful absence w.e.f 03.6.2003 for a period of 206 days resulting into suspension of the petitioner from service and followed by departmental inquiry. Inquiry Officer submitted his report thereby duly proving the charges and consequent thereupon a show cause notice dated 19.5.2005 was issued. The petitioner submitted his written reply and after consideration of the same, respondent No.5 while taking a lenient view, imposed the punishment of forfeiture of five increments in lieu of five years of approved service with cumulative effect and the period of suspension was treated as suspension and absence was treated as period of without duty.

Respondent No.4 being the Reviewing Authority, invoked the provisions of Rule 16.28 of the Punjab Police Rules against the petitioner, while considering the punishment imposed by respondent No.5 to be too mild in view of the various instances of wilful absence of the petitioner and the present case being a gravest act of misconduct by a member of disciplined force, which read thus:

"16.28. Powers to review proceedings (1) The Inspector-General, a Deputy Inspector-General, and a Superintendent of Police may call for the records of awards made by their subordinates and confirm, enhance, modify or annul the same, or

make further investigation or direct such to be made before passing orders. (2) If an award of dismissal is annulled, the officer annulling it shall state whether it is to be regarded as suspension followed by reinstatement, or not. The order should also state whether service previous to dismissal should count for pension or not. (3) In all cases in which officers propose to enhance an award they shall, before passing final orders, give the defaulter concerned an opportunity of showing cause, either personally or in writing, why his punishment should not be enhanced.”

It is not in dispute that the petitioner has been awarded punishment on as many as eight occasions for wilful absence, the details of which is given in Preliminary Objections of the reply by way of an affidavit filed on behalf of respondent Nos.1 to 5 and the relevant part of the same reads as under:

“i) Two years service forfeited with permanent effect vide this office order No.756-61/PA dated 09.02.1999 for being absent for 151 days, 13 hours. (annexure R.1).

ii) Three years service forfeited with permanent effect vide this office order No.2729-33/PA dated 01.05.1999 for being absent for 170 days. (Annexure R.2).

lii) Four years service forfeited with permanent effect vide this office order No.7053-57/PA dated 11.12.1999 for being absent for 360 days (Annexure R.3).

iv) Two years service forfeited with permanent effect vide this office order No.4660-64/PA dated 05.10.2000 for being absent for 137 days 3 hours & 30 minutes (Annexure R.4).

v) Three years service forfeited with permanent effect with this office order No.3237-41/PA dated 12.07.2001

for being absent for 179 days and 9 hours (Annexure R.5)

vi) One years service forfeited with permanent effect vide this office order No.3611-15/PA dated 06.08.2001 for being absent for 72 days and 9 hours (Annexure R.6)

vii) He was dismissed from service by the then Senior Superintendent of Police, Jalandhar on 15.03.2002 for being absent for 230 days and 9 hours from duty for the period 11.05.2001 to 27.12.2001, vide this office order No.1293-98, dated 15.03.2002 (Annexure R.7). But later on he had filed appeal before the deputy Inspector General of Police, Jalandhar Range, Jalandhar which was accepted vide his office order dated 13.03.2003 (Annexure R.8), whereby his dismissal punishment was reduced to forfeiture of three year of service.

Viii) Two years service forfeited with permanent effect vide this office order No.1979-83/PA dated 24.04.2006 for being absent from 08.10.2004 to 04.02.2005, for 119 days (Annexure R.9)."

It is not in dispute that in consonance with Rule 16.28 of the PPR, a show cause notice dated 07.3.2006 was issued to the petitioner by respondent No.4 before passing the impugned dismissal order dated 15.6.2006 and he was afforded an opportunity to file his written reply, which was duly received by the wife of the petitioner-Kamaljit Kaur on 15.3.2006 through special messenger but the petitioner neither appeared in person nor filed any reply and thereafter also a memo dated 19.5.2006 was issued thereby granting him one more opportunity followed by an reminder dated 06.6.2006 and 09.6.2006. Still the position remained the same as neither written representation was

submitted against the show cause notice nor the petitioner appeared in person to explain his position. Even, no counter or rejoinder has been filed by the petitioner to the instances quoted in the preliminary objections and order of punishment attached as Annexure **R.1 to R.9** of the reply filed by the respondents.

Record of the case reveals that the petitioner was inducted as a Constable with the Punjab Police on 08.12.1990 and until his dismissal i.e 15.6.2006, he remained wilful absent for a period of approximately 2127 days on different occasions as enumerated above.

In view of the aforesaid discussion, the petitioner has rightly been dismissed from service by respondent No.4 by invoking the provisions of Rule 16.28 of PPR and no interference is warranted under Article 226 of the Constitution.

Dismissed.

August 26, 2016
manoj

(JASWANT SINGH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No