

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

Date of decision: 04.04.2016

CWP No.2650 of 2015

Roshan Lal

...Petitioner

Vs.

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. K.S.Dadwal and Mr. Manish Dadwal, Advocates,
for the petitioner.

Mr. Vaibhav Sharma, DAG, Punjab.

1. *To be referred to the Reporters or not?*
2. *Whether the judgment should be reported in the Digest?*

RAJIV NARAIN RAINA, J. (ORAL)

1. In the facts narrated briefly hereafter I am incline to deduce from them that hardly any indulgence can be shown to the petitioner in exercise of equitable and discretionary writ jurisdiction provided by Article 226 of the Constitution to bail out an ex member of the disciplined force because when a police constable remains absent from duty without leave it amounts to gravest misconduct. For such acts and what they merit see State of Punjab v. Ashok Kumar, 1996 (2) SCJ 139 (SC).

2. The petitioner while serving the police as a Head Constable with local rank as ASI proceeded on sanctioned Ex-India leave for 30 days from 01.11.1998 to 30.11.1998 for treatment of diabetes claiming that Government Hospital, Hoshiarpur lacked facilities for treatment of the disease. The leave was sanctioned by the Senior Superintendent of Police, Hoshiarpur vide order dated 21.10.1998. He had by then spent 23 years of service. He never returned to work within the stipulated time and instead applied for extension of leave for three months from 01.12.1998 to 28.02.1999. He attached with medical

certificates in support of his request. Even that period of leave was sanctioned on medical grounds on 01.01.1999. Thereafter, he again applied for leave for five months on medical grounds from abroad by his application dated 24.02.1999 for the additional reason of suffering from back ache which made travel difficult and on advise of doctors in USA. Even this was period was sanctioned on 15.03.1999. He was required to report back for duty by 31.07.1999, but failed to do so. Hence he was marked absent in police department records w.e.f. 01.08.1999. The petitioner was placed under suspension in absentia vide suspension order dated 30.10.1999. A departmental enquiry was instituted and entrusted to the Superintendent of Police, Detective, Hoshiarpur to go into his misconduct of willful absence without leave. An ex parte enquiry was held in which the petitioner was found guilty of the charge. Pursuant to submission of such departmental enquiry report to the disciplinary authority, a show cause notice of dismissal was issued to the petitioner, which was delivered to his wife on 11.04.2000 through special messenger. The petitioner says that he submitted reply (Annex P-1) even prior thereto on 02.04.2000 after receiving notice on 05.01.2000.

3. One of the main grievances made in the petition is that firstly he had no notice of enquiry proceedings and secondly the said reply to the show cause notice after enquiry was not considered and the petitioner was dismissed from service. It is averred that the dismissal order was not communicated to him. Thereafter, he availed his departmental remedies against the dismissal order, which were exhausted with the dismissal of statutory appeal/ revisional and non-statutory mercy petition. Against those orders, the petitioner approached this Court by filing CWP No.17542 of 2012 in which similar prayers were made including setting aside of the dismissal order and for quashing all consequential orders passed thereon by the respective

appellate/revisional and last reviewing authorities. The appeal was dismissed on 13.07.2005 as time barred. The revision was filed on 01.06.2010 i.e. after 5 years. There is an admission by the petitioner in the petition that the appeal etc. were all filed while he was residing in the United States of America (USA). The writ petition was disposed of on 04.11.2014 with a direction to consider the case of pension in the light of the provisions of Rule 16.2 of the Punjab Police Rules, 1934 which required of the disciplinary authority while awarding penalty of dismissal to have regard to the length of service of the offender and his claim for pension. The relevant extract of the operative part of the order is reproduced in the order dated 24.01.2015 (Annex P-9), which forms part of the speaking order rejecting the petitioner's case for grant of pension. From this, Mr. Vaibhav Sharma learned Deputy Advocate General, Punjab argues that the petitioner's case against the dismissal order stands foreclosed since the Court did not interfere and limited the consideration by the Administrator to pension being payable or not. The issue before this court is with regard to pension.

4. Indisputably the petitioner remained absent for inordinate time without sufficient cause and punishment was proposed in the show cause notice of dismissal from service and a copy of the order was delivered to his wife on 11.04.2000 through special messenger sent by the Police Department. The remaining orders are mostly narration of facts in the aftermath of the dismissal order in appeals etc. The Senior Superintendent of Police, Hoshiarpur vide order dated 24.01.2015 has dismissed the petitioner's prayer for pension holding that he was a member of the disciplined force and was supposed to report back from Ex-India leave after the expiry of leave sanctioned/extended to him. But he did not bother to respect discipline of the department, which was gravest misconduct on his part. It is also not known what the petitioner was doing in USA and whether he was working, which makes the misconduct

even graver. Nothing has been mentioned in the correspondence [and the petition] as to the source of income in USA. Therefore, the dismissal order and denial of pension was found justified. The petitioner was not only guilty of a single act, but of a series of absences continuing for sufficiently long time to measure adversely the conduct of a policeman who does not think it fit to obey the lawful commands of his superiors to return to police lines. It is in these circumstances that the Senior Superintendent of Police, Hoshiarpur has held that the petitioner not entitled to pension and pensionary benefits.

5. When Rule 16.2 speaks of pension, it does not take away the sting of the order of dismissal, when found justified by the disciplinary authority tested later on judicial review. If the act of misconduct is of such gravity, it leaves no room for an offender to assert an absolute right to pension merely on the basis of length of service. All that is required of the competent authority is to record a finding and satisfaction as to the gravest act of misconduct or repeated acts of misconduct proving incorrigibility of the offender. The legal position appears to be that in the absence of a finding recorded of gravest act of misconduct, the punishing authority is then bound to consider and follow the provisions of rule 16.2 to protect the right to pension. Once an act is held to be of the gravest kind the mandate of the second part of rule 16.2 as a condition precedent becomes irrelevant. In short, if the view of the competent authority is that the act complained is gravest act of misconduct he is not compelled by law to record a finding against pension. If the decision is bona fide and justified on facts then it is not for this to Court to tinker with the dispensation handed down by the Senior Superintendent of Police, who is the best judge of the demands of the police department of maintenance of discipline so that the force does not earn a bad name by acts of the offender found gravest. It is thus not in every case of dismissal that a person can be resurrected and handed over

pension when his conduct which led to dismissal is reprehensible and clearly falling in the category of acts of gravest misconduct. Absence of a policeman from duty is a very serious matter. In the absence of sufficient explanation furnished in defense of overstay, a serious doubt is cast on the character of the policeman, i.e. the petitioner who has been rightly dismissed from service for complete unfitness to serve the Police Department in the position held and denied pension. He will be taken in law to have abandoned service by not reporting back in the time allowed and taking the department for a ride for long enough. The indulgence shown to the petitioner by the department in accepting his requests for extension of leave more than once has been abused. Therefore, the reliance of the petitioner's counsel on the dicta in *SI Surinder Singh v. State of Punjab & Others*, 2008 (4) S.C.T. 72: 2008 (4) RSJ 613 is misplaced. The passages in paragraphs 13 & 14 militate against the stand of the petitioner. The case is also distinguishable on facts. *SI Surinder Kumar* had refused to join the much lower post on his repatriation from deputation which the High Court had declared illegal did not make simple absence cognizable for denial of pension, the act not falling in the classification of gravest act of misconduct. The ratio of the case does not fit the facts of this case.

6. I therefore find no valid or cogent reason to disagree with the findings recorded either in the enquiry or of the quantum of punishment chosen by the disciplinary authority which is reasonable and adequate to the gravamen of the charge. The disciplinary authority has not only examined the case in hand on merits, but has delved into past record of the petitioner and found him bearing a poor record of service. In any case, it is not for the writ court to sit in appeal over the findings recorded in a domestic enquiry or interfere with the quantum of punishment, when it is neither unreasonable nor arbitrary nor irrational nor perverse. Neither is it shockingly disproportionate to the

misconduct. Besides, the principles of natural justice were abided by the Police Department throughout the disciplinary proceedings and I have no reason to take a different view by sitting in appeal over the findings arrived at while performing a managerial function involving discipline in a uniformed force. No ground warranting interference is made out even by a long shot. Though not called upon to express any opinion on the nature of the dismissal order but have yet considered it to satisfy the conscience of the court that the ultimate decision does not lead to any miscarriage of justice.

7. So far as the point in issue is concerned I would only say following the dicta in *State of Punjab v. Ashok Kumar (supra)* that the measuring foot ruler in the case of a policeman is differently and tightly notched in cases of absence without leave which in the case of a constable have been held by the Supreme Court to be the gravest act of misconduct in a disciplined and uniformed force where demands on police personnel is far, far greater than other civil services which are not charged with the duty of maintenance of law and order.

8. For the foregoing reasons, this petition is found totally devoid of merit and is accordingly dismissed.

04.04.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE