

CWP No. 4267 of 2015

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

CWP No. 4267 of 2015

Reserved on 10.11.2016

Date of Pronouncement: 01.12.2016

E/ASI Baljeet Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Ms. Neeru Bansal, Advocate for the petitioner.

Mr. Rajesh Gaur, Additional Advocate General, Haryana.

Anupinder Singh Grewal,

This petition is directed against the order dated 26.09.2013 (Annexure P-3) passed by respondent No. 4 (Deputy Commissioner of Police, Faridabad), whereby the petitioner was dismissed from service, order dated 25.11.2013 (Annexure P-5), whereby his appeal preferred against the order dated 26.09.2013 (Annexure P-3) was dismissed by respondent No. 3 (Commissioner of Police, Faridabad) and order dated 24.07.2014 (Annexure P-7) passed by respondent No. 2 (Director General of Police, Haryana), dismissing his revision petition.

2. The petitioner was working as Exempted ASI (EASI) with Haryana Police. He was charge-sheeted on 27.09.2013 for absence from duty from 05.05.2012 to 01.11.2012 and from 03.11.2012 to 28.05.2013, for a total period of 381 days. The petitioner submitted his reply to the

charge-sheet on 27.03.2013. An enquiry was entrusted to ACP Crime, Faridabad and later to Reserve Inspector, Faridabad. The Enquiry Officer after examining the departmental witnesses and the witnesses in defence, held the charges to be proved against the delinquent official. The Deputy Commissioner of Police, Headquarters Faridabad, who is the competent authority, after examining the report of the Enquiry Officer issued a show cause notice on 16.08.2013 for punishment of dismissal from service along with a copy of the inquiry report to the petitioner. The petitioner submitted his written reply on 13.09.2013, a copy whereof is appended as Annexure P-2. The competent authority also accorded personal hearing to the petitioner on 19.09.2013 and thereafter vide order dated 26.09.2013 (Annexure P-3) arrived at the conclusion that remaining absent from disciplined force for such a long time amounted to gravest act of misconduct and the petitioner was dismissed from service. The petitioner preferred an appeal thereagainst to the Commissioner of Police, Faridabad, who after hearing the petitioner on 21.11.2013, dismissed the appeal vide order dated 25.11.2013 (Annexure P-5). The revision petition preferred to the Director General of Police, Haryana was also dismissed vide order dated 24.07.2014 (Annexure P-7).

3. Learned counsel for the petitioner has contended that the petitioner was suffering from Jaundice and Diabetes and hence, he could not report on duty for which he had sent medical certificates. The medical certificates and the medical condition of the petitioner had not been taken into account by the departmental authorities while passing the impugned

orders. Learned counsel further contended that in the alternative that even if the petitioner is deemed to have absented from duty that by itself did not warrant the extreme punishment of dismissal from service.

4. Per-contra, learned State counsel has contended that the petitioner was afforded adequate opportunity and after considering his defence, the impugned orders have been passed recording therein that absence from duty without leave by a police officer amounts to gravest act of misconduct warranting his dismissal from service.

5. I have heard learned counsel for the parties.

6. The petitioner is stated to have absented from duty for a period of 381 days. In his defence, he had produced Dr. Jagmohan Kapoor, MBBS as DW4, who is running Sally Nursing Home, Jhajjar. This witness in his statement before the Enquiry Officer has stated that the petitioner was suffering from Jaundice, Sugar and Cough and he was treated by him from 11.05.2012 till 28.05.2013. He has also stated that he had issued him fitness certificate on 28.05.2013 and advised him rest during the period of treatment. The petitioner has also referred to the medical certificate dated 11.05.2002, a copy of which has been attached with this petition as Annexure P-9, wherein he is stated to be suffering from UTLC Hepatitis and his absence from duty from 11.05.2012 to 28.05.2013 for a period of 381 days, is absolutely necessary for his treatment/rest.

7. It is not discernible as to how the said Doctor could issue a medical certificate on 11.05.2012 foreseeing the absence of the patient for a future period of 381 days from 11.05.2012 to 28.05.2013. It is, thus,

apparent that this medical certificate has been antedated and has rightly been discarded from consideration by the Enquiry Officer. There is no certificate or report of a diagnostic laboratory, which would indicate that the petitioner was suffering from Hepatitis. The Enquiry Officer has rightly recorded that diabetes is a common problem and by itself cannot justify absence from duty for a period of 381 days. The petitioner was serving as EASI with the Haryana Police and instead of getting treatment at a Government Hospital, has chosen to be treated at a private nursing home. He should have at least got himself examined at a Government Hospital, if he was actually sick. Therefore, the explanation of the petitioner for absence without leave has rightly been held to be unworthy of credence.

8. I am also conscious of the fact that the scope of judicial review, in the findings of the disciplinary authority, is extremely limited and confined to the cases, where the finding is clearly unsustainable having been recorded without any material whatsoever or there is gross illegality. The sufficiency or adequacy of material before the disciplinary authority cannot be gone into by this Court while exercising writ jurisdiction. Even if another view is possible on the same factual matrix, interference will not be called for as this Court does not exercise appellate jurisdiction over the departmental authorities. I draw support from the judgment of the Hon'ble Supreme Court in **Vinod Kumar vs. State of Haryana [(2013) 16 SCC 293]**, wherein it was held as under:

“24. The matter can be looked into from another angle as well. In those cases where Courts are concerned with the judicial review of the administrative action, the parameters within which administrative action can be

*reviewed by the courts are well settled. No doubt, the scope of judicial review is limited and the courts do not go into the merits of the decision taken by the administrative authorities but are concerned with the decision making process. Interference with the order of the administrative authority is permissible when it is found to be irrational, unreasonable or there is procedural impropriety. However, where reasonable conduct is expected, the criterion of reasonableness is not subjective but objective; albeit the onus of establishment of unreasonableness rests upon the person challenging the validity of the acts. It is also trite that while exercising limited power of judicial review on the grounds mentioned above, the court can examine whether administrative decisions in exercise of powers, even if conferred in subjective terms are made in good faith and on relevant considerations. The courts inquire whether a reasonable man could have come to the decision in question without misdirecting himself on the law or facts in a material respect. (See: *M.A.Rasheed v. State of Kerala*; (1974) 2 SCC 687-pp.690-91, para-10.)”*

9. Insofar as the question of proportionality is concerned, it is trite that this Court shall interfere in the award of punishment only in case the punishment imposed is wholly disproportionate to the misconduct and shocks the conscience of the Court.

10. It is also well settled that absence without leave in a disciplined force like the Police has to be viewed seriously so as to warrant dismissal from service. Reference can be made to the judgment of the Hon'ble Supreme Court in the case of ***Om Prakash vs. State of Punjab & Ors., 2011(14) SCC 682***, wherein dismissal of a Head Constable for his absence for a period of 39 days without leave or intimation was upheld.

11. Reference can also be made to the judgment of the Hon'ble Supreme Court in the case of ***Chennai Metropolitan Water Supply and Sewerage Board & Ors. vs. T.T.Murali Babu, 2014 (4) SCC 108***, wherein

while allowing the appeal, the order dismissing the respondent therein, who was absent without leave for a period of 1 year & 7 months, was upheld. It was held as under:

“30. After so stating the two-Judge Bench proceeded to say that one of the tests to be applied while dealing with the question of quantum of punishment is whether any reasonable employer would have imposed such punishment in like circumstances taking into consideration the major, magnitude and degree of misconduct and all other relevant circumstances after excluding irrelevant matters before imposing punishment. It is apt to note here that in the said case the respondent had remained unauthorisedly absent from duty for six months and admitted his guilt and explained the reasons for his absence by stating that he neither had any intention nor desire to disobey the order of superior authority or violated any of the rules or regulations but the reason was purely personal and beyond his control. Regard being had to the obtaining factual matrix, the Court interfered with the punishment on the ground of proportionality. The facts in the present case are quite different. As has been seen from the analysis made by the High Court, it has given emphasis on past misconduct of absence and first time desertion and thereafter proceeded to apply the doctrine of proportionality. The aforesaid approach is obviously incorrect. It is telltale that the respondent had remained absent for a considerable length of time. He had exhibited adamant attitude in not responding to the communications from the employer while he was unauthorisedly absent. As it appears, he has chosen his way, possibly nurturing the idea that he can remain absent for any length of time, apply for grant of leave at any time and also knock at the doors of the court at his own will. Learned counsel for the respondent has endeavoured hard to impress upon us that he had not been a habitual absentee. We really fail to fathom the said submission when the respondent had remained absent for almost one year and seven months. The plea of absence of “habitual absenteeism” is absolutely unacceptable and, under the obtaining circumstances, does not commend acceptance. We are disposed to think that the respondent by remaining unauthorisedly absent for such a long period with inadequate reason had not only shown indiscipline but also made an

attempt to get away with it. Such a conduct is not permissible and we are inclined to think that the High Court has erroneously placed reliance on the authorities where this Court had interfered with the punishment. We have no shadow of doubt that the doctrine of proportionality does not get remotely attracted to such a case. The punishment is definitely not shockingly disproportionate.

*31. Another aspect needs to be noted. The respondent was a Junior Engineer. Regard being had to his official position, it was expected of him to maintain discipline, act with responsibility, perform his duty with sincerity and serve the institution with honesty. This kind of conduct cannot be countenanced as it creates a concavity in the work culture and ushers in indiscipline in an organization. In this context, we may fruitfully quote a passage from **Government of India and another v. George Philip**: -*

“In a case involving overstay of leave and absence from duty, granting six months’ time to join duty amounts to not only giving premium to indiscipline but is wholly subversive of the work culture in the organization. Article 51-A(j) of the Constitution lays down that it shall be the duty of every citizen to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement. This cannot be achieved unless the employees maintain discipline and devotion to duty. Courts should not pass such orders which instead of achieving the underlying spirit and objects of Part IV-A of the Constitution have the tendency to negate or destroy the same.”

32. We respectfully reiterate the said feeling and restate with the hope that employees in any organization should adhere to discipline for not only achieving personal excellence but for collective good of an organization. When we say this, we may not be understood to have stated that the employers should be harsh to impose grave punishment on any misconduct. An amiable atmosphere in an organization develops the work culture and the employer and the employees are expected to remember the same as a precious value for systemic development.”

12. Tested in the light of the aforementioned principles of law, the dismissal of the petitioner, who was an E/ASI and had been absent without

leave for a period of 381 days, cannot in any manner be said to be disproportionate to the misconduct.

13. For these reasons, I do not find that the impugned orders suffer from any infirmity warranting interference by this Court. They are, in fact, fully justifiable as there is adequate material on record in support thereof.

14. In the result, the writ petition stands dismissed without any order as to costs.

Ist December, 2016.
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(ANUPINDER SINGH GREWAL)
JUDGE

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No