

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, BENCH AT AURANGABAD

**WRIT PETITION NO.2001 OF 2017****Preetpalsingh S/o Darshansingh Bal Vs. The State of Maharashtra and others.**

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| Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. | Court's or Judge's orders |
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Mr.Amol Chalak advocate holding for Mr.S.B.Talekar, advocate for the petitioner.  
Mr.V.M.Kagane, A.G.P. for the State.

**CORAM : S.V.GANGAPURWALA AND  
K.L.WADANE, JJ.**  
**Date : 14.02.2017.**

**PER COURT :**

1. Heard.
2. The petitioner is dismissed after holding inquiry. The appeal filed by the petitioner is dismissed. The petitioner filed Original Application before the Maharashtra Administrative Tribunal, Aurangabad. The same is dismissed. Aggrieved thereby, the present petition.
3. Learned counsel for the petitioner submits that the authority and the Tribunal failed to consider the reason for absence of the petitioner. The petitioner was sanctioned 4 days leave but the health of the petitioner did not permit the petitioner to join the

services. The Medical Certificate to that effect was also submitted to the authority. The charges were framed against the petitioner for absence from duty for 433 days. The learned counsel submits that the petitioner was not in a physical position to remain present and attend the duty. For more than a year, the petitioner was under treatment. The learned counsel submits that the punishment of removal from service is too disproportionate to the act alleged. Mere absence from duty may not invite punishment of removal from service. The learned counsel relies on the judgment of the Apex Court in the case of **“Shri Bhagwan Lal Arya Vs. Commissioner of Police, Delhi and others”** reported in **(2004) 4 Supreme Court Cases 560**.

4. The learned A.G.P. submits that the petitioner had applied for leave of 4 days only and thereafter failed to attend duties for 433 days. The learned A.G.P. further submits that the certificate produced by the petitioner itself shows that petitioner was only a out-door patient. The petitioner was in habit of remaining absent. In his total tenure of 9 years, the petitioner remained absent for 1401 days. The authority has considered the said aspect.

5. We have considered the submissions canvassed by the learned counsel for respective parties. We have also gone through the judgment delivered by the Tribunal.

6. It is trite that Wednesbury's principle of reasonableness has

been replaced by the doctrine of proportionality.

7. In the case of **“Shri Bhagwan Lal Arya Vs. Commissioner of Police, Delhi and others”** referred to supra, the petitioner therein was absent for two months 7 days and 17 hours on medical ground and leave was also sanctioned. The Apex Court in that case observed that it is not the case of the Respondents that the appellant therein is a habitual absentee.

8. In the present case, the finding is recorded about the petitioner being habitual absentee. Though the charges were framed for unauthorised absence for 433 days, the past conduct of the petitioner in habitual remaining absent is considered. Even the Medical Certificate produced shows that petitioner was only out-door patient. The petitioner remained continuously absent from 22.8.1999 to 25.10.2000 and the petitioner never intimated about the cause of absence nor had applied for leave.

9. The attitude of the petitioner is callous. The authority and the Tribunal have properly appreciated the facts. No case for interference is made out.

10. The Writ Petition is dismissed. No costs.

**( K . L . WADANE , J . )**

**( S . V . GANGAPURWALA , J . )**

Dt.14.02.2017.  
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