

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5660 OF 2015

Mr.Dilawar Gulab Mulla	]	
Age 47 years, Occ. Dismissed employee	]	
Residing at Varad Colony, Laxmi Road	]	
15 th Lane, TS No. 40/5, Plot No.15	]	
Jaisingpur, Taluka Shirol,	]	
District Kolhapur – 416 101	]	Petitioner

V/s.

1.	The State of Maharashtra	]	
		]	
2.	The Superintendent of Police, Kolhapur,	]	
	At Kolhapur	]	
		]	
3.	The Addl. Director General of Police,	]	
	(Admn), M.S., Mumbai	]	
	Police Headquarters,	]	
	Old Council Hall,	]	
	Shahid Bhagatsingh Road,	]	
	Mumbai – 400 005	]	Respondents

- Mr.Shashikant Choudhari i/b. Maharashtra Law Associates for the Petitioner.
- Mr.Vishal Thadani, AGP for the Respondents-State.

**CORAM : SMT. V.K. TAHILRAMANI &
DR. SHALINI PHANSALKAR-JOSHI, J.J.**

DATE : 7th SEPTEMBER, 2017.

ORAL JUDGMENT (PER : SMT. V.K. TAHILRAMANI, J.) :-

1] Rule. Rule is made returnable forthwith. By consent the matter is taken up for final hearing.

2] Heard learned counsel for the Petitioner and learned AGP for the Respondents.

3] The Petitioner was appointed as a Police Constable on 01/08/1986. By order dated 20/12/2010 he was removed from service. He preferred an appeal against the said order, which came to be rejected; hence he preferred Original Application (OA) No.1165 of 2012 before the Maharashtra Administrative Tribunal, Mumbai Bench, challenging his order of removal from service. The said OA came to be dismissed; hence this petition.

4] The main charge against the Petitioner was that he unauthorizedly remained absent for 200 days i.e. 17/09/2007 to 02/04/2008.

5] Learned counsel for the Petitioner submitted that as the children of the Petitioner were studying in Pune, he has sought transfer from Kolhapur to Pune. However, his request was not

considered.

6] The record shows that the Petitioner was given full opportunity to defend himself. Infact, the Petitioner admitted the charge against him during the Departmental Enquiry and the charge against him was proved. Before imposing penalty he was given a Show Cause Notice by Superintendent of Police Kolhapur on 13/10/2010. After his reply, detailed order dated 20/10/2010 was passed imposing penalty of removal from service. It is to be noted that the Special Inspector General of Police has given personal hearing to the Petitioner during the appeal and passed a reasoned order dismissing the appeal by order dated 21/05/2011. It is pertinent to note that before every Authority, the Petitioner had accepted that he was unauthorizedly absent from duty for 200 days.

7] Learned counsel for the Petitioner submitted that, even if the Petitioner had admitted that he was unauthorizedly absent for 200 days, the punishment imposed on him is shockingly disproportionate to the charges found to be proved. In this connection, he has placed reliance on the decision of the Supreme Court in the case of ***Ranjit Thakur vs. Union of India and Ors., reported in AIR 1987 SC 2386.***

He pointed out that in the said decision it has been observed that the sentence should not be vindictive or unduly harsh and should not be disproportionate to the offence so as to shock conscience.

8] In the case of ***Union of India and Ors. vs. S.S. Ahluwalia***, reported in AIR 2007 SC 2952, the Supreme Court has held as under;

“the scope of judicial review in the matter of imposition of penalty as a result of disciplinary proceedings is very limited. The Court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved.”

9] In the present case, the Petitioner was a member of disciplined and uniformed force. He has unauthorizedly remained absent for 200 days. From the report of the Enquiry Officer, we found that the Petitioner had admitted the charges against him. It was therefore not necessary to hold a detailed enquiry. However, despite the fact that the Petitioner had admitted the charges against him, a detailed Departmental Enquiry was conducted and four witnesses were examined. However, the Petitioner declined to cross-examine them. The Petitioner has admitted in the Departmental Enquiry that

he was given copies of all the relevant documents. He also admitted that he remained absent for 200 days i.e. from 17/09/2007 to 02/04/2008.

10] Learned counsel for the Petitioner placed reliance on the Medical Certificate dated 14/05/2008 which shows that the Petitioner was suffering from Major Depression Alcohol Dependence syndrome and that the Petitioner was under the treatment of Dr.Amar Shinde from 25/11/2007. However, it is noted that, the Petitioner was treated on an outdoor patient basis and his condition was not serious enough to be admitted in the hospital.

11] It is pertinent to note that, this Certificate shows that the Petitioner was under treatment from 25/11/2007. However, the Petitioner has been unauthorizedly absent from duty from 17/09/2007.

12] Thereafter, learned counsel for the Petitioner relied on another Certificate issued by Arpan Foundation, which is signed by the Trustee of the said Arpan Foundation; which shows that the Petitioner was undergoing treatment in their Rehabilitation Center

from 24/10/2007 to 25/11/2007. The Arpan Foundation helps the people who are Alcoholics, Drug Addicts and who cannot help themselves. On going through the said Certificate, it shows that the Petitioner was not admitted in a hospital but in the Rehabilitation Center for a period of about one month from 24/10/2007 to 25/11/2007. Thereafter, there are no documents to show that the Petitioner was admitted in any hospital during the period of 200 days that he was unauthorizedly absent from duty.

13] As stated earlier, the Petitioner was a member of the disciplined and uniformed force, he has remained unauthorizedly absent for a period of 200 days. Looking to this fact, it cannot be said that the punishment is disproportionate. Thus, we find no merit in this petition. The Petition is, therefore, dismissed.

14] Rule is discharged.

(DR. SHALINI PHANSALKAR-JOSHI, J.) (SMT. V.K. TAHILRAMANI, J.)