

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

**CWP-19421-2017 (O&M)
Date of decision: 20.11.2017**

Shinder Pal

... Petitioner

Vs.

State of Punjab & others

... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Satbir Gill, Advocate for the petitioner.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

As per pleadings on record, petitioner, who was serving on the post of Constable was dismissed from service vide order dated 31.08.2001 (Annexure P-2) passed by the Senior Superintendent of Police, Kapurthala. The appeal preferred by the petitioner was rejected by the Deputy Inspector General of Police, Jalandhar Range, Jalandhar Cantt. vide order dated 21.03.2005 (Annexure P-4). Even a revision petition filed by the petitioner has not been accepted by the Revisional Authority i.e. the Inspector General of Police, Zone-II, Jalandhar in terms of order dated 18.05.2009 (Annexure P-6). Apparently, the petitioner thereafter preferred a mercy petition which has also been declined by the State Government i.e. the Secretary, Government of Punjab, Home Affairs and Justice Department vide Memo dated 28.01.2014 (Annexure P-8).

The instant writ petition is directed against the order dated 31.08.2001 (Annexure P-2) passed by the Senior Superintendent of Police, Kapurthala as also the subsequent orders placed on record at Annexures P-4 and P-6, whereby the Appellate Authority as also the Revisional Authority

have affirmed the penalty of dismissal. Further challenge is to the order at Annexure P-8, whereby the mercy petition has been declined.

Having heard counsel for the petitioner at length and having perused the pleadings on record, this Court is of the considered view that the writ petition deserves to be dismissed on the sole ground of delay and laches.

Suffice it to observe that the major penalty of dismissal has been imposed upon the petitioner in pursuance to a regular departmental inquiry having been conducted against the charge of having remained absent for a total period of 190 days, one year and 5 minutes i.e. from 27.01.2000 to 05.08.2000. Perusal of the dismissal order further reveals that even on previous occasions on account of having remained absent from duty, a punishment of forfeiture of eight years service on permanent basis had been imposed. That apart, petitioner had been censured on seven different occasions. Petitioner had been appointed as a Constable in the year 1989 and in his entire tenure of service remained absent for a total period of 632 days on 40 separate occasions. The Dismissal Authority has ultimately reached a conclusion that the petitioner is unfit for police service. While passing the impugned order of dismissal even his past service has been kept in mind.

Counsel during the course of arguments would himself concede that against a total service of 12 years that had been rendered, 8 years permanent service already stood forfeited and as such, petitioner in any case would not be entitled to any pension.

Still further, perusal of the impugned order itself would demonstrate that the rules of natural justice had been adhered to prior to

imposition of the major penalty upon the petitioner. Rather a regular departmental inquiry had been conducted against the petitioner.

The order of dismissal from service was passed in the year 2001. The appeal preferred by the petitioner was rejected by the Appellate Authority in the year 2005. Even the statutory remedy of revision having been availed of was rejected by the Revisional Authority in terms of order dated 18.05.2009. In spite of a pointed query having been put, counsel has not advanced any submission with regard to any statutory remedy available to the petitioner after rejection of the appeal as also the revision against the order of dismissal.

The order of dismissal having been passed in the year 2001, the same stands affirmed by the Appellate as also the Revisional Authorities in the year 2009. No justification whatsoever has been furnished as regards the inordinate delay of almost eight years in having approached the writ Court after passing of the order by the Revisional Authority.

Counsel would attempt to cover up delay by adverting to the order dated 28.01.2014 (Annexure P-8) issued by the State Government and whereby the mercy petition preferred by the petitioner has been dealt with and rejected.

It is by now well settled that repeated representations would not furnish a fresh cause of action. A reference in this regard may be made to the judgment of the Hon'ble Supreme Court of India in **S.S. Rathore Vs. State of Madhya Pradesh, AIR 1990, SC 10.**

In the case of **Baljinder Pal Kaur Vs. State of Punjab & others, 2008 (4) SCT 213**, a Division Bench considered the issue of delay in a situation, wherein after exhausting the statutory remedies of appeal and

revision, the petitioner therein had preferred a mercy petition and the same also having been dealt with by passing an order. It was held that cause of action would be taken to accrue from the date of passing of the final order or from the date when appeal or revision provided under law is disposed of. It was further held that in the absence of any statutory provision providing for filing of a mercy petition, delay cannot be overlooked merely on account of an order having been passed on such mercy petition as it was the employee himself who had invited such order.

In the facts of the present case, the petitioner had exhausted his statutory remedies at the stage of dismissal of his revision petition on 08.05.2009 (Annexure P-6).

There is an inordinate delay of more than eight years in having approached the writ Court.

Petition is dismissed on the ground of delay and laches.

20.11.2017*harjeet***(TEJINDER SINGH DHINDSA)
JUDGE**

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| (i) Whether speaking/reasoned? | Yes |
| (ii) Whether Reportable? | No |