

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

CWP-26168-2014 (O&M)
Date of decision : 17.05.2018

Parminder Singh

...Petitioner(s)

Versus

The State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Saurabh Arora, Advocate,
for the petitioner(s).

Ms. Sudeepti Sharma, Addl.A.G., Punjab.

JITENDRA CHAUHAN, J. (Oral)

By way of the instant writ petition filed under Articles 226/227 of the Constitution of India, the petitioner(s), *inter alia*, seek(s) issuance of a writ in the nature of Mandamus/Certiorari for reconsidering/withdrawing the impugned order of dismissal of the petitioner from service dated 22.12.2008 (Annexure P-6) on account of absence from service.

Learned counsel contends that the punishment awarded to the petitioner is on the higher side. In support of his contention, learned counsel refers to Rule 16.2 of the Punjab Police Rules which stipulates that dismissal from service has to be awarded in the cases of gravest act of misconduct. In this case, the petitioner remained absent from duty as his widowed mother was seriously ill and there was no other family member to take her care. Learned counsel further refers to Section 42 of the Police Act, 1861, which provides that all actions and prosecution against any person accused of a misconduct shall commence within three months of

such act. The inquiry report is also vitiated as the petitioner was never joined in the inquiry proceedings.

On the other hand, learned State counsel submits that the petitioner remained absent from duty from 08.01.2008 to 22.12.2008 i.e. For 349 days. Despite issuance of notices, the petitioner did not join the inquiry proceedings. He has not furnished any material on record before any competent authority to show that his absence was due to the illness of his mother.

I have heard learned counsel for the parties and perused the case file.

It is a settled principle that general rule for any violation under Rule 16.2 of the Punjab Police Rules, 1934, is dismissal from service. However, in certain exceptional cases, a lenient view can also be taken. The petitioner is a member of the disciplined force. The petitioner remained absent from duty for almost one year. Earlier also, the petitioner had remained absent from duty for about 53 days on different occasions and therefore, his one year's service was forfeited with permanent effect. The plea taken by learned counsel for the petitioner that the action/prosecution commenced after lapse of limitation period of three months as prescribed in Section 42 of the Police Act, 1861, is also against the record. The disciplinary proceedings had commenced well within the limitation period. It has also come on record that despite having been issued a number of notices, the petitioner, for the reasons best known to him, chose not to join the inquiry proceedings. As regard the illness of his mother, the petitioner has not brought any material on record in support of his defence. Even

before the appellate authority, the appellant submitted that his mother is suffering from knee pain and did not discuss about any other serious disease.

In ***Karnail Singh Vs. The State of Punjab, 1993(4) S.C.T 770***

(P&H) (DB), this Court has held as under:-

“7. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effects in the maintenance of law and order. The interpretation placed by the learned Single Judge in Chanan Singh case on Rule 16.2(1) of the Rules has not been approved by the apex Court in Ram Singh case (supra). Resultantly, with respect to the learned Single Judge, we have no option but to overrule the same.

The petitioner habitually remained absent from duty. He did not reform himself. The record which has been alluded to by the appellate authority reveals that on previous occasions too the petitioner was awarded punishment on eight different occasions for remaining absent from duty. His absence from duty continuously for 5 months and 5 days was not an isolated Act. There had been repeated acts of remaining absent from duty for which he had been awarded punishment and the past record was taken into account while awarding punishment of dismissal from service. On the facts of the instant case, we do not find that the action of the respondents suffers from any infirmity.

For the reasons stated above, the writ petition fails and is dismissed, but with no order as to costs.”

Considering the nature of duties cast upon the petitioner by virtue of his being member of a disciplined force and considerably long period of absence, this Court does not find any infirmity or illegality in the impugned order of dismissal.

In view of the above discussion, this Court feels that there is no merit in the present case and accordingly, the same is dismissed.

17.05.2018
atulsethi

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No