

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

Letters Patent Appeal No. 1510 of 2018 (O&M)

Date of Decision: 04.10.2018

Swami Nath

.....Petitioner

versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

Present : Mr. Vivek Sharma, Advocate, for the petitioner.

KRISHNA MURARI, CHIEF JUSTICE (oral)

CM No. 4077-LPA of 2018

Heard. For the reasons mentioned in the application, delay of 8 days in filing the appeal is condoned. Application stands disposed of.

LPA No. 1510 of 2018

This intra court appeal filed under Clause X of the Letters Patent is directed against the judgment and order of the learned Single Judge dated 13.08.2018 dismissing the writ petition filed by the appellant herein challenging the order dated 26.04.2013 dismissing him from service.

2. Facts in brief relevant for the purposes of the dispute in a nut shell can be summarized as under:-

Appellant-petitioner was employed as Baildar on 31.03.1993 in Provisional Works Division (B&R) Branch, Panchkula, where he worked till 11.06.1996 and thereafter his services were transferred to Bridge Construction Division, PWD (B&R) Branch, Haryana, Chandigarh. He

continuously remained absent from duty from 01.11.1996 onwards. A charge sheet dated 02.01.2013 under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 on the allegations that he had remained absent from duty w.e.f. 20.02.2003 without any justifiable cause was served upon him. A reply dated 22.03.2013 was alleged to have been submitted by the appellant-petitioner to the charge sheet wherein it has been mentioned that he was not in proper senses and was not medically fit for which he was undergoing long treatment and thus he was unable to attend his duties. It is relevant to point out that even prior to submission of reply dated 22.03.2013, notices dated 17.03.2003, 28.03.2003, 08.04.2003, 13.05.2003, 02.07.2003, 04.08.2003, 30.11.2004, 27.07.2005, 22.08.2005, 21.12.2005, 01.06.2006 and 12.09.2006 were issued to him all of which were returned back with the remarks of the post office that whereabouts are not known as he left the address without intimation. After the alleged reply to the charge sheet was submitted, final notice dated 04.02.2013 was issued where under an opportunity of personal hearing on 26.02.2013 was afforded to him. However, he did not appear on the said date nor came forward to participate in the disciplinary proceedings. Resultantly, order dated 26.04.2013 was passed dismissing him from service.

3. Thus there is no dispute about the fact that from 01.11.1996 till he was dismissed from services vide order dated 26.04.2013 appellant-petitioner absented himself unauthorizedly. The facts further clearly demonstrate that despite opportunity he did not come forward to participate in the disciplinary proceedings. At this stage, it may be also relevant to point out Rule 3.25 of CSR, Volume-1, Part-I, which provides as under:-

“A Government servant does not resume duty after remaining on leave for a continuous period of five years,

or where a Government servant after expiry of his leave remains absent from duty he will be deemed to have resigned and shall accordingly cease to be in Government employment.”

4. Thus in view of the above facts, the appellant-petitioner was not liable to be retained in service and no fault can be found either with the impugned order dismissing him from service on account of unauthorized absence from duty for a period of more than 17 years nor the order of the learned Single Judge rejecting the writ petition.

5. In view of the above facts and discussion, the appeal is devoid of any merits and accordingly stands dismissed in limine.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

04.10.2018
ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	Yes/No√