

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-14874-2019

Date of Decision: July 15, 2019

Jagseer Singh

... Petitioner

vs.

State of Punjab and Ors

.. Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. J.P.S.Sidhu, Advocate
for the petitioner.

ARUN MONGA, J.(ORAL)

The petitioner is aggrieved on account of having been removed from service vide impugned order dated 29.01.2019 (Annexure P-1) and *inter alia* seeks issuance of an appropriate writ in the nature of *certiorari* to quash the said impugned order.

2. Succinctly, the facts of the case are that the mother of petitioner died in harness and on account thereof, he was appointed on compassionate grounds on the post of Peon on 02.06.2006. However, he was removed from service vide the impugned order dated 29.01.2019 (Annexure P-1) on account of remaining absent from duty on various occasion, intermittently, leading to a total of 728 days.

3. The positive case pleaded by the petitioner is that he was transferred from his hometown Mansa to Abohar on 06.07.2016 which is approximately at a distance of 290 Kilometers. The petitioner is the only earning male member of the family and has one minor son and two daughters and he is taking care of the whole family. Being the only adult

male family member, he had to attend to his minor son who fell ill and remained admitted at Government hospital with effect from 08.09.2016 to 29.10.2016 owing to which he could not report for duty.

4. The petitioner further states that owing to the illness of his son, he became mentally unstable and resultantly, he himself also fell ill which precluded him from joining his duties and he repeatedly sent representations to the competent authorities seeking sanction for leave but none of his representations were adverted by the official respondents. Copies of the representations are Annexures P-6 to P-8.

5. Learned counsel for the petitioner strenuously argues that the impugned order is in violation of Punjab Civil Services (Punishment and Appeal Rules) 1970 and also suffers from the vice of arbitrariness and unreasonableness and is thus violative of Article 14 of Constitution of India. He also contends that the principles of Natural Justice have also been violated, inasmuch as, neither any regular departmental inquiry was conducted, as per Rule 8 of the Rules, *ibid*, nor any opportunity of being heard was, otherwise, granted to the petitioner before passing of impugned order.

6. Having heard learned counsel for the petitioner and on going through the paper-book, I find that even if the factual contents of the petition are accepted, the same do not entitle the petitioner to any indulgence under extraordinary writ jurisdiction vested in this Court under Article 226 of Constitution of India. A perusal of the medical record appended with the writ petition as Annexure P-12 reflects that son of the petitioner was undergoing treatment for Malaria and it is completely unfathomable to believe that petitioner lost his mental balance due to his son falling ill with

Malaria.

7. Even otherwise, a perusal of the impugned order reflects that the petitioner is a habitual defaulter and repeatedly absented himself on different occasions for months together. He was awarded punishments from time to time qua those delinquencies arising out of leave without sanction.

A tabular chart thereof is hereunder:-

<i>Sr. No.</i>	<i>Time (of absence)</i>	<i>Remarks</i>
1.	01.9.2007 to 29.10.2007=59 days	Regarding above absence vide this office order no. 1/71/96/A-3 (SS) 2015/51178-84, Dated: 29.12.2015, punishment of Censure was given and absence period was treated as leave of kind due.
2.	15.07.2008 to 21.07.2008=7 days	-Above-
3.	01.09.2008 to 03.11.2008=64 days	-Above-
4.	08.06.2009 to 12.08.2009=66 days	-Above-
5.	07.06.2012 to 20.08.2014=805 days	-Above-
	Total 1001 Days	

8. Still the petitioner did not reform himself and remained absent from 15.08.2016 to 13.08.2018 during different months/ dates for a total 728 days of unauthorized absence which is as under:

<i>Sr. No.</i>	<i>Time of absence</i>	<i>Total Days</i>
1.	15.08.2016 to 28.08.2016	14 days
2.	30.08.2016 to 31.03.2017	214 days
3.	01.04.2017 to 31.03.2018	365 days
4.	01.04.2018 to 13.08.2018	135 days
		Total 728 Days

9. As against the above absence of 728 days, the explanation rendered by the petitioner is only for a short duration with effect from 08.09.2016 to 29.10.2016 during which period the petitioner claims that his son was undergoing treatment in a hospital on account of being diagnosed with 'Malaria'.

10. Regarding the contentions of learned counsel for the petitioner for not following the due procedure and non-compliance of Rule 8 of the Punjab Civil Services (Punishment and Appeal Rules) 1970, *ibid*, the impugned order itself is quite self explanatory. In-fact, though, the petitioner has impugned and appended the impugned order but has maintained a stoic silence in the writ petition with regard to the following reasoning in the impugned order:

“That regarding absence Jagseer Singh Peon office of CDPO Abohar-I was issued letter no.1/71/06/A-3(SS) 2017/8635, dated 21.04.2017 for giving clarification for remaining absent. That regarding this employee vide his letter dated 19.04.2017 had given clarification and written that suddenly his son fell ill and for getting paid leave/without pay leave from 07.09.2016 to 29.12.2016 he had written letter to Child Development Project Officer Abohar-I. That after leave he went to office of CDPO Abohar-I for joining but CDPO-Abohar-I did not allow him to join duty. That this office vide letter no. 1/71/06/A-3(SS)/2017/29446, Dated: 11.10.2017 had written to Child Development Project Officer Abohar-I to give his remarks on request of Employee. That Child Development Project Officer Abohar-I vide his office letter no. 154 dated 27.06.2018 had written to this office vide which presence time and absence time of the employee had sent to this office from which it became apparent that the application which the employee had given for leave to CDPO, that has not been approved and for the rest of the time which is indicated in above table, on those dates this employee remained on unauthorized absence. So, by not considering the clarification of the employee to be satisfactory this office vide letter no. 01/71/2006/A-3(SS) 2018/33433, dated 12.09.2018 had issued charge sheet under Rule 8 of

Punjab Civil Services (Punishment and Appeal) Rules 1970.

That employee had given reply to the charge sheet vide letter dated 28.09.2018 in which he had written that he remained absent from 15.8.2016 to 28.08.2016, 30.08.2016 to 31.08.2016 to 31.03.2017, 01.04.2017 to 31.03.2018 and 01.04.2018, 18.07.2018. He has also written that during this time he remained ill and due to some domestic problems and due to bad health his family members had also suffered difficulties. That by considering the clarification given by employee it is evident that employee had admitted his fault by remaining on unauthorized absence.”

11. The allegations of the petitioner, as contended in the petition, with regard to non grant of opportunity of personal hearing are also belied by the following reasoning contained in the interim order:

“That before considering any punishment to employee for remaining on unauthorized absence and for admitting his fault this office vide letter no. 1/71/2006/A-3(SS)-2018/62270, dated 17.12.2018 had called the employee for personal hearing on 20.12.2018 but employee does not come present for personal hearing. That after this office vide letter no. 1/71/2006/A-3 (SS)-2018/64297, dated 27.12.2018 had written to this employee to come present on 03.01.2019 for personal hearing to head office Chandigarh. That this employee came present on 03.01.2019 for personal hearing but he was not able to give any satisfactory reply for remaining on unauthorized absence from which it become apparent that this employee is not serious about his duty and is habitual of remaining absent willfully.

That this employee inspite of being given punishment of censure for remaining absent from 01.09.2007 to 20.08.2014 on different dates there is no

improvement in the employee and he remained on unauthorized absence from 15.08.2016 to 13.08.2018 of different dates from which it is evident that this employee is habitual of remaining absent. That inspite of repeated letters and inspite of number of chances given to him there is no improvement in his conduct and he became liable for major punishment to be given under Rule 5 of Punjab Civil Services (Punishment and Appeal) Rule 1970.”

12. Having heard learned counsel for the petitioner at length and after perusal of the reasoning contained in the impugned order, against which no explanation, whatsoever, let alone any plausible explanation, has been rendered, either in the writ petition or in the course of arguments, I am of the view that the petition is devoid of any merit and no indulgence under extraordinary writ jurisdiction of this Court under Article 226 of Constitution of India is warranted. Petition is dismissed with no order as to costs.

13. Dismissal of the writ petition under extraordinary writ jurisdiction shall not preclude the petitioner to seek his ordinary/alternative remedy as may, otherwise, be available in law.

July 15, 2019
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(ARUN MONGA)
JUDGE

Whether speaking/reasoned	: Yes/No
Whether Reportable	: Yes/No