

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-2265-2011

Date of Decision: 10.09.2019

Gurnam Singh, Ex. Constable II

.....Petitioner

Versus

The State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Jasvir Singh Dhaliwal, Advocate,
for the petitioner.

Mr. H.S. Sullar, DAG, Punjab.

Harnaresh Singh Gill, J.

The petitioner was tried for committing the offence punishable under Section 7 of the East Punjab Essential Services (Maintenance) Act, 1947 (for short 'the Act'). Vide judgment and order dated 13.03.2010, learned Judicial Magistrate, Ist Class, Budhlada, held the petitioner guilty under Section 7 of the Act and sentenced him to undergo RI for one year and to pay a fine of Rs.1000/- and, in default of payment of fine, to further undergo RI for one month.

Aggrieved there-against, the petitioner filed an appeal before the learned Sessions Judge, Mansa. Vide judgment dated 3.8.2011, the learned Additional Sessions Judge, Mansa, dismissed the appeal filed by the petitioner, thereby affirming the judgment and order passed by the learned trial Magistrate. Still aggrieved, the petitioner has preferred the present revision petition.

As per the prosecution case, petitioner-Constable-II, Gurnam Singh No. 166/Mansa, was posted in District Police, Mansa. Vide order dated 5.9.2002, he was posted in G.R.P., Bathinda and temporarily posted at GRP Post, Bareta. He joined his duties at G.R.P., Post Bareta on 14.9.2002. On 5.10.2002, he was assigned a patrolling duty from Railway Station Kahangarh to the side of Jakhal. However, as per Rapat No. 7 dated 5.10.2002, the accused absented himself from duties without any permission or prior leave application. Then Inquiry Officer, Harmel Singh, RI, sent letter dated 16.10.2002 to SP (H) Mansa through DSP (H) Mansa to stop the salary of the petitioner. Accordingly, salary of accused-petitioner was stopped vide order dated 30.12.2002. Reports of his absence from duties were called from GRP Post Bareta, Line Officer Mansa and SHO GRP, Bathinda. SHO, GRP Bathinda submitted his report dated 23.11.2002 to the effect that accused-petitioner had been absent from his duties since 5.10.2002 without any permission or leave application. Thereafter, a presence notice dated 23.11.2002 was sent to the petitioner, which was received by him on 17.12.2002. However, even after receipt of the said notice, he did not join the duties. As per report dated 30.12.2002 of MHC Police Line, Mansa, accused-petitioner was continuously absent from duties till 30.12.2002, therefore, intimation in this regard was also sent to the higher authorities for initiating disciplinary action against him. Upon orders of the higher authorities of the Department, FIR in this case was registered against the petitioner.

After completion of investigation, challan was presented in the Court.

Charge under Section 7 of the Act was framed against the accused-petitioner. The petitioner denied the charge and claimed trial.

In support of its case, the prosecution had examined as many as 6 witnesses.

In his statement under Section 313 Cr.P.C., the petitioner denied the allegations levelled against him and pleaded innocence. He, however, did not lead any evidence.

The learned trial Court on the basis of the evidence on record and after hearing the learned counsel for the parties came to the conclusion that the absence from duties without any approval or leave application, stood proved against the accused-petitioner. Thus, the learned trial Court convicted and sentenced the petitioner-accused, as noticed above. The appeal filed by the accused-petitioner was also dismissed by the learned appellate Court.

While challenging the impugned judgments and order passed by the Courts below, learned Counsel for the petitioner states that on same set of charge, the petitioner was proceeded against departmentally and as a result of such proceedings, he was terminated from the service. He further contends initiation of criminal proceedings on the same cause amounts to double jeopardy. He further contends that Constable Raja Singh, who had lodged the DDR was not examined. Still further, the complaint on the basis of which the FIR had been lodged, was

not filed by the authorized person. It is further contended that none of the prosecution witnesses testified regarding any specific duties being assigned to the petitioner.

While relying upon the judgment of the Hon'ble Supreme Court reported as State of Punjab Vs. Kharaiti Lal, 1956 AIR SC 551 and a Division Bench judgment of this Court reported as State of Haryana Vs. Phula Ram, 1972 PLR 1004, it is contended that even if the petitioner has absented himself from duties, the same would not lead to the criminal prosecution resulting into conviction and sentencing of the accused-petitioner and that at the most, the petitioner could be proceeded being negligent in performance of his duties.

Per contra, learned State Counsel, while supporting the judgments and order passed by the Courts below has laid stress on the fact that both the Courts have recorded the findings of guilt on the basis of cogent and convincing evidence on record. It is further submitted that the accused-petitioner being a constable on GRP duties, could not be expected of abandoning his duties and that too without any justified cause, reason or prior approval or leave application. It is further contended that before initiation of the criminal proceedings, the accused-petitioner had been granted ample opportunity by way of a notice of presence, to appear before the departmental authorities and explain the reasons for his absence from duties, but to no avail. Thus, in these circumstances, there being no scope of interference, prayer for dismissal of the revision petition, has been made.

After hearing learned counsel for the parties and on having gone through the records of the case, I find no merit in the present revision petition.

It may be noticed that the petitioner had remained absent from duties from 5.10.2002 to 30.12.2002 (i.e. nearly two months). It has come on record that despite having been served with the presence notice, he did not make himself available for duties and ultimately, as noticed by the learned trial Court in its judgment, he was later on terminated from service when proceeded against departmentally.

The Division Bench judgment in Phula Ram's case (supra), relied upon by the learned counsel for the petitioner has no applicability in the present case as in the said case, the petitioner therein had been admittedly on the sanctioned leave for seven days and even for extension of leave beyond the sanctioned period, he had submitted a telegram. It was the said telegram, which was rejected by the departmental authorities and therefore, his non-joining of the duties had brought in the criminal prosecution against the petitioner therein under the Act. It was under these circumstances, the Court held that the petitioner therein was not guilty of abandonment of employment or absenting himself from work and rather he was held guilty of neglect of duty within the meaning of Section 29 of the Police Act.

In Kharaiti Lal's case (supra), the Hon'ble Supreme Court held that when a constable did not report for duties for a refreshment course, he could not be held guilty under Section

5(b) of the Act. A perusal of the said judgment would reveal that the absence in the said case was between 2nd and 3rd February, 1953 and in the given facts of the said case, it was held that the petitioner might have entailed himself liable for the neglect of duties, but not under Section 5 of the Act and accordingly, he was acquitted.

However, coming to the facts of this case, the petitioner had absented himself from duties nearly for two months and that too, without any intimation or prior approval of the higher authorities. Besides, the petitioner, as noticed by the learned trial Court in its judgment, stands terminated from the service. Thus, the facts of the instant case being totally different from the facts of the cases referred to above, the said judgments are of no help to the petitioner. Hence, the finding regarding conviction as recorded by the learned trial Court and upheld by the appellate Court, is maintained.

At this stage, learned counsel appearing for the petitioner contends that the petitioner has already undergone 2 months and 15 days out of the total sentence of 1 year imposed upon him. It is further submitted that the FIR in this case was registered on 3.2.2003 and the petitioner has been facing the agony of trial for the last 16 years. Therefore, under these mitigating circumstances, the sentence imposed upon the petitioner may be reduced to the period already undergone by the petitioner.

The prayer of the learned counsel for the petitioner regarding sentence part, deserves acceptance, especially when,

in my opinion, after 16 years of protracted trial, no useful purpose would be served by sending the petitioner behind the bars once again to undergo the remaining period of sentence. Instead, ends of justice would be suitably met if the sentence imposed upon the petitioner is reduced to the period already undergone by him, but subject to payment of fine of Rs.10,000/- over and above to the fine already imposed by the learned trial Court.

In view of the above, while upholding the conviction of the petitioner under Section 7 of the Act, his substantive sentence is reduced to the one already undergone by him subject to payment of fine of Rs.10,000/- over and above the amount of fine already imposed by the learned trial Court. Such amount shall be deposited by the petitioner before the learned Chief Judicial Magistrate Mansa, within a period of two months from today.

Disposed of in the above terms.

(HARNARESH SINGH GILL)
JUDGE

10.09.2019
ds

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No