

**Sr. No.251
IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP No.23261 of 2010 (O&M)

Date of Decision: 20.11.2019

Joga Singh

... Petitioner

Versus

Punjab State Electricity Board and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Abhimanyu Kalsy, Advocate,
for the petitioner.

Ms. Gurpal Kaur Dulat, Advocate,
for the respondents.

ARUN MONGA, J.(ORAL)

1. *Inter alia*, issuance of a writ in the nature of certiorari has been sought seeking to quash order dated 26.05.2010 (Annexure P-2) thereby rejecting the review petition filed by the petitioner against appellate order dated 19.03.2008 (Annexure R-9) (wrongly appended as P-9 with the reply) and upholding the dismissal order dated 13.11.2007 (Annexure R-8) (wrongly appended as P-8 with the reply).

2. In the return filed on behalf of the respondents, the petition has been resisted primarily on the ground that petitioner was transferred way back in the year 2000 and he did not accept the said transfer orders and instead impugned the same by filing a writ petition before this Court, which was dismissed.

3. Against the dismissal of the said writ petition, no further proceedings were initiated by the petitioner.

4. On the other hand, instead complying with the transfer

orders, he himself preferred to abandon his service and never reported at the place of transfer with effect from 27.01.2000 onwards.

5. I have heard rival contentions of learned counsel and I have gone through the pleadings along with record appended thereto more particularly the dismissal order dated 13.11.2007 (Annexure R-8) whereby the petitioner was awarded the punishment of dismissal from service on the ground having himself wilfully remained absent.

6. In the pleadings, no explanation worthy of being plausible has been rendered with regard to inordinate delay of 7 years of absence when clearly the petitioner was dismissed from service.

7. In fact, the perusal of the dismissal order which is self-explanatory would reflect that more than deserving opportunity was tried to be afforded by the disciplinary authority to enable the petitioner to appear before him before he was forced to take ex parte proceedings passing the order of dismissal.

8. The petitioner without seeking requisite sanction of leave remained absent from 27.01.2000 and perhaps as a protest to not comply with the transfer order dated 13.01.2000.

9. Despite the dismissal of the writ petition impugning the transfer order, the department on its own showed leniency to the petitioner and yet again transferred him vide transfer order No.107 dated 15.02.2000 to the office of Superintending Engineer, Muktsar and there too the petitioner did not report for duty. Thereafter, no

adverse action was taken by the department though the petitioner deserved the same. Yet again leniency was shown to him and vide order dated 22.08.2003, he was transferred/posted from the office of Superintending Engineer to the Senior Executive Engineer, Fazilka, but the petitioner once again preferred not to join his place of posting at Fazilka. Clearly, the department was forced to prepare the list of charges bearing No.4345 dated 20.04.2004 and sent the same to his residential address where the other communications which were being sent and being received but the petitioner in a cavalier manner refused to receive the charge sheet.

10. Faced with the situation, the competent authority i.e. Executive Engineer once again made personal efforts to serve the charge sheet by hand through Sub Divisional Officer and yet again the petitioner declined to accept the same. Despite the refusal of the petitioner either to receive the same at his residential address or otherwise to receive the same by hand from the SDO, the Department showed leniency. Instead of proceeding against him, it preferred to inform the petitioner once again by way of a newspaper publication in Newspaper (Daily Punjabi Newspaper "Ajit") dated 27.08.2005. Vide said newspaper publication, the petitioner was yet again called upon to join duty within 15 days, but to no avail. Attempts of the department did not culminate here and the disciplinary authority vide order dated 17.05.2006 appointed Inquiry Officer i.e. one Mr. Babu Lal Chhokra, Assistant Executive Engineer with instructions to him to send report. The

said Inquiry Officer vide his letters dated 13.06.2006 followed by 09.10.2006 tried on two different occasions to serve the petitioner on his permanent address. The said letters were also returned by the postal department with remarks “refused to receive the letter”.

11. It is settled position of law refusal of service is deemed to be effected service. The department was, therefore, at liberty to proceed on that basis. Yet again department showed further leniency and chose to give newspaper publications in Indian Express on 03.02.2007 followed by Punjabi Tribune on 06.02.2007 again calling upon the petitioner to come present within 15 days of the publication of the said notices. The petitioner did not respond to the same and it was thereafter, in the above background of making innumerable attempts, that the disciplinary proceedings were carried out ex parte by the disciplinary authority.

12. In view of the aforesaid background, I am of the opinion that the disciplinary authority was left with no other choice but to award the punishment of termination in inevitable circumstances which are creation of the petitioner himself.

13. The appellate authority was rightly passed the impugned order upholding the punishment order and no interference is, therefore, called for by this Court under extraordinary writ jurisdiction.

14. Writ petition is dismissed.

(ARUN MONGA)
JUDGE

20.11.2019

vandana

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No