

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

215

CWP No.18197 of 2015

Decided on : 10.05.2019

Jagtar Singh

... Petitioner

Versus

Union of India and others

.. Respondents

CORAM : HON'BLE MR.JUSTICE ARUN MONGA

Present : Ms.Kulwant Kaur Kahlon, Advocate
for the petitioner.
Ms.Sheenu Sura, Advocate for the respondents.

Arun Monga, J. (Oral)

1. Petitioner herein inter alia, seeks quashing of order dated 02.09.2013 (Annexure P-5) whereby petitioner has been dismissed from service.

2 The only charge levelled against the petitioner as per charge-sheet dated 23.8.2013 (Annexure P-4) is that he remained absent for 41 days with effect from 01.07.2013 (FN) to 11.08.2013 (FN) without leave. Owing to the said delinquency, punishment order dated 02.09.2013 (Annexure P-5) was passed awarding him major punishment of dismissal from service which in turn was upheld by appellate orders dated 13.02.2014 (Annexure P-9) and 06.01.2015 (Annexure P-10) respectively.

3. Per contra, primary stand taken in the written statement of respondents is that the absence from duty for 41 days without leave was not the only reason for passing of punishment order but the petitioner was a habitual offender.

4. Having gone through the pleadings, I find that the stand taken

in the written statement and convassed by learned counsel for the respondent qua the past conduct of the petitioner does not stand scrutiny of law or the principles of fair play and justice. The impugned order passed by the punishing authority and the appellate authority, nowhere mention anything about the past conduct of the petitioner being a ground for holding him habitually delinquent. The said stand was taken for the first time in the written statement filed by the respondent-BSF in response to the writ petition.

5. I am of the opinion that the argument of the learned counsel for respondents is not sustainable in the eyes of law as it is a settled position of law that the punishment order must speak for itself and stand of party cannot be improved by way of pleadings. Even otherwise, I am of the view that the punishment of dismissal is disproportionate to the gravity of the offence imputed against him.

6. Even if the said delinquency attributed to him for remaining absent from duty without leave is taken to be correct, it was owing to the exceptional circumstances in view of the family dispute as stated by the petitioner which disabled him to report for duty and was a mitigating factor required to be taken into consideration. Punishment of dismissal from service is akin to economic death penalty. It is only takes away the livelihood of the delinquent employee with no future prospects due to the stigma but the entire family is also reduced to live in penury and suffers consequences for rest of their lives. Reliance may be placed on the judgment of Calcutta High Court in “Union of India and others Vs. Sri

reproduced herein below:-

“13. It would be naïve to say as on today, that livelihood is not a part of right to life. By this time, by a large number of decisions, it has been held by the Hon'ble Supreme Court as well as High Courts in this country that livelihood is an integral facet of right to life. In this connection, a decision of the Hon'ble Supreme Court rendered in the case of **State of Himachal Pradesh v. Raja Mahendra, reported in AIR 1999 SC 1786** may be remembered.

14. Dismissal from service undoubtedly is taking away the livelihood of a person at an advanced stage because at that stage, it is impossible for a person to get any employment elsewhere as the order of dismissal will be treated as a disqualification. Loosing a job in an establishment amounts to a civil death, as the concerned person will not be in a position to earn livelihood at the advanced stage, when all his energies and endeavours have almost come to a diminishing stage.”

7. Learned counsel for the petitioner has relied upon the judgment of this Court rendered in CWP No.3573 of 2003 titled as “Sanjeev Sharma Vs. Union of India and others” decided on 14.12.2018, which in turn was passed relying upon Division Bench judgment of Delhi High Court in case W.P(C) No.7098 of 1999 titled as “Ex. Constable Ashok Kumar Vs. Union of India and others” decided on 24.5.2012, whereby delinquency attributed to the petitioner was overstaying on leave for 115 days and the punishment order whereby he was dismissed, was

quashed being undoubtedly harsh.

8. Having gone through the Division Bench judgment as also the judgment *ibid*, relied upon by learned counsel for the petitioner, I am of the considered view that case of the petitioner is squarely covered by the same.

9. In view of my discussion above and the reasoning contained therein, the major punishment awarded vide order dated 02.09.2013 (Annexure P-5) as also upheld vide appellate order dated 13.02.2014 (Annexure P-9) and order dated 06.01.2015 (Annexure P-10) are quashed. The respondents are directed to reinstate the petitioner with continuity of service and consequential benefits with effect from the date when he was dismissed from service, within two months from the date of receipt of certified copy of this order. However it is made clear that the petitioner shall not be entitled to any pay for the period he was out of service.

9. With the above said observations, the present writ petition is allowed, in terms of preceding para, above.

**[ARUN MONGA]
JUDGE**

10.05.2019

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