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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 3911/2018**

U. DAVID RAJU

..... Petitioner

Through: Mr.Abhishek Kumar Choudhary with
Mr. Brijesh Kumar, Advocates.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Ms.Anju Gupta and Mr.Vikrant
Nilesh Goel, Advocates.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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27.08.2019

1. By way of this writ petition the Petitioner has prayed for his reinstatement with full back wages, seniority, increment and promotion. As per the Petitioner he was serving with Respondent Nos. 2 and 3 as Constable/G.D. with effect from 7th July, 2007. He applied for leave and the same was granted to him from 19th August, 2014 to 3rd September, 2014.

2. It is further averred by the Petitioner that during that period he suffered from high fever and loose motion and he sent an application for extension of leave alongwith medical certificate on 2nd September, 2014 but no response was received. His wife was also pregnant and she was suffering from high blood pressure and he had to take his wife to Delhi to save the life of his wife and that of unborn child. Wife of the Petitioner gave birth to a premature baby on 14th November, 2014 but the child expired on 27th December, 2014 and due to this the Petitioner suffered mental pain and trauma and he could not inform the Respondents about the reasons of his absence.

3. The medical condition of wife of Petitioner did not improve. She was kept under observations for several months. The Petitioner's wife again conceived and remained under treatment till the delivery of the baby i.e. from 10th July, 2015 to 11th March, 2016 and during this period the Petitioner duly informed Respondent No. 3 about the health and treatment of his wife.

4. It is further alleged by the Petitioner that Respondent No. 3 was in some hurry to dismiss him without considering the crises, grief and trauma which he was facing and accordingly ex-parte decisions were taken by the Respondents. When the Petitioner reached his native place in Andhra Pradesh on 30th March, 2016 he received copies of two orders dated 31st December, 2014 and 21st April, 2015 which were written in Hindi and he was not well versed with Hindi language and even his parents were unable to know the contents of the said letters.

5. Petitioner appealed to the Respondents on 16th May, 2016 and 10th June, 2016. The appeal of the Petitioner was dismissed vide order dated 24th June, 2016 by Respondent No. 3 without going into the merits. Another representation was sent by the Petitioner to Respondent No. 2 on 25th May, 2017 but the same was rejected on 20th July, 2017 without appreciating the hard circumstances faced by the Petitioner.

6. As per the Petitioner, he was never given proper opportunity of being heard before order of dismissal was passed against him. He sent a legal notice dated 27th December, 2017 to the Respondent no reply was received

so the Petitioner has been forced to invoke the writ jurisdiction of this Court.

7. In the counter affidavit filed on behalf of the Respondents, it has been stated that the Petitioner was granted eight days' casual leave on ground of family problem and after completion of the leave he was supposed to return at Northern Headquarters of ITBP at Dehradun on 3rd September, 2014. The Petitioner did not return for duty on 3rd September, 2014 rather he sent a fax message for extension of leave for ten days due to his own illness but no medical certificate was enclosed.

8. The Petitioner was informed on 4th September, 2014 that in the absence of medical document it was not possible to extend his leave and the application will be considered on submission of medical documents by him on his arrival at the point of duty. However, no response was received to this communication. The Petitioner neither returned to the place of posting nor sent any response to this communication so he was again directed on 25th September, 2014 to report at the Headquarters at the Dehradun and he was warned that in case he fails to report then disciplinary action will be initiated against him. Again, no response was received from the Petitioner. Thereafter a letter dated 8th October, 2014 was sent to S.P. District Kurnoor, Andhra Pradesh for apprehending the Petitioner and handing him over to the Headquarters of ITBP but no reply was received from the local police in this regard.

9. Thereafter, the Respondents were forced to constitute the Court of Enquiry as per the provisions of Section 74(1) of the ITBP Act, 1992 to find

out reasons of unauthorised absence of the Petitioner and on the basis of the report of said Court of Enquiry Petitioner was declared “Deserter” with effect from 4th September, 2014 vide memorandum dated 31st December, 2014 and this order was also sent to the Petitioner by registered post at his native address for giving an opportunity of being heard. Thereafter a ‘Notice’ was sent to DAVP vide letter dated 15th January, 2015 for publication in local newspaper so that the Petitioner could report to his duties. This notice was published in local newspapers named “Andhra Jyothi” and “Saakshi” of 31st January, 2015 and as per the said notice Petitioner was given fifteen days’ time to resume his duties and otherwise it would be presumed that he was not willing/interested to serve in ITBP and his services would be terminated. The Petitioner neither reported to the Headquarter nor replied to the said notice.

10. As per Respondents, even previous record of the Petitioner shows that he was a habitual offender of absenting from leave. Since the Petitioner did not report on duty even after 230 days of his absence and also keeping in view his habitual absence from the place of posting, the competent authority terminated his services as per the Rule 20 read with Rule 17 of ITBP Rules 1994 and it was communicated to all concerned vide order dated 21st April, 2015 and a copy of the same was also sent to the Petitioner at his native place address through registered post.

11. The Petitioner submitted appeal dated 16th May, 2016 and 10th June, 2016 to reinstate him in service after lapse of more than one year from the date of his termination and it was rejected being devoid of any merit and

also being time barred, as the appeal could be filed within ninety days from the date of termination of service. This decision was communicated to the Petitioner on 24th June, 2016.

12. We have heard the learned counsel for the parties. No plausible explanation has been given by the learned counsel for the Petitioner for the unauthorised absence of the Petitioner from his place of duty with effect from 4th September, 2014 onwards. The only communication which was sent by him was, as per his own statement, is dated 2nd September, 2014 for extension of his leave by ten days and this message was sent by fax but as per the Respondents no medical certificate was enclosed alongwith the said request.

13. Thereafter, Petitioner never took any steps to either contact or to inform the Respondent No. 3 regarding the reasons of his absence from his place of posting. The next communication on record placed by the Petitioner in this regard is dated 16th May, 2016/10th June, 2016 meaning thereby that for a period of about one year and eight months, he did not think it proper to inform his employer as to why he was not attending his duties. The Petitioner has not denied the receipt of the orders/communications issued by the Respondent No. 3 which were sent at his residential address but the lame excuse given is that the said communications were in Hindi so he and his parents could not understand the meaning of the same. This is not a tenable ground at all.

14. To support his ground for reinstatement, the learned counsel for the Petitioner has relied upon the judgment of this Court in ***Mahesh Chand v.***

UOI 145 (2007) DLT 588 (DB) wherein the Petitioner had overstayed his leave for 85 days and this Court was pleased to allow the petition, set aside the impugned order and direct the reinstatement of the order and disciplinary authority was given a free hand to decide upon lesser punishment, if any, that may be imposed upon the Petitioner. That judgment was delivered in the peculiar facts and circumstances of that case. In the said case initially the Petitioner was given 30 days leave in connection with his own marriage but his father passed away in the meantime so resumption of duties was delayed by 32 days beyond the sanctioned leave. On the second occasion, the Petitioner was granted 28 days leave in connection with demise of his mother but he joined the duties after delay of 85 days and during that period, he was under treatment for his illness at the Primary Health Centre, Dankaur. On both the occasions, the Petitioner had lost one of his parents and his own illness compounded the said misfortune. It was held that no formula can be formulated or applied in such cases nor any norms can be prescribed for a uniform application to all situations and punishment of dismissal should be given only in cases of employees who are habitual.

15. In our view, the present case falls in the category of cases where employees are habitual as the Petitioner did not think it proper to either join his place of duty or at least inform his employer of the reasons of his absence for a period of more than one year and eight months. Even on earlier occasions, Ratio of ***Mahesh Chand*** (supra) does not apply in the facts and circumstances of the present case. The Petitioner has not been able to show any ground which entitles him to invoke writ jurisdiction of this Court to pray for reinstatement with the ITBP.

16. Hence, the writ petition is devoid of merits and the same is hereby dismissed. No order as to costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 27, 2019

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