

**IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH
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CWP-442-2020

Date of decision: 28.02.2020

AVTAR SINGH

...PETITIONER

V/S

STATE OF PUNJAB & ANOTHER

..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Simranjeet Singh Gill, Advocate,
for Mr. Satnam Singh Ahluwalia, Advocate,
for the petitioner.

Mr. Vikas Mohan Gupta, Additional Advocate General, Punjab,
for the State.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this writ petition is to the enquiry dated 17.05.2018 (Annexure P-6) and the order of punishment made in pursuance thereto dismissing him from service as well as the order of the Appellate Authority, whereby the appeal preferred by the petitioner has also been dismissed.

The writ petition had come up for hearing before this Court on 09.01.2020 when following order was passed:-

“ Counsel for the State to seek instructions as to what action was taken upon the application dated 14.06.2004

(Annexure P-1) for voluntary retirement submitted by the petitioner followed by application dated 26.07.2004 (Annexure P-2), which has been forwarded to the Chief Engineer on 23.03.2005 (Annexure P-3).

In pursuance to the said order, affidavit dated 28.02.2020 of the Executive Engineer, Central works Division No. 1, PWD (B&R) Amritsar, Punjab, has been filed in Court.

According to the said affidavit, the earlier applications, which were moved by the petitioner dated 14.06.2004 (Annexure P-1) and 26.07.2004 (Annexure P-2), were returned to the petitioner as the petitioner, by that time, had not completed 20 years of service and, therefore, was not entitled for consideration for the voluntary retirement, as prayed for by him. As regards the application, which was submitted by the petitioner subsequently, the same was withdrawn by him. In the light of the withdrawal of the said application, the assertion of the counsel for the petitioner that the voluntary retirement application submitted by the petitioner having not been decided and, therefore, the petitioner, on expiry of the notice period, would be deemed to have been voluntarily retired, thus, the dismissal order as well as the appellate authority's order rejecting his appeal are unsustainable, cannot be accepted.

Another argument, which has been raised by the counsel for the petitioner, is that the petitioner had applied for five years' leave under the Self Employment Scheme which has been rejected on the ground that an enquiry was pending against him whereas the said enquiry stood already concluded, whereby the punishment imposed upon the petitioner was for recovery of ₹14,450/-. He, thus, contends that the reason for rejection of his

application for five years' leave is unsustainable.

This contention of the counsel for the petitioner again cannot be accepted. Once the competent authority has not accepted the said request, the petitioner did not get a right for proceeding on leave for a period of five years, may be as per the Policy of the Government of Punjab which requires the approval/sanction of the competent authority for such leave which an employee would have sought.

A perusal of the paper-book would indicate that the order of punishment of dismissal has been passed against the petitioner because of his absence from duty after holding a regular enquiry. Petitioner has chosen not to participate in the enquiry. After the report of the enquiry officer, the petitioner was issued a show cause notice to submit his reply in writing within a period of 15 days but no reply was received. Petitioner admits the fact that no reply has been filed by him to the said show cause notice and, therefore, the competent authority has, in the absence of any reply from the petitioner, decided to dismiss him from service for absence from duty. The appellate authority has confirmed the said order of punishment, as imposed by the punishing authority, which cannot be faulted with as absence from duty is a mis-conduct which requires the competent authority to pass an order as it finds mention in the statutory rules, for which a punishment can be imposed.

Learned counsel for the petitioner asserts that the punishment of dismissal is too harsh in the light of the fact that the petitioner has completed 21 years of service and, therefore, was entitled to the grant of pension. In support of this contention, he places reliance upon a judgment of this Court in the case of **Lal Chand Aggarwal (dead) through LRs vs.**

State of Haryana and others, 2015 (4) S.C.T. 319.

A perusal of the said judgment would show that the Court has exercised its discretion while reducing the punishment of dismissal to that of compulsory retirement keeping in view the peculiar facts and circumstances of the said case where evidence was brought on record which clearly shows that the health was a big issue with the deceased petitioner Lal Chand Aggarwal and it is under certain circumstances which were beyond his control which led to his absence from duty.

Present is a case where no such plea has been taken nor any evidence has been brought on record. The only plea, which has been taken by the petitioner for his absence from duty, is his family circumstances, which plea cannot be equated with that of the situation, as prevalent in Lal Chand Aggarwal's case (supra). The reason, therefore, as assigned by this Court in Lal Chand Aggarwal's case (supra) and the ratio laid down therein would not be applicable to the case in hand. The absence from duty of an employee would be one of the gravest acts of mis-conduct, for which order of dismissal can be passed and, therefore, this Court is of the view that the punishment, as imposed upon the petitioner, is fully justified which does not call for any interference.

The writ petition, therefore, stands dismissed.

February 28, 2020

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No