

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-22114-2014 (O&M)
Date of Decision: 16.1.2020

Hargurinder Singh

--Petitioner

Versus

Punjab State Power Corporation Ltd. & others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Vijay Rana, Advocate for the petitioner.

Mr. Mukul Aggarwal, Advocate for the respondents.

TEJINDER SINGH DHINDSA.J (Oral)

Petitioner, who was serving on the post of Upper Division Clerk under the respondent-Corporation has filed the instant writ petition assailing the order dated 23.9.2011 (Annexure P-8) whereby the punishment of removal from service has been imposed upon him and his period of absence from duty w.e.f. 5.9.1994 to 22.9.2011 has been directed to be treated as non-duty period.

It would be apposite to take note that the instant petition had come up for preliminary hearing before this Court on 30.10.2014 and at that stage counsel had confined the scope of the petition as regards quantum of punishment. His statement had also been recorded that petitioner would not claim any arrears for the past period.

Operative part of the notice of motion order dated 30.10.2014 reads as follows:-

“Learned counsel limits his relief in the present petition to the awarding of lesser punishment. He also states that the petitioner would not claim any arrears for the past period.

Notice of motion for 15.3.2015”

Counsel for the petitioner while contending that the punishment imposed is excessive has submitted that initial appointment of the petitioner was in the year 1985 in the erstwhile Punjab State Electricity Board. It is urged that the extreme penalty of removal from service is disproportionate, if, viewed against the length of service that the petitioner has put in. That apart, counsel submits that the absence from duty was well justified as the petitioner had given intimation with regard to his illness to the respondent authorities from time to time. Even the concerned doctor from Civil Hospital, Jalandhar had issued the medical certificate certifying that the petitioner was suffering from acute depression from 5.9.1994 to 18.5.1995. Further contended that in the inquiry held against the petitioner in which he has been held guilty of being absent from duty, the only basis taken is that the certificates relied upon were not on the prescribed proforma. It is argued that the harsh penalty of removal from service should not have been imposed on such technicality. Yet another submission raised is that vide letter dated 19.12.1994 (Annexure P-2) the petitioner had been relieved from his duties and he had been directed to get further orders as regards his posting from the office of Director, Personnel of the Punjab State Electricity Board but no such posting orders had been issued and for which the petitioner cannot be put to blame for not having resumed duties.

Per contra counsel would submit that due process had been followed in terms of a detailed departmental inquiry on the charge of unauthorized absence from duty. Petitioner had been associated in such inquiry at each stage. No plausible defence had been forthcoming to justify absence from duty and under such circumstances no basis for interference in the matter is called for.

Counsel for the parties have been heard.

In matters of quantum of punishment, the principles governing interference in the same are well settled. It has been held in a catena of judgements rendered by the Apex Court that the High Court while exercising powers of judicial review cannot substitute its own opinion of penalty and impose some other penalty. It is only if the punishment imposed by the disciplinary authority shocks the conscience of the Court, then, it would be appropriate to mould the relief either by directing the disciplinary authority to reconsider the punishment imposed or to shorten the litigation and in exceptional and rare cases, to pass an order imposing appropriate punishment in the light of cogent reasons being assigned.

Adverting to the facts of the present case petitioner was charge sheeted for having remained absent from duty w.e.f. 5.9.1994 to 30.11.1994. Pursuant to such charge petitioner was removed from service vide order dated 15.6.1998. Petitioner challenged such order by instituting a civil suit. Vide judgement and decree dated 29.10.2008 the order of removal from service was set aside on the ground of being violative of the principles of natural justice. Liberty, however, was granted to initiate fresh inquiry against the petitioner. It is thereafter that Inquiry Officer was appointed and petitioner was granted opportunity to raise his defence. Apparently, the prolonged absence from duty was sought to be justified by the petitioner by way of production of outdoor medical slips. No valid justification came forth even after 1995 and up to the year 1998 as regards not joining duties. Even though, it is the assertion made on behalf of the petitioner that fresh posting orders had not been issued but such stand does not inspire confidence. Even if such was the case, the petitioner ought to have agitated

with the superior authorities or before the competent forum as regards posting orders having not been issued as is being alleged. Petitioner has chosen to remain mum on such front for a number of years.

Perusal of the impugned order would reveal that even prior in point of time petitioner had willfully absented from duty w.e.f. 25.11.1991 to 1.1.1992. Even pertaining to such absence period petitioner was charge sheeted and awarded a major penalty of stoppage of one annual increment with future effect.

In the considered view of this Court, willful absence from duty is a misconduct. In the present case it is not one stray incident of absence from duty. Facts would rather demonstrate that the petitioner is a habitual absentee. Under such circumstances, there would be no scope for interference and to take a different view as regards quantum of punishment imposed by the punishing authority.

Petition is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

16.01.2020

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