

117.

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

CWP-14761-2022

Date of Decision: 13.07.2022

MAKHAN SINGH

.... Petitioner

Versus

STATE OF HARYANA AND OTHERS

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Rajinder Goyal, Advocate, for the petitioner.

JAISHREE THAKUR.J

This is a petition that has been filed under Articles 226/227 of the Constitution of India for issuance of an appropriate writ, order or direction especially in the nature of Certiorari for quashing the orders dated 28.03.2007, 01.10.2007, 20.08.2008 and 03.09.2019 (Annexures P-5 to P-7 and P-12). The petitioner, a Constable in Haryana Police, has been dismissed from service for remaining wilfully absent from duty for a period of more than 6 months.

Briefly stated, the facts are that the petitioner joined as Constable in the police department on 16.02.2002. He was sent for basic training and while posted at IRB Centre Bondsri, Gurgaon, he sustained injury on his right foot. He was treated at Government Hospital, Sirsa and the doctor advised him for light duty for one month. While he was undergoing Basic Recruit Course, he got injured and was sent for medical check-up to Civil Hospital, Karnal on 20.09.2006 in a Government vehicle, but on the

way, he got down from the vehicle and did not report at the hospital. He remained willfully absent from the basic training. On 21.09.2006, at the time of physical attendance, he was found absent and a regular departmental inquiry was initiated against him. In the inquiry proceedings, he was held guilty of the charges levelled against him by the Inquiry Officer. The punishing authority issued a show cause notice to the petitioner on 22.02.2007 and he was asked to submit his reply, but no response was received. He was also asked to appear before the punishing authority for personal hearing on 19.03.2007, but again he did not turn up. Consequently, the punishing authority awarded him punishment of dismissal from service vide order dated 28.03.2007 (Annexure P-5) for remaining absent during the period from 21.09.2006 to 28.03.2007. The appeal preferred by him against the order of punishment was rejected by the Appellate Authority vide order 01.10.2007 (Annexure P-6). He filed a revision petition against the said order, which was also rejected by the Director General of Police, Haryana vide order dated 20.08.2008 (Annexure P-7). Thereafter, he filed a mercy petition on 21.06.2016 (Annexure P-8). He served a reminder as well on 07.10.2018 (Annexure P-10) i.e. after a period of more than 2 years. When no action was taken on the reminder, he filed CWP No.29985 of 2018 before this Court, which was disposed of vide order dated 05.08.2019 (Annexure P-11) with a direction to the respondent to consider his mercy petition dated 21.06.2016 within a period of three weeks and pass a speaking order. Vide order dated 03.09.2019 (Annexure P-12), his mercy petition came to be dismissed finding no merit upholding the dismissal order. Hence, the present petition.

Learned counsel appearing on behalf of the petitioner would contend that the petitioner has been awarded severe punishment of dismissal from service for remaining absent after holding an ex-parte inquiry. His absence from duty was neither intentional nor deliberate. He was under medical treatment. He was not given any opportunity of personal hearing, or producing any witnesses or documents, before passing the dismissal order. He has referred to Rule 16.2 of the Punjab Police Rules, 1934 to contend that his absence from duty does not lie under the gravest act of misconduct. Counsel would argue that another employee, namely, Balwinder Singh was also dismissed from service for remaining absent for 312 days and on his appeal, he was reinstated. He has thus prayed for quashing of the impugned orders.

I have heard learned counsel for the petitioner and perused the paper book.

Admittedly, the petitioner remained absent from duty w.e.f. 20.09.2006 till the passing of the order of dismissal on 28.03.2007 i.e. for a period of more than 6 months. A departmental enquiry was conducted against him, however, admittedly despite receiving the notices, he did not opt to join the inquiry proceedings. He served the department only for a short span of about 4 ½ years. Against his dismissal order, his appeal was dismissed on 01.10.2007 and thereafter, his revision petition too was dismissed on 20.08.2008. He sat over such orders for about 7 years and 10 months and thereafter arose to file a mercy petition to the State Government only on 21.06.2016, which also came to be dismissed vide order dated 03.09.2019. The petitioner again took about three years to approach this

Court.

The law is well settled that one has to be vigilant regarding his rights. The doctrine of 'Delay or Laches' is an equitable doctrine. It is based on the maxim "Vigilantibus non dormientius aequitas subvenit" which means equity aids the vigilant and not the ones who sleep over their rights. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. Even if there is no period prescribed for filing the writ petition under Article 226 of the Constitution of India, yet it should be filed within a reasonable time.

The petitioner cannot agitate a stale claim. Moreover, the act and conduct of the petitioner firstly for remaining absent from duty willfully for considerably a long period and then his remaining away from the disciplinary proceedings and finally sleeping over the orders for long periods, is not such delay which can be ignored. Moreover, he had been given an opportunity to defend himself but he choose to avoid putting in an appearance. The order as passed on the mercy petition is well reasoned and warrants no interference.

In view of above, this Court does not find any ground to entertain the instant writ petition. Consequently, the writ petition is dismissed.

(JAISHREE THAKUR)
JUDGE

13.07.2022

sanjeev

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No