

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

CWP No. 21201 of 2015 (O&M)

Reserved on : 07.07.2022

Date of Pronouncement: July 22, 2022

Varinder Kumar

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Dhawaljeet Dutta, Advocate,
the petitioner.
Mr. Pawan Sharda, Sr. DAG, Punjab.

JAISHREE THAKUR, J.

1. The petitioner has approached this Court under Articles 226/227 of the Constitution of India seeking a writ in the nature of Certiorari for quashing the impugned order 27.12.2012 (Annexure P/12) dismissing him from service and subsequent orders passed dismissing his appeal and revision against the order dated 27.12.2012.

2. In brief, the facts are that the petitioner was appointed as a Special Police Officer in District Hoshiarpur in 1994 and thereafter was promoted to the rank of Constable in 1999 on account of his good service. He was subsequently promoted as Head Constable in November 2005. On 07.12.2011, when the petitioner was posted as in-charge of Security Guards at State Bank of India, Talwara Branch, District Hoshiarpur, a customer of the State Bank of India namely, Balbir Singh informed the Bank Manager

that the gold and the silver items were missing from his locker. The matter was then reported by Balbir Singh at the Police Station Talwara, and on the basis of his complaint, a FIR No. 47 dated 8.12. 2011 was registered under Section 380 IPC at Police Station Talwara against unknown persons. The petitioner was not named as an accused under the said FIR. In February 2012, the petitioner was transferred to 6th IRB Battalion Sangrur and was relieved by the Competent Authority from the duty in order to enable him to join his duties, but he did not join at the new place of posting. As he did not join his duties at the new place of posting, he was ordered to be treated as willfully absent from duty w.e.f. 28.2.2012. Consequently, departmental proceedings were initiated against the petitioner by issuing charge sheet dated 4.5.2012, which culminated in an *ex-parte* Inquiry Report dated 18.10.2012, recommending his dismissal from service. Thereafter, a show cause notice was issued to him, which was not served upon him and ultimately, he was dismissed from service by the impugned order and his appeal too was rejected. Even the revision as well as the revision-cum-mercy petition preferred by the petitioner was rejected by the Inspector General of Police and Additional Director General of Police, by order dated 9.7.2014 and 30.7.2014 respectively.

3. Mr. Dutta, learned counsel appearing on behalf of the petitioner, would submit that the absence from duty was not willful. In the FIR registered at Talwara, the petitioner was nominated as an accused with the result he had to apply for bail which was rejected by the lower court as well as by this Court and eventually he was allowed bail by the Supreme

Court on 28.9.2012. Immediately thereafter the petitioner went to join duty on 5.10.2012, 12.10.2012, 15.10.2012, 17.10.2012 and also appeared before the Inquiry Officer to allow him to join the proceedings, which was declined. The petitioner also sent a telegram to be allowed to join his duties which was again not entertained. It is submitted that the show cause notice was sent at the house address of the petitioner and as he had not been given any interim bail, he was not residing at the given address. The petitioner even served a legal notice on the Commandant dated 23.10.2012 stating that he was not being allowed to join proceedings, but it did not have the desired effect. It is submitted that although the ground for dismissal is being absent from duty, but the authorities did not take into consideration the fact that he was not absent willfully, as he was making all effort to get bail in FIR No 47 dated 8.12.2011 in which he had been falsely implicated.

4. Learned counsel would further submit that the petitioner can be dismissed from service only under Rule 16.2 of the Punjab Police Rules, 1934 for gravest act of misconduct and “absence from duty” will not constitute a grave act of misconduct. Moreover, the punishing authority has not taken into account the length of service of the petitioner or his claim for pension before dismissing him from service.

5. Whereas, Mr. Pawan Sharda, Sr. DAG Punjab, appearing on behalf of the respondents—State would argue that the petitioner being a member of the disciplined force, could not have remained absent from duty since 28.2.2012, without prior permission.

6. I have heard learned counsel for the petitioner as well as the

respondents—State at length. Rule 16.2 of the Punjab Police Rules is reproduced herein below:-

"16.2. Dismissal. - (1) Dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service. In making such an award regard shall be had to the length of service of the offender and his claim to pension.

(2) An enrolled police officer convicted on a criminal charge and sentenced to imprisonment shall be dismissed;

Provided that in case the conviction of an enrolled police officer is set aside in appeal or revision, the officer empowered to appoint him shall review his case keeping in view the instructions issued by the Government from time to time in this behalf.

(3) When a police officer is convicted judicially and dismissed, or dismissed as a result of a departmental enquiry, in consequence of corrupt practices, the conviction and dismissal and its cause shall be published in the Police Gazette. In other cases of dismissal when it is desired to ensure that the officer dismissed shall not be re-employed elsewhere, a full descriptive roll, with particulars of the punishments, shall be sent for publication in the Police Gazette."

7. As per Rule 16.2 (1), a delinquent official shall be dismissed only for the gravest act of misconduct or if there is continued misconduct by the said delinquent official proving his incorrigibility and complete unfitness for police service. The explanation as provided to sub-rule (1) defines the gravest acts of misconduct and reading of the same does not reflect absence from duty to be such an act. While dismissing a delinquent

official, it is imperative for the authority to take into account the length of service of the delinquent and his claim to pension.

8. In the instant case, the petitioner remained absent from duty, on account of FIR No. 47 dated 8.12.2011 that was initially registered against unknown persons, but he was later on nominated as an accused under it. He remained absent from duty till such time as he was able to get interim protection from the Supreme Court on 28.09.2012 staying his arrest. The petitioner did approach the authorities to allow him to join work immediately on getting the interim bail but his request was not acceded to. Apart from that, he also requested the Inquiry Officer to allow him to join the inquiry proceeding but was not permitted to do so. Letter dated 18.10.2012 submitted by the petitioner requesting to join the duty is available on the record. The inquiry proceedings culminated in the petitioner being held guilty of being absent from duty.

9. The disciplinary authority issued a show cause notice and ultimately the petitioner was dismissed from service. An important factor that needs to be taken note of is, that when the Inquiry Officer and the Commandant i.e. respondent No. 6 were served with a legal notice by the counsel for the petitioner, wherein it was stated that the absence of the petitioner was not willful and requested to allow him to join the inquiry, he was advised vide reply to legal notice dated 12.11.2012 through his counsel, to join the departmental proceedings. Yet when the punishing authority decided the matter, the contents of the legal notice were not taken note of despite being aware of the same. The punishing authority did not take into

account the fact that the petitioner, who had served a legal notice, had given adequate explanation for being absent, which was on account of the pendency of the FIR and not getting interim protection from the courts. The absence from duty must be willful and if the delinquent employee is able to establish his absence was due to compelling circumstances, such absence cannot be held to be willful. The Supreme Court in **Krushnakant B. Parmar v. Union of India, (2012) 3 SCC 178** has held:

“17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be willful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean willful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a government servant.”

10. Apart from the above, it would also be pertinent to take note of the fact that the petitioner had put in service as a Special Police Officer and was promoted as a Constable w.e.f 23.7.1999. He had put in 13 years of service as a Constable and Head Constable, apart from 5 years of service as SPO and, therefore, would have qualified for pension. The punishing authority did not take into account his length of service, while it was mandatory for him to do so. Even the orders as passed in appeal and revision do not take into account the fact that there is non-compliance of Rule 16.2 of the PPR 1934 and, therefore, the same are not sustainable.

There are catena of judgments to the effect that the right to pension cannot be ignored. In **Dhan Singh v. State of Haryana and others, 2008(3) S.C.T. 816**, the following observations have been made:-

"17....However, the authorities have not applied their mind and not taken into consideration the length of service of the petitioner and his right to pension while awarding the punishment. It has been stated by the petitioner in ground of this petition that he has rendered 11 years 9 months service. No rule has been brought to our notice that the petitioner is not entitled to any pensionary benefits for rendering about 12 years of service. Giving consideration to the length of service, the right to pension is inherent under Rule 16.2 itself and thus it cannot be ignored."

Similar view has been taken in **Satbir Singh Constable v. The Director General of Police, Haryana and others, 2013(3) S.C.T. 76**.

11. This court is conscious of the fact that in a disciplined force like the police, absence from duty can be fatal to a person's career. However, before passing any order of dismissal, the punishing authority has to conclude that the absence was willful or the cumulative effect of continued misconduct proves a person incorrigible and completely unfit for police service. The impugned orders also do not take into account the request to join inquiry or the reasons as to why the petitioner remained absent nor his right to a pension in case he was going to be dismissed from service.

12. Consequently, the impugned order dated 27.12.2012 dismissing the petitioner from service as well as all the subsequent orders are set aside. The matter is remanded back to the disciplinary authority to

pass order afresh, after giving due opportunity to the petitioner in accordance with law. Let the matter be decided within a period of three months from receipt of a certified copy of this order.

July 22, 2022
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No