

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

CWP-21971-2018 (O&M)

Date of decision: July 22, 2022

Satish Kumar

....Petitioner

versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. J.P. Dhull, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG Haryana.

ARUN MONGA, J. (ORAL)

Petitioner herein, *inter alia*, seeks issuance of a writ in the nature of Certiorari for setting aside impugned order dated 06.03.2012 (Annexure P-4) passed by respondent No.3 whereby services of the petitioner on the post of Driver have been dismissed.

2. Succinct factual background first. Petitioner joined the respondent Department as Driver on contractual basis for 89 days vide order dated 07.08.2002 (Annexure P-1). Subsequently, his services were regularized w.e.f. 26.08.2009. Petitioner was issued charge-sheet for remaining absent from duty for 86 days w.e.f. 31.08.2010 to 24.11.2010. Petitioner remained absent due to family problems and his illness. During inquiry, he submitted all the relevant documents pertaining to his illness. He was suffering from pain & infection in his anal region due to which he could not sit properly. When petitioner recovered from his illness, he approached the concerned authorities to allow him to join duty but instead, his services were terminated vide impugned order dated 06.03.2012 (Annexure P-4).

3. It is not comprehensible as to why and how the petitioner being a Government employee would forego his right to medical reimbursement given that the petitioner's pleaded case is that he had undergone certain surgery in private nursing homes where he is stated to have remained admitted for as long as three months, though certain medical certificates have been appended as Annexures P-2 (Colly) and P-3 (colly) issued from different nursing homes.

4. On a Court query, learned counsel for the petitioner is not able to establish as to why the petitioner chose private nursing homes for his treatment despite being a Class-IV employee whereas, he was entitled to get his treatment at the Government expenses in the Government Hospital. Furthermore, it transpires that the petitioner never got himself examined from any Government medical officer even though he is stated to have taken treatment for three months which is not from one nursing home, but from different ones from time to time. He annexed medical certificates as Annexures P-2 (Colly) and P-3 (Colly).

5. Perusal of the same reflects that initially petitioner got himself treated at Bhalla Nursing Home, Gharaunda from 11.08.2010 to 25.08.2010, was operated on 21.09.2010 and discharged on 25.09.2010 from Jindal Nursing Home, Panipat, got his surgery done on 21.09.2010 at Jindal Nursing Home, Panipat, examined on 22.07.2011 and 17.08.2011 at Civil Hospital, Panipat. Collective perusal of the certificates does reveal that the petitioner was continuously undergoing treatment. However, what remains unaddressed is the conduct of the petitioner by not only seeking medical leave but also failure on his part or his family members to inform the Department that the petitioner was unable to join duties what to say if seeking any permission for remaining absent. The absence of the petitioner for three months which led to his termination, is not solitary instance and it is the collective service record of the petitioner

which seems to have weighed with the appellate officer who recorded as below
in order dated 03.09.2013 (Annexure P-5):-

“xx xxxx. Undersigned had heard the appellant personally on 05.09.2012, during personal hearing the appellant had told that he is suffering from Fistula/ Bhagandar disease due to which he could not perform duty, for which he had got done operation from Jindal Nursing Home, Panipat and Civil Hospital, Karnal. At the absent period he was admitted in the hospital and requested for restore of his services. I agree with the statement of the appellant that he was ill and was admitted in the hospital. But he has to sent the prior information to the office of his illness. Other than this perusal of the entire service record and found that his service record was not satisfactory. He during service period of 10 years remained willful absent for 64 times, 2 punishments for stoppage of annual increments, one time condemn of service, 2 times warnings, 4 inquiries in absent cases are pending and in the year 2004-05 ACR it is recorded that not good behavior with the passenger. Transport department is a necessary service, wherein any willful absent of any employee is not in public interest or service. Perusal of the entire record of the appellant and his earlier service record, he is not entitled for sympathy, therefore, his appeal is rejected.”

6. In the aforesaid premise, no grounds for interference are made out.
7. Dismissed.

(ARUN MONGA)
JUDGE

July 22, 2022
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No