

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.25910 of 2017 (O&M)

Date of Decision:14.09.2022

Kuldeep Kumar

...Petitioner

Vs

State of Punjab and others

...Respondents.

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR.

Present: Mr. Karan Bhardwaj, Advocate
for the petitioner.

Ms. Deepali Puri, Addl. A.G., Punjab.

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JAISHREE THAKUR J. (ORAL)

1. The instant writ petition has been filed under Article 226 of the Constitution of India seeking issuance of a writ in the nature of certiorari for quashing the order dated 01.02.2008 passed by respondent No.5 vide which the petitioner has been dismissed from service w.e.f. 31.01.2008 and orders dated 01.11.2010, 04.10.2011, 11.02.2013 and 23.06.2014 passed by respondents No. 4, 3, 2 & 1 respectively whereby appeal/representation/mercy petition filed by the petitioner against order dated 01.02.2008 also stood dismissed.

2. In brief, the facts as culled out from the petition are that the petitioner was appointed as Constable in Indian Reserve Battalion, Jalandhar Cantt. on 09.02.2005 on compassionate ground, as his father died in harness on 25.06.2001. He was posted at 4th Indian Reserve Battalion, Jalandhar Cantt. and completed the basic training course from 09.01.2006 to 10.08.2006 in batch No.141. The petitioner went on leave for 2 days from 30.04.2007 to 01.05.2007 but due to compelling circumstances he could not join duty on 02.04.2007 after availing the leave. Accordingly, an entry was made in the roznamcha of Battalion Headquarter, 4th Indian Reserve Police, Jalandhar Cantt. and his

absence was marked. Respondent No.5 vide letter dated 11.05.2007, which was addressed at his rented accommodation, directed the petitioner to report on duty immediately and in case of not doing so, departmental action will be initiated against him. The aforesaid letter remained unserved with the report that the petitioner was not residing at the given address. Again letters dated 28.05.2007 and 18.06.2007 were sent on the very same address asking the petitioner to report on duty and thereafter, when no response came forth from the petitioner, he was suspended vide order dated 09.07.2007 by respondent No.5. A departmental inquiry was initiated against the petitioner and vide order dated 03.08.2007, Inspector Jarnail Singh, 4th Indian Reserve Battalion, Jalandhar Cantt. was appointed as inquiry officer. Vide letter dated 13.08.2007, the enquiry officer asked the petitioner to join duty within 7 days as well as to join the departmental proceedings, failing which ex parte proceedings would be initiated against him. Similar letters were issued on 23.08.2007, 05.09.2007, 31.10.2007, 08.11.2007 and 21.11.2007 asking the petitioner to join the departmental proceedings otherwise he would be proceeded against ex parte. The petitioner did not appear despite service and ultimately the inquiry officer submitted inquiry report concluding that charges against the petitioner stand proved. Thereafter, a show cause notice dated 04.01.2008 was issued to show cause within 10 days as to why the petitioner be not terminated from service. Since the petitioner did not respond to the show cause notice despite receipt of the same, vide order dated 01.02.2008, the petitioner was dismissed from service w.e.f. 31.01.2008 and the period from 02.05.2007 to 09.10.2007 and from 22.10.2007 to 31.01.2008 was considered without duty. Aggrieved against the order dated 01.02.2008, the petitioner preferred an appeal before respondent No.4 which stood dismissed vide order dated 01.11.2010 being time barred as

the same was filed after 1 year 8 months from the passing of the order of his dismissal from service. Subsequent mercy petition/revision petition/representation submitted by the petitioner against the order of dismissal also stood dismissed, which orders are also challenged in the instant writ petition.

3. Learned counsel appearing on behalf of the petitioner would contend that the petitioner remained absent on account of the fact that an FIR No.7 dated 11.01.2007 under Sections 498-A, 406 IPC and Section 31 of Protection of Women from Domestic Violence Act, 2005 was registered against him at Police Station Sadar, Jalandhar and due to apprehension of arrest under the said FIR, he could not join duty after leave period got over. The petitioner could have been dismissed from service only if he was guilty of the *gravest act of misconduct*. It is argued that the dismissal is provided in Rule 16.2 of the Punjab Police Rules, 1934 wherein it is specified that dismissal shall be awarded only for the gravest acts of misconduct or as a cumulative effect of continued misconduct providing incorrigibility and complete unfitness for police service; or a police officer shall be dismissed if convicted and sentenced to imprisonment on a criminal charge. It is submitted that absence without leave does not amount to gravest act of misconduct and therefore, the said order of dismissal is not sustainable. Apart from this, it is also argued that the petitioner was never served with the alleged notices sent by the inquiry officer asking the petitioner to join duty and the departmental proceedings as the notices were sent on the address where the petitioner was not residing at the relevant point of time. It is further argued that the inquiry officer did not follow the procedure as prescribed under Rule 14.11A of Chapter 14 of the Punjab Police Rules, 1934 for taking action against an absconding police officer. There is no limitation prescribed under

Rule 16.29 of Chapter 16 of the Punjab Police Rules, 1934 and thus, the order rejecting the appeal of the petitioner being time barred is not sustainable, therefore, prays for setting aside the orders under challenge.

4. Learned counsel appearing on behalf of the respondent-State would submit that three notices dated 11.05.2007, 28.05.2007 and 18.06.2007 were sent through special messenger at permanent address of the petitioner asking him to join duty but the petitioner did not report back and continuously absented himself from duty. Even the inquiry officer had sent three notices to join the departmental proceedings which were received by the petitioner under his own signatures on different dates. However, the petitioner came present on 09.10.2007 after remaining absent for 159 days and again absented from 22.10.2007. Thereafter, again respondent No.5 sent three notices dated 31.10.2007, 08.11.2007 and 21.11.2007 at the permanent address of the petitioner through special messenger to come present on duty but he chose to remain absent. Copy of charge-sheet and 48 hours permission for submitting his list of defence witnesses was sent to the petitioner at his permanent home address, which was received by the petitioner under his own signatures but neither he presented himself nor submitted list of defence witnesses. The petitioner was also given time 7 days time to submit his defence statement, which he did not do and it is in these circumstances that the inquiry officer completed the inquiry proceedings. Thereafter, show cause notice along with conclusion report was sent to the petitioner, which was received by him under his own signatures on 10.01.2008 and 10 days time was given to him to give reply to the show cause notice. The petitioner again did not submit his reply nor he appeared for personal hearing and ultimately vide order dated 01.02.2008, petitioner was dismissed from service. It is further argued that as per Rule

16.30(2) of the Punjab Police Rules, 1934, an appeal which is not filed within a month of the date of the original order, exclusive of the time taken to obtain a copy of order on record, shall be barred by limitation and therefore, appeal of the petitioner has rightly been dismissed being time barred.

5. I have heard learned counsel for the petitioner as well as the respondent-State at length. Rule 16.2 of the Punjab Police Rules, 1934 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) if the conduct of an enrolled police officer leads to his conviction on a criminal charge and sentenced to imprisonment shall be dismissed;

Provided that a punishing authority may, in an exceptional case involving manifestly extenuating circumstances for reasons to be recorded and with the prior approval of the next higher authority impose any punishment other than that of dismissal;

Provided further 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.”

6. A reading of the order whereby the petitioner was dismissed from service would reflect that the petitioner was dismissed on account of his absence from duty for 160 days from 02.05.2007 to 09.10.2007 and subsequently for 102 days from 28.10.2007 to 31.01.2008. The petitioner had been granted 10 days for filing reply to the show cause notice after he had been found guilty but he did not file any reply. He was also issued a notice for personal appearance but he did not appear even at that time, consequent to which order of dismissal was passed. The appeal too was dismissed, being time barred as well as the mercy petition/revision petition. The conduct of the petitioner being a member of disciplined force is highly uncalled for. It is well settled that absence without leave in a disciplined force like the Police has to be viewed seriously so as to warrant dismissal from service. Reference can be made to a judgment of the Hon'ble Supreme Court in *Om Prakash vs. State of Punjab & Ors.*, 2011(14) SCC 682, wherein dismissal of a Head Constable for his absence for a period of 39 days without leave or intimation was upheld.

7. The argument of the counsel for the petitioner that principles of natural justice have not been adhered to while conducting the inquiry has no significance, as no procedural flaws have been pointed out in the inquiry proceedings or breach of principles of natural justice. The petitioner was given reasonable opportunity to produce his defence witnesses and prove his innocence in the inquiry and on account of his failure to do so, the authorities had no option but to dismiss him from service.

8. The argument of the petitioner that procedure for action against an absconding police officer as per Rule 14.11-A under Chapter 14 of the Punjab Police Rules, 1934 is not complied with, has also no significance, as the case in hand is not of an absconding police officer, who was not served at all. Rule

14.11-A talks about where an enrolled police officer being absent on leave, fails, without reasonable cause to report himself for duty on the expiration of such leave, shall be prosecuted under Section 29 of the Police Act, 1861 and a warrant for his arrest shall be applied for. Further, if the officer absconds or conceals himself so that the warrant cannot be executed, an application shall be made to the Court for the publication of a written proclamation under Section 87 of the Code of Criminal Procedure. If the proclamation is made and the police officer so proclaimed fails to appear within the statutory period of thirty days, he may be dismissed or otherwise dealt with at the discretion of the police officer empowered to appoint him, under Rule 16.2(2). The case in hand is not the case where the enrolled police officer was concealing himself and was not served at all, compelling the court for publication of a written proclamation under Section 87 of the Criminal Procedure Code. It is also relevant to point out here that in the eventuality of following the procedure under Rule 14.11-A, the delinquent shall be prosecuted under Section 29 of the Police Act, 1861 where he shall be liable, on conviction before a Magistrate, to a penalty not exceeding three months' pay, or to imprisonment, with or without hard labour, for a period not exceeding three months, or to both. In the present case, apart from other notices, the inquiry officer sent three notices dated 13.08.2007, 23.08.2007 and 05.09.2007 through special messenger to the petitioner asking him to join duty/proceedings, which were received by the petitioner under his own signatures but still he chose to remain absent. The charge sheet and the show cause notice was also received by the petitioner under his own signatures as well as the conclusion report on 10.01.2008. The factum that the petitioner was served notices through special messenger and as well as the chargesheet, show cause notice and the conclusion report, which he received under his own

signatures, as has been stated in the reply submitted by the respondent-State, is not controverted by the petitioner filing any counter to the same. The procedure prescribed under Rule 14.11-A is altogether of criminal nature and was not warranted in the case at hand and therefore, the enquiry proceedings are not vitiated due to any procedural lapse.

9. Further, Rule 16.30(2) of the Punjab Police Rules, 1934 stipulates that an appeal which is not filed within a month of the date of original order, exclusive of the time taken to obtain a copy of order or record, shall be barred by limitation. In the present case, appeal against the order of dismissal dated 01.02.2008 was filed after 1 year and 8 months and thus, was barred by limitation.

10. As far as the argument of taking into consideration the length of service of the petitioner as per Rule 16.2 of the Punjab Police Rules, 1934 is concerned, the petitioner was appointed on 09.02.2005 and was dismissed from service on 01.02.2008 after remaining absent from duty for 262 days. There is hardly any virtue to take into consideration the length of service of the petitioner in the circumstances of the instant case.

11. In view of the findings rendered by this Court, this Court does not find any reason to interfere with the impugned orders passed by the disciplinary/competent authorities. Consequently, the instant petition stands dismissed.

(JAISHREE THAKUR)
JUDGE

September 14, 2022

Pankaj*

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No