

105.

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

CWP-37642-2019

Date of Decision: 29.09.2022

MADAN LAL

.... Petitioner

Versus

STATE OF PUNJAB AND ORS

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Abhiraj Singh Baweja, Advocate,
for the petitioner.

JAISHREE THAKUR.J

Aggrieved against the order of dismissal from service, the the petitioner has filed the instant writ petition.

In brief, the facts are that the petitioner was appointed as a Constable in Punjab Police and he joined as such on 04.12.1989. The petitioner continued to work till such time as he left for Italy in the month of April 2004 to look after his ailing mother. He duly applied for leave but instead of granting leave, he was marked absent from duty w.e.f. 22.04.2004. An enquiry was initiated against him and vide order dated 17.11.2006, he was dismissed from service. On return to India on 13.11.2008, he filed an appeal but the same was dismissed as was the revision petition.

Learned counsel appearing on behalf of the petitioner would argue that the order of dismissal has been passed without affording the petitioner due opportunity of hearing and he was neither served with a copy of the charge-sheet nor was given any assistant to help him in the said

enquiry. It is also argued that the dismissal from service can only be for the grievous act of misconduct and being absent from duty is not such a ground as mentioned in Rule 16.2(1) of the Punjab Police Rules. It is also argued that while making an award of dismissal, the claim for pension has to be considered, which has not been done in the instant case. The petitioner has put in 14 years of service without any blemish on his record.

I have heard learned counsel for the petitioner and have perused the pleadings of the case.

The petitioner herein left for Italy in the month of April, 2004 ostensibly to look after his ailing mother. Since he did not attend his duty from 22.04.2004 onwards, he was marked absent and thereafter directed by the local police to appear for duty. The wife of the petitioner, namely, Mandeep Kaur gave a statement in the presence of the Sarpanch and Chowkidar of the village that her husband Madan Lal, the petitioner herein, had gone to Italy in order to meet his mother. Taking note of the fact that the petitioner had left for Italy without getting sanction of ex-India leave, departmental enquiry was commenced in which Inspector Kanwaljit Singh was appointed as an Enquiry Officer. A notice was served upon the petitioner by the Enquiry Officer asking him to join departmental proceedings. The said notice was pasted outside his house in the presence of Sarpanch and other respectables of the village but the petitioner neither joined the said enquiry nor did he come present on his duty. Thereafter, ex-parte proceedings were initiated in the departmental enquiry and on completion of enquiry, a report was submitted. On perusal of the enquiry report and the concerned record, the punishing authority issued a show cause notice as to why the petitioner

should not be dismissed from service. A copy of the show cause notice was sent by post. ASI Bikram Singh also visited the residential house of the petitioner and his wife stated in the presence of Shri Jaspal Singh, Member, Gram Panchayat, that her husband had gone to Italy and that he would reply to the show cause notice on his return. Since no reply was served to the show cause notice, another opportunity was given to the petitioner to present himself, by publishing a public notice in leading newspapers i.e. Times of India and Desh Sewak, giving him 10 days time to put an appearance but despite thereto, he did not put an appearance. The case of the petitioner regarding pension was also considered but keeping in view the discipline in police department, it was held not to keep such an irresponsible and undisciplined employee in the police department. The petitioner was dismissed from service with immediate effect under Rule 16.2 (1) of the Punjab Police Rules and his period of absence w.e.f. 22.04.2004 till the passing of the order on 17.11.2006 was treated as leave without salary.

Aggrieved against the order of dismissal, the petitioner filed appeal in June 2009 and appeared before the Appellate Authority on July 7, 2009 stating that he had gone abroad without leave so that he could look after his mother. The appeal was dismissed as the petitioner was unable to substantiate that he was actually looking after his mother as all documents produced by him were in Italian language. The appeal was dismissed taking into account the gross violation of remaining continuously absent from 22.04.2004 without intimation to the department till such time as he had presented himself before the appellate authority. The Director General of Police, Punjab also dismissed the revision petition.

The argument of counsel for the petitioner that an ex-parte order could not have been passed and that a person should have been deputed to assist him, is without any merit considering the fact that every attempt was made to serve a notice upon the petitioner regarding departmental enquiry having been initiated. His wife was duly informed about the said proceedings. A show cause notice was also issued to him after the enquiry report was submitted. However, the petitioner despite notice being served upon him through his wife did not put an appearance. Another attempt was made to serve the petitioner by way of publication and once the petitioner failed to put an appearance, the authorities concerned have no option but to pass the orders which are now sought to be challenged.

The other argument of counsel for the petitioner that a Constable can be dismissed from service only for a grievous act of misconduct and absence from duty cannot be construed as such, is again without any force as this is not a case where a Constable overstayed the leave allowed to him. The petitioner herein remained absent from duty without informing the department or getting any leave sanctioned. He remained absent from duty from 22.04.2004 and only filed appeal, after his return to India, in the year 2009 i.e. he remained absent for more than 5 years. The police force is a disciplinary force and absence of an employee without sanction of leave for such a pretty long period, is an act of misconduct. In this regard, reference may be made to the judgments rendered in ***Balbir Singh (ex-Constable) Versus State of Punjab and another, 2013(1) RSJ 407; Krishan Lal (ex-Constable) Versus State of Punjab, 1997(1) RSJ 535.***

Another argument of counsel for the petitioner is that dismissal order does not take into account the case of the petitioner for grant of pension considering the length of his service, however, the order of dismissal does mention regarding whether the petitioner would be entitled to pension or not and the same has been declined. This Court does not find any infirmity in the order of dismissal as passed considering the fact that the petitioner was a member of the disciplined force and remained absent from duty w.e.f. 22.04.2004 till dismissal order was passed, without getting the necessary approval for leave or getting ex-India leave sanctioned. An enquiry has been held and due opportunity was given to the petitioner to put an appearance which he willfully refrained from joining. Principles of natural justice have also been complied with. Therefore, finding no merit in the writ petition, the same stands dismissed.

However, in case the petitioner approaches the department concerned for consideration of his claim for grant of pension independently, the same will be considered in accordance with law.

(JAISHREE THAKUR)
JUDGE

29.09.2022

sanjeev

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