

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

CWP No.1345 of 2020 (O&M)
Date of Decision: March 22, 2022

Paramajit Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Upender Prasher, Advocate
for the petitioner.

Ms. Jasleen Kaur, DAG Punjab.

JAISHREE THAKUR, J. (Oral)

The instant writ petition has been filed under Article 226/227 of the Constitution of India for the issuance of an appropriate writ, order or direction, especially in the nature of *certiorari* for quashing the order dated 17.05.2004 (Annexure P-1) passed by respondent No.5 whereby, the petitioner has been dismissed from service and subsequent order dated 16.01.2006 (Annexure P-3) passed by respondent No.4, order dated 18.02.2013 (Annexure P-4) passed by respondent No.3, order dated 26.02.2015 (Annexure P-5) passed by respondent No.2 as well as order dated 30.10.2018 (Annexure P-7) passed by respondent No.1, whereby, the Appeal/Revision/Mercy Petition of the petitioner have been dismissed.

In brief, the facts of the case are that the petitioner herein was

appointed as Constable on 29.09.1993 in the Punjab Police Force and in the month of July 2003, the petitioner was posted in police lines Majitha, where he remained absent due to his illness and remained unable to join his duty and thereafter, he was treated as absent from duty. It is submitted that the petitioner, due to his illness, was undergoing treatment and the department initiated proceedings for his absence. It is stated that the petitioner could not appear before the Enquiry Officer and ultimately, on the basis of the *ex parte* enquiry, the charges were held to be proved against him and thereafter, vide order dated 17.05.2004 (Annexure P-1) he was ordered to be removed from services. Aggrieved against the order of removal from services, the petitioner herein filed statutory appeal, revision and the Mercy Petition, however, all came to be dismissed. All the said orders have been assailed in the instant writ petition.

Learned counsel appearing on behalf of the petitioner would argue that the authorities have considered the repeated absence of the petitioner as the sole reason and did not consider the medical evidence put forth by the petitioner that he was ill, therefore, his claim for reinstatement should be considered. It is contended that the orders, so passed by the official respondents, are illegal, unjust and improper, therefore, the same are liable to be quashed. In support of his arguments, learned counsel for the petitioner would rely upon judgments rendered by the Apex Court in *Collector Land Acquisition Anant Nag and another vs. Ms. Katiji and others*, AIR 1987 SC 1353, *Prem Chand vs. Rup Chand*, 2001(SUP-1) JT 86, *State of Nagaland vs. Lipok AO and others*, AIR 2005 SC 2191 and *Commissioner Nagar Parishad, Bhilwara vs. Labour Court Bhilwara and*

another, 2009(3) SCC 525.

Notice of motion was issued in the matter, pursuant to which the respondents have put in their appearance and filed their reply.

Learned State counsel would argue that the petitioner willfully absented himself from duty without any leave or permission from the competent authority and absent is a gravest act of misconduct in the disciplined force. It is contended that due to his continuous absence from duty, the petitioner was placed under suspension and a regular departmental enquiry was initiated against him. The enquiry officer started departmental enquiry against the petitioner and issued summary of allegations along with list of witnesses and issued various notices to the petitioner, which the petitioner personally noted, however, did not join the departmental enquiry. The same were also sent at the address of the petitioner through special messenger, which were duly received by his wife in the presence of an independent witness of the village, however, in spite of that, the petitioner did not join the departmental proceedings. Various other notices were also sent to the petitioner with the direction to attend the office of enquiry officer and join the departmental enquiry against him and defend himself, but despite receiving the notices personally under his signature, he did not intentionally join the departmental proceedings. Due to this reason, approval for *ex parte* proceedings against the petitioner was accorded by the competent authority. It is contended that after completing the enquiry, the enquiry officer held the petitioner guilty on the charges of absence levelled against him and sent the enquiry file to the competent authority. The petitioner was reinstated provisionally without prejudice to the decision of

departmental enquiry pending against him and a show cause notice was issued to him along with copy of finding of departmental enquiry, however, despite receiving the same personally, the petitioner did not submit his written reply within the stipulated period, nor personally appeared to defend himself. A reminder was also sent to the petitioner in this regard, but the petitioner did not bother to the same and, thereafter, the petitioner was dismissed from service w.e.f. 17.05.2004 and his absence period was treated as *non-duty period* without pay.

I have heard learned counsel for the parties, apart from perusing the pleadings of the case.

A perusal of order dated 17.05.2004 passed by Senior Superintendent of Police, Majitha (Annexure P-1) makes it clear that the petitioner herein started absenting himself from duty w.e.f. 16.04.1995. In the year 1995, he remained absent from duty *six times*, in the year 1996, he remained absent from duty *six times*, in the year 1998, he remained absent from duty *six times*, in the year 1999, he remained absent from duty *four times*, in the year 2000, he remained absent from duty *two times*, in the year 2001, he remained absent from duty *three times*, in the year 2002, he remained absent from duty *three times* and in the year 2003, he remained absent from duty *three times*, for different dates, as detailed therein. The statutory appeal, revision and the mercy petition also came to be dismissed. This court is of the considered view that in case, the petitioner was suffering from some ailment, he could have got his leave sanctioned or could have informed the department, but he did not bother to do so. Further, despite providing number of opportunities by the department to the petitioner to

join the departmental proceedings, he again did not bother to do so. It is the stand of the petitioner herein from the very beginning that he was ill and taking the medical treatment, however, no document has either been produced before the department during enquiry or otherwise before this Court. The case law relied upon by counsel for the petitioner is totally distinguishable and cannot be applied to the facts and circumstances of the present case. Under this peculiar situation, the contention raised by the petitioner that he was ill and getting the medical treatment, cannot be accepted as gospel truth. By any stretch of imagination, the orders passed by the competent authorities in the present case do not suffer from any illegality or infirmity, rather, the same are speaking one.

Finding no ground to interfere in the instant petition, the same is hereby dismissed.

March 22, 2022
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No