

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

CWP No.16904 of 2017

Date of decision : 12.01.2023

Balwinder Singh

....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Rajan Lakhanpal, Advocate
for the petitioner.

Mr. Sehajbir S. Aulakh, Asstt. Advocate General, Punjab.

PANKAJ JAIN, J. (ORAL)

Present writ petition has been filed under Article 226/227 of the Constitution of India for issuance of writ of mandamus seeking quashing of order dated 29th of December, 2008 (Annexure P-1) whereby the services of the petitioner have been ordered to be dismissed on account of unauthorized absence for 259 days from 15th of April, 2008 to 29th of December, 2008 and the order dated 5th of November, 2013 (Annexure P-3) whereby the appeal preferred by the petitioner also stands rejected being barred by delay and that order dated 6th of March, 2014 placed on record at Annexure P-5 whereby his mercy petition also stands rejected.

2. The brief facts that needs to be noticed for adjudication of the present writ petition are that the petitioner joined Police Forces in the year

1993. In the year 2008, he proceeded on Ex-India Leave from 16th of March, 2008 to 14th of April, 2008. On the expiry of such period he opted not to return back though as per him he filed an application seeking extension of leave through Fax. When the petitioner returned back, he found that his services already stood terminated vide order dated 29th of December, 2008 (Annexure P-1). Thereafter, appeal preferred by him was dismissed being barred by delay and mercy petition was also ordered to be dismissed being not maintainable in the facts and circumstances.

3. Ld. Counsel for the petitioner submits that after the petitioner had applied for extension of leave, the authorities ought to have passed the order on such application rejecting the same or accepting it. He, thus, submits that in view of the aforesaid fact the punishment of dismissal being extreme punishment is disproportionate to the misconduct alleged against the petitioner.

4. Per contra, State Counsel submits that the petitioner being member of a Disciplined Forces was required to report back to the duty on expiry of the leave and, thus, unauthorized absence being one of the major misconducts prescribed under the rules cannot be ignored. The penalty of dismissal is in accordance with the provisions of law. He further submits that the petitioner has not approached this Court with clean hands. Reference is being made to the pleadings in Para No.2 wherein the reason for extension of leave is stated to be dispute between the sister of the

petitioner and her husband whereas in the application sent through Fax the reason pleaded was different. The Fax reads as under :-

“To

The Commandant, 13th Battalion,
P.A.P., Chandigarh.

Sir,

Submitted with the request that I was sanctioned Ex-India Leave for 30 days vide order No.4326-29/CRC dated 25.02.2008 w.e.f. 16.03.2008 to 14.04.2008 which has been expired. I have to attend the marriage of another friend on 11-05-2008. As such, it is requested that I may please be sanctioned 90 ays more Ex-India leave, so that I may attend the marriage of my friend. I shall be highly thankful to you.

Date :- 14-04-2008

Yours obediently.
Ct. Balwinder Singh No, 13/297
P.A.P. Chandigarh.”

5. I have heard counsel for the parties and have gone through the records of the case.

6. Without going into the dispute w.r.t. reasons for which the petitioner sought extension, it goes un rebutted that the petitioner after expiry of the leave opted not to report back to the duty. He relies upon unilateral request at his end seeking extension of leave period. He never bothered to find as to whether such prayer has been accepted or rejected. Thus, there can't be any dispute w.r.t. the finding recorded by the departmental authorities that the absence on part of the petitioner was willful.

7. Moreover, the principle w.r.t scope of judicial review in the case of punishments awarded by the department after conducting due inquiry have been reiterated and culled out by Apex Court in case of **Union of India and another v.s S.S. Ahluwalia, (2007) 7 SCC 257**. The only scope for interference is where there is infirmity while following the mandatory procedure as prescribed by law or where the Court finds that the punishment is shockingly disproportionate to the charges proved against the employee. Counsel for the petitioner has not pointed out any infirmity in the procedure followed.

8. In case of **State of Karnataka & Another vs. Umesh (2022) 6 SCC 563**, Apex Court held that :-

“7 In the exercise of judicial review, the Court does not act as an appellate forum over the findings of the disciplinary authority. The court does not re-appreciate the evidence on the basis of which the finding of misconduct has been arrived at in the course of a disciplinary enquiry. The Court in the exercise of judicial review must restrict its review to determine whether: (i) the rules of natural justice have been complied with; (ii) the finding of misconduct is based on some evidence; (iii) the statutory rules governing the conduct of the disciplinary enquiry have been observed; and (iv) whether the findings of the disciplinary authority suffer from perversity; and (vi) the penalty is disproportionate to the proven misconduct.”

9. The petitioner being a member of Disciplined Forces was definitely under obligation to report back to the duty after period of leave

granted by the employer expired and, thus, it can't be said that the punishment awarded is disproportionate to the charges proved against the petitioner much less shockingly disproportionate.

10. In view of the aforesaid facts, no fault can be found with the impugned order. Consequently, no ground to entertain the present writ petition while exercising the writ jurisdiction is made out and the same is, thus, dismissed.

January 12, 2023
Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No