

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP No.19707 of 2017
Judgment reserved on 19.01.2023
Pronounced on:31.01.2023

Ex-Warder Devender Kumar

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Vijay Dahiya, Advocate
for the petitioner.

Mr. Sourabh Mohunta, DAG, Haryana.

SUVIR SEHGAL J.

Instant petition has been filed seeking a writ in the nature of certiorari for quashing impugned order dated 06.09.2016 (Annexure P-6), whereby, petitioner has been dismissed from service and subsequent orders dated 05.12.2016 (Annexure P-7) and 09.05.2017 (Annexure P-8), whereby, appeal and revision preferred by the petitioner, have been dismissed.

In a nutshell, facts leading to filing of the petition are that petitioner, who was serving as a Warder since September, 2003 was served with a charge-sheet dated 24.04.2015 (Annexure P-2) on account of remaining absent from duty from 11.04.2014 to 10.03.2015 i.e, for 334 days, without getting prior permission from the competent authority. He submitted reply (Annexure P-3) alongwith a medical certificate, which was found to be unsatisfactory and inquiry officer was appointed, who came to the conclusion that charges stood proved and submitted report dated 07.07.2016

after considering his response, by impugned order dated 06.09.2016 (Annexure P-6), Superintendent, Head Quarters, Jail, Panchkula dismissed the petitioner from service. Statutory appeal and revision preferred by the petitioner were dismissed, vide impugned orders, Annexures P-7 and P-8.

While making reference to Rules 16.2 of the Punjab Police Rules, 1934, counsel for the petitioner has contended that the petitioner had put in 13 years of service, but the disciplinary authority did not advert to the length of the service rendered by the petitioner and his right to pension, while imposing punishment. Reliance has also been placed by him upon a Division Bench judgment of this Court in **Dhan Singh Vs. State of Haryana and others 2008(3) SCT 816**. He has urged that the authorities failed to consider that the petitioner was down with jaundice and typhoid. According to the counsel, petitioner's absence was neither willful nor deliberate and he had submitted a medical certificate, which has been rejected by the authorities due to technicalities. Placing reliance on the judgment of Hon'ble Supreme Court in **Chhel Singh Vs. M.G.B.Gramin Bank Pali and others (2014) 13 SCC 166**, he has argued that the dismissal on account of absence cannot be sustained.

Countering his argument, State counsel has supported the action taken by the respondents and has submitted that the petitioner has been repeatedly absent from duty and his past service and conduct have been considered before passing the impugned orders.

I have considered the arguments addressed by counsel for the parties and examined the documents appended with the paper book with their able assistance.

On a specific query as to whether Punjab Police Rules, 1934 are applicable, counsel for the petitioner has invited the attention of the Court to Rule 15 of the Haryana Police (Non Gazetted and Other Ranks) Service Rules, 2017 (for short “2017 Rules”) to submit that in the matters relating to discipline, penalties and appeal, members of the service are governed by the Punjab Police Rules, 1934, as amended from time to time. This argument of counsel has been examined. Members of service governed by 2017 Rules have been specified in Appendix 'A' to the Rules, but the post of Warder has not been mention therein, rather post held by the petitioner is governed by the Punjab Jails Department State Service (Class-III Executive) Rules, 1963 (for short “1963 Rules”). As per Rule 15 of 1963 Rules, matters relating to discipline etc., of members of service, including Warders, are to be governed by Punjab Jails Department Executive Staff (Punishment and Appeal) Rules, 1943 and charge-sheet (Annexure P-2) has been issued thereunder. Therefore, reliance on Punjab Police Rules, 1934 and Division Bench judgment of this Court is misplaced.

In his reply, Annexure P-3 to the charge-sheet, petitioner has referred to medical certificates dated 11.04.2014 and 22.07.2014 (Annexure P-3), respectively to justify his absence. Both the certificates have been examined. A perusal of second certificate shows that although it was issued on 22.07.2014, but the medical officer had certified that leave of the petitioner for 07 months and 19 days, w.e.f. 22.07.2014 to 10.03.2015 is necessary for his treatment. It is beyond comprehension as to how it was possible for a medical practitioner to mention with such precision the date on which the petitioner will get better. The certificate, therefore, is not

beyond the shadow of doubt and has rightly been discarded by the disciplinary authority. In these circumstances, the judgment of the Apex Court is of no help to the petitioner.

Record shows that the petitioner is a habitual absentee and has been punished for remaining absent on numerous occasions. In particular, reference deserves to be made para 3 of the preliminary submissions of the written statement filed by the respondents, which is as under:-

“3. That the brief facts of this case are that Ex-Warder Devender Kumar, Belt No.486 was appointed as Warder in the year 2003 in Haryana Prison Department on temporary basis. The work and conduct of the appellant was found unsatisfactory as he was habitual absentee. As per service record of the appellant, the details of absent period is illustrated as under:-

Sr. No.	Absent From	period To	Total days	Decision taken of absent period
1.	06.05.07	01.06.07	27	Absent period treated as without pay leave
2.	14.06.07	30.06.07	17	Absent period treated as without pay leave
3.	14.06.08	23.06.08	10	Absent period treated as without pay leave
4.	18.07.08	11.08.08	25	Absent period treated as without pay leave
5.	17.05.09	26.05.09	10	Absent period treated as without pay leave
6.	06.11.10	02.01.11	58	Absent period treated as without pay leave and awarded punishment of “Censure” vide No.4444 dated 09.08.2013.
7.	05.04.12	02.05.12	28	Absent period treated as without pay leave and

				<i>awarded punishment of “Censure” vide No.4931 dated 10.09.2013</i>
8.	13.08.12	28.02.13	200	<i>Absent period treated as E.O.L and awarded punishment of stoppage of two annual increments without future vide No.175 dated 13.01.2014</i>
9	11.04.14	10.03.15	334	<i>Dismissed from service</i>
10	08.01.16	02.02.16	26	<i>Decision pending</i>
11	15.05.16	08.06.16	25	<i>---do---</i>
12.	14.08.16	01.09.16	19	<i>---do--</i>
<i>Total =769 Days</i>				

The chart depicts that the petitioner is given to absenteeism and despite deterrent action, he has shown incorrigibility. Therefore, the severity of punishment imposed upon him is justified. This Court, therefore, finds that there is no reason to interfere with the orders passed by the departmental authorities.

Finding no merit in the petition, it is hereby dismissed.

(SUVIR SEHGAL)
JUDGE

January 31, 2023
savita

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes