

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

(260)

CWP-2435-2015

Date of Decision : September 05, 2023

Ram Pal**.. Petitioner****Versus****State of Haryana and others****.. Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Sandeep Verma, Advocate, for the petitioner.

Mr. Saurabh Mohunta, Deputy Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

1. Present writ petition has been filed challenging the order dated 13.12.2010 (Annexure P-1) by which, the petitioner was given a minor punishment of stoppage of three increments without cumulative effect as well as the order dated 05.05.2014 (Annexure P-3) by which, the appeal against the said order, has been dismissed.

2. As per the facts mentioned in the petition, the petitioner remained absent from his duty from 03.09.2009 onwards for which a charge-sheet was issued to the petitioner on 30.10.2009. Keeping in view the said fact, as the allegation that petitioner remained absent for a period of more than three months stood proved, a minor punishment of stoppage of three increments without cumulative effect was imposed upon him, which order was passed by the General Manager, Haryana State Transport, Panipat.

3. Aggrieved against the said order, the petitioner preferred an appeal, which appeal came to be decided by the Additional Transport Commissioner-cum-Appellate Authority on 05.05.2014 according to which, the petitioner had conceded that he had not applied for the leave for the period of absence in question but as he was not well, he could not attend the duties. By taking into consideration the said fact, appeal filed by the petitioner was dismissed on the ground that no employee can avail leave without getting it sanctioned even if the same is a medical leave. The orders imposing punishment and dismissing the appeal dated 13.12.2010 (Annexure P-1) and 05.05.2014 (Annexure P-3) respectively are under challenge in the present petition.

4. Learned counsel appearing on behalf of the respondents submits that once it is a conceded fact that the petitioner remained absent from duty without there being any leave applied or approved, the challenge to the order of punishment and dismissal of appeal is liable to be rejected.

5. I have heard learned counsel for the parties and have gone through the record with their able assistance.

6. It is a settled principle of law that an employee though can avail appropriate leave as prescribed under the Rules but the same can only be availed after getting it approved from the competent authority. In the present case, it is a conceded position keeping in view the facts which have come on record that the petitioner did not get his leave sanctioned before availing the same. It is only when the charge-sheet was issued to the petitioner for remaining absent from duty, the petitioner came up with the plea that he was not well. It is also a conceded position that no medical leave application was even submitted by the petitioner.

7. Even if it is assumed for the sake of argument that the petitioner was not well, then also, nothing stopped the petitioner from writing an application seeking medical leave by corroborating the said fact with the medical certificate issued by the competent authority. In the absence of any such action undertaken by the petitioner, the respondents were well within their jurisdiction to treat the period in question as unauthorized absence.

8. Learned counsel for the petitioner submits that keeping in view the fact that the petitioner had also produced a medical certificate which shows that the petitioner was actually not well to attend the duty, hence, the punishment imposed upon him be reduced as the same is disproportionate to the charges alleged and proved against him.

9. The imposition of punishment is the jurisdiction of the employer and the Court cannot substitute its own opinion with that of the employer unless and until the punishment imposed upon the employee is shockingly disproportionate to the allegations alleged and proved. In the present case, keeping in view the allegations alleged and proved, the punishment imposed is not shockingly disproportionate as only a minor punishment has been imposed upon the petitioner for the alleged misconduct of absence from duty, hence, no ground is made out for any interference by this Court.

10. Dismissed.

September 05, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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