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

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CWP-17538-1999 (O&M)
Date of Decision : 07.11.2024

DALJIT SINGH

.... PETITIONER

V/S

STATE OF PUNJAB AND ORS

.... RESPONDENTS

CORAM : HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Madan Lal Saini, Advocate
for the petitioner.

Mr. G.S.Bhullar, AAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of orders dated 31.08.1995 (Annexure P-2) whereby he has been dismissed from service.

2. The petitioner joined Punjab Police as Constable on 06.04.1986. He remained absent from duty from 01.12.1992 to 22.02.1993. The respondent initiated departmental proceedings against him on account of his absence from duty. He did not join enquiry and SSP, Ludhiana after issuing show cause notice dismissed him from service vide order dated 05.03.1994. The petitioner preferred CWP No. 6597 of 1994 before this Court assailing order of dismissal from service.

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This Court set aside order passed by respondent with liberty to conduct fresh enquiry. The court in the meantime ordered to reinstate him. The petitioner was taken back on duty. The respondent again initiated enquiry. The petitioner again opted to remain absent from duty. Left with no other option, this time notice of proceedings was served upon his mother. The petitioner did not join enquiry and consequent proceedings. The jurisdictional SSP by impugned order dated 31.08.1995 dismissed him from service.

3. Mr. Saini, Advocate submits that the act of petitioner was not gravest misconduct in terms of Rule 16.2 of Punjab Police Rules, 1934 warranting dismissal from service, thus, impugned order is patently bad in the eye of law and deserves to be set aside.

4. Per contra, Mr. Bhullar submits that the petitioner was a habitual absentee. The conduct of petitioner for the first time could be condoned, however, he opted to remain absent even during the enquiry conducted on the direction of this Court.

5. I have heard the arguments of counsel for the parties and perused the record.

6. From the perusal of record, it is evident that the petitioner was dismissed from service on account of absence from duty from December' 1992 to February' 1993. The order of dismissal from service was set aside by this Court and authorities were directed to initiate fresh enquiry. The petitioner again absented himself from duty. He did not join departmental proceedings. He remained absent from duty till the conclusion of departmental proceedings. The petitioner was part of

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police force where discipline is of paramount consideration.

7. Supreme Court in **Ex Sepoy Madan Prasad v. Union of India and others, (2023) 9 SCC 100** while advertng to disciplinary action in case of absence from duty has held that the Court should not set aside order of dismissal where delinquent is part of Armed Forces and remained absent from duty. The relevant extracts of the judgment read as:

“11. It is apparent from the above table that the appellant was a habitual offender. There were four red ink entries and one black ink entry against him before the present incident cited at Serial No. (f) above. Such gross indiscipline on the part of the appellant who was a member of the Armed Forces could not be countenanced. He remained out of line far too often for seeking condonation of his absence of leave, this time, for a prolonged period of 108 days which if accepted, would have sent a wrong signal to others in service. One must be mindful of the fact that discipline is the implicit hallmark of the Armed Forces and a non-negotiable condition of service.

XXXX XXXX XXXX

18. For the aforesaid reasons, we do not find any infirmity in the impugned judgment [Madan Prasad v. Union of India, 2015 SCC OnLine AFT 887] passed by the AFT. The appellant had been taking too many liberties during his service and despite several punishments awarded to him earlier, ranging from imposition of fine to rigorous imprisonment, he did not mend his ways. This was his sixth infraction for the very same offence. Therefore, he did not deserve any leniency by infliction of a punishment lesser than that

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which has been awarded to him.”

8. A Division Bench of this Court while dealing with similar issue in Balwinder Singh versus State of Punjab and others, (LPA-934-2023, decided on 21.02.2024), has held that act of remaining absent from duty for a man in uniform is a gravest act of misconduct. The relevant extracts of the judgment read as:

“That a man in uniform has to maintain greater discipline and the act of remaining absent from duty is a gravest act of misconduct. Reliance can be placed upon the judgment in State of Punjab & others Vs. Mohinder Singh, 2005 (12) SCC 182 wherein the Apex Court allowed the appeal by noticing that there was absence of 5 ½ months and it was reprehensible conduct by the Constable. The basic principle which has been time and again laid down is that remaining absent from duty after the sanctioned leave by a uniformed personnel is fatal. Keeping in view the fact that the appellant voluntarily kept away from his duties which were very much required by his department and the fact that the matter was duly enquired upon. Copy of the notice was sent to his foreign address through registered post to which he had not replied and also copy had been sent to his father which would be clear from the order of dismissal.”

9. As the petitioner despite being member of disciplined Police Force was habitual absentee and did not mend his behavior, this Court does not find it appropriate to look into the quantum of punishment awarded to him.

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10. In the wake of above facts & findings, judgment of the Apex Court in Madan Prasad (Supra) and Division Bench Judgment of this Court in Balwinder Singh (Supra), this Court is of the considered opinion that the present petition being bereft of merit deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

07.11.2024
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Whether speaking/reasoned	: Yes/No
Whether Reportable	: Yes/No