



167 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

**CM-3578-LPA-2024 in/and
LPA-1526-2024 (O&M)
Date of Decision: August 21, 2024**

Amarjit Singh Appellant

Versus

State of Punjab and others Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Present: Mr. Vipin Mahajan, Advocate for the appellant.

Mr. Rohit Ahuja, DAG, Punjab.

LISA GILL, J.

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1. For the reasons mentioned in application as well as arguments addressed, delay of 30 days in refilling of the appeal is condoned.
2. Application is, accordingly disposed of.

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1. Prayer in this appeal is for setting aside order dated 20.03.2024 passed by learned Single Bench whereby CWP-2416-1999 filed by appellant (writ petitioner) has been dismissed.

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2. Appellant (writ petitioner) filed CWP-2416-1999 for setting aside order dated 11.11.1995 whereby he was dismissed from service by Disciplinary Authority; order dated 11.05.1996 whereby Appellate Authority dismissed his appeal and order dated 22.11.1996 whereby his revision petition was also dismissed as well as order dated 22.09.1998 whereby his representation was dismissed. Appellant pleaded that he enrolled with Punjab Police and after having served for about five years, he fell sick on 09.03.1994. He remained absent from duty till 29.04.1994. He rejoined duty on the said date after Doctor found him fit to join duty. Appellant was, however, charge sheeted for willful absence for a period of 51 days, 1 hour and 45 minutes. It was pleaded that inquiry was conducted in an arbitrary manner and on the basis of inquiry report, Disciplinary Authority vide order dated 11.11.1995 directed dismissal of appellant from service. His appeal was also dismissed by Appellate Authority on 11.05.1996. Revisional Authority dismissed revision petition filed by appellant without adverting to facts and circumstances of the case. His representation was also dismissed on 22.09.1998 but no reasons were supplied to appellant for the same.

3. Learned Single Bench upon considering the facts and circumstances of the case found no infirmity in impugned orders dated 11.11.1995, 11.05.1996, 22.11.1996 and 22.09.1998, thus, dismissed the writ petition. Aggrieved therefrom, present appeal has been filed.

4. Learned counsel for appellant vehemently argued that inquiry proceedings are clearly illegal and arbitrary inasmuch as there is complete violation of principles of natural justice. Appellant was not afforded proper opportunity to defend himself. It is further contended that perusal of show cause

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notice (which is otherwise not on record of writ petition but sought to be placed on record vide CM-3579-LPA-2024 under Order 41 Rule 27 CPC) reveals that Disciplinary Authority had already made up its mind to dismiss the appellant. It is submitted that authorities have illegally taken note of earlier periods of absence while passing order of punishment without putting appellant to notice in this regard. It is further contended that punishment imposed is not commensurate with alleged misconduct. It is vehemently argued that Revisional Authority has not taken into account arguments as raised on behalf of the appellant. Therefore, present appeal should be allowed, impugned order dated 20.03.2024 should be set aside and writ petition be allowed as prayed for.

5. Learned counsel for State (on advance notice) has refuted the arguments as addressed. It is submitted that impugned order dated 20.03.2024 has been passed correctly and deserves to be upheld. Dismissal of the appeal is sought.

6. We heard learned counsel for parties and have perused the file with their able assistance.

7. Absence of appellant from duty for 51 days, 1 hour and 45 minutes is a matter of record. It is the case of appellant that his absence was not without substantial cause. He had fallen seriously ill and it is only when his Doctor found him fit to join duty that he reported on 29.04.1994. However, it is to be noted that there is no document on record to indicate that appellant had been stricken with such a serious ailment which prevented him to join duty. Perusal of writ petition reveals that no detail regarding his illness is forthcoming. No such certificate has also been attached with writ petition. On pointed query to learned counsel for appellant in respect to ailments so suffered, no clear response is

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forthcoming. Perusal of impugned order dated 22.11.1996 passed by Revisional Authority, however, reveals that appellant had claimed to be suffering from jaundice. We do not find any merit in the argument raised by learned counsel for appellant that as Dr. P.S. Dhillon, the doctor who was treating him, expired, that he could not lead any evidence in defence. It is a matter of common knowledge that a person suffering from jaundice would, if not anything else have undergone basic blood tests. Even such laboratory reports are not forthcoming.

8. Perusal of order dated 03.11.1995 reveals that statements of three witnesses in question were recorded in the presence of delinquent. He was given full opportunity to cross examine them. He was provided 48 hours to provide list of defence witnesses but an application was submitted by appellant before inquiry Officer stating that he did not wish to produce any defence witness in the departmental inquiry and wanted to submit his written reply. Thereafter, inquiry Officer allowed a period of seven days to appellant to submit his written reply. Perusal of file reveals that complete opportunity of hearing was afforded to the appellant, at all stages. Argument raised that he was only given 48 hours to produce defence witnesses is clearly opposed to record. He was given 48 hours to produce the list of defence witnesses. Show cause notice alongwith inquiry report was duly received. There is again no merit in the argument raised by learned counsel for appellant that Disciplinary authority had already made up its mind. Show cause notice (though not dated) sought to be placed on record as Annexure A2 clearly negates the arguments as raised on behalf of appellant.

9. It is a settled position that absence from duty by member of a disciplined Force indeed amounts to grave misconduct. Quantum of punishment imposed is not such which shocks the conscience of this Court or is so

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disproportionate that it calls for interference by this court. Hon'ble the Supreme Court in **State of UP versus Ashok Kumar Singh 1996 (1) SCC 302** observed that member of Police Force (Police Constable in the said case) is expected to adhere to the Rules and procedures strictly. It was observed as under:-

“ We are clearly of the opinion that the High Court has exceeded its jurisdiction in modifying the punishment while concurring with the findings of the Tribunal on facts. The High Court failed to bear in mind that the first respondent was a police constable and was serving in a disciplined force demanding strict adherence to the rules and procedures more than any other department. Having noticed the fact that the first respondent has absented himself from duty without leave on several occasions, we are unable to appreciate the High Court's observation that 'his absence from duty would not amount to such a grave charge. Even otherwise on the facts of this case, there was no justification for the High Court to interfere with the punishment holding that 'the punishment does not commensurate with the gravity of the charge' especially when the High Court concurred with the findings of the Tribunal on facts. No case for interference with the punishment is made out.”

10. Hon'ble the Supreme Court in **State of Punjab and others versus Sukhwinder Singh 2007 (10) SCC 511**, held that merely because words 'gravest act of misconduct' is not mentioned in punishment order cannot detract from the substance of conclusion.

11. Learned counsel for appellant is unable to point out any illegality, infirmity or irregularity in impugned order dated 20.03.2024 which calls for interference.

12. No other argument has been raised.

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13. Keeping in view the facts and circumstances as above, appeal is dismissed with no order as to cost.

(LISA GILL)
JUDGE

August 21, 2024
Rts

(SUKHVINDER KAUR)
JUDGE

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