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

CWP No.11289 of 2023 (O&M)

Date of Decision: 06.09.2024

Mohinder Singh

..... Petitioner

Versus

High Court of Punjab and Haryana, Chandigarh

..... Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Munish Thakur, Advocate,
for the petitioner.

Ms. Gagandeep Kaur, Advocate,
for the respondent.

MAHABIR SINGH SINDHU, J.

Present petition has been filed under Article 226 of the Constitution, *inter alia*, for issuance of a writ in the nature of *certiorari* for quashing of the impugned order dated 21.02.2014 (P-17) passed by the respondent, whereby petitioner was prematurely retired from service and for issuance of a writ in the nature of *mandamus* directing the respondent to decide the mercy petition dated 22.11.2022 (P-26) filed by petitioner, in a time bound manner.

2. Contends that petitioner had joined as Safai Sewak in the establishment of this Court on 29.10.1987 and confirmed as such on 07.05.1999. Further contends that petitioner was wrongly charge-sheeted for imposition of one of the major penalties, vide Memo No.22950/E1 V.C./12-E dated 16.06.2011 under Rule 35 of the High Court Establishment



(Appointment & Conditions of Service) Rules, 1973, (for short, 'Rules of 1973') read with Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (for short, "Rules of 1970").

2.1 Further contends that the impugned order dated 21.02.2014 (P-17) passed by the respondent, whereby petitioner has been retired prematurely, is totally arbitrary and deserves to be set aside. Further contends that petitioner has performed his duties sincerely and diligently and there has never been any complaint about his work and conduct.

2.2 Also contends that all the ACRs of petitioner have been recorded as either 'Satisfactory' or above, except for one adverse entry, which cannot be selectively used to pass the impugned order.

2.3 Further contends that petitioner had filed a mercy petition dated 22.11.2022 (P-26), but no decision has been taken on the same, till date.

2.4 Still further contends that though petitioner had taken quite a bit leave, but those were duly applied for and approved on the basis of certified medical records appended with leave application(s).

2.5 Lastly contends that allegations against petitioner that he had taken disproportionate number of leave in the year 2009, are totally baseless and unreasonable.

3. *Per contra*, learned counsel for the respondent submits that the work and conduct of petitioner was never upto the mark during his entire service. Further submits that petitioner was a habitual leave seeker, as has been recorded in the ACRs of petitioner for the years 2001, 2009, 2010 & 2011 and his integrity was recorded as 'Doubtful' in the ACR for the year 2012. Also submits that in view of Rule 33(4) of the Rules of 1973, the case



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of petitioner was placed before the authorities and after considering the past service record as well as his work and conduct, he has been rightly prematurely retired in public interest, vide impugned order dated 21.02.2014 (P-17).

3.1 Further contended that mercy petition of petitioner was duly seen by Hon'ble the Chief Justice, the same was filed vide order dated 23.12.2022 issued by Registrar (Administration).

4. Heard learned counsel for the parties and perused the paper-book.

5. It is discernible from the paper-book that petitioner was appointed as Safai Sewak on the establishment of this Court on 29.10.1987 and he was charge-sheeted for imposition of one of the major penalties vide Memo No.22950/E1 V.C./12-E dated 16.06.2011 (R-II) under Rule 35 of the Rules of 1973 read with Rule 8 of the Rules of 1970. For reference, relevant part of the charge-sheet reads as under:-

"ARTICLES OF CHARGES

You, Shri Mohinder Singh, Safai Sewak are guilty of the following charges:-

- 1. That you remained wilfully absent from duty on 01.09.2009 and 18.12.2009 without any intimation/leave application(2 days).*
- 2. That you are habitual leave taker, as is evident from the leave applications sent by you for grant of leave from 20.01.2009 to 21.1.2009, 26.02.2009 to 28.02.2009, 03.03.2009 to 18.03.2009, 05.04.2009 to 13.04.2009, 16.04.2009 to 26.04.2009, 02.05.2009 to 07.05.2009, 29.07.2009 to 07.08.2009, 22.08.2009 to 31.08.2009, 10.09.2009 to 12.09.2009, 15.09.2009, 25.09.2009, 07.10.2009 to 09.10.2009, 20.10.2009 to 21.10.2009, 29.10.2009 to 07.11.2009, 16.11.2009 to 17.11.2009, 30.11.2009 to 01.12.2009, 03.12.2009 to 05.12.2009, 09.12.2009 to 10.12.2009 & 14.12.2009 to 16.12.2009 which is yet to be granted/sanctioned (99 days).*
- 3. That you have not availed casual leave proportionately during the year 2009; thus, you have violated the instructions contained*



in the office order dated 22.12.1973 duly circulated vide Endst. No. 1137 Exc.Cell, dated 16.01.2006.

4. That you have also defied the orders of the authorities as contained in Memo No. 24906 E.1./V.C./6-E dated 29.07.2009, 30754 E.I./V.C./6-E dated 18.9.2009 and 9946 E.1./V.C./6-E dated 31.3.2010.

Thus, you have failed to maintain devotion to duty and violated Rule 3 of the Government Employees (Conduct) Rules, 1966 as applicable to the employees of this Court and acted in a very irresponsible manner, disobeyed the orders of the authorities, which amounts to indiscipline, insubordination and dereliction in the performance of your official duty, unbecoming of a Government Servant."

6. Thereafter, vide office order No.545 E.I. VB(12-E) dated 07.01.2012, Enquiry Officer was appointed to conduct regular departmental enquiry. In compliance thereof, Enquiry Officer submitted Report dated 25.07.2012 (R-III) concluding that charges were proved against the petitioner. Also discernible from para 4 of the written statement filed by the respondent that work and conduct of petitioner during his service tenure was never upto the mark. For reference, Para 4 of the written statement is recapitulated as under.

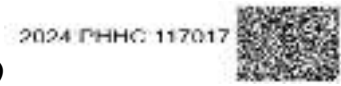
"4. The details of his work and conduct are reproduced as under:

- *The Petitioner remained absent from duty from 01.08.1993 to 25.08.1993 for which he was placed under suspension and later on by taking lenient view Hon'ble the Chief Justice pleased to revoke the order of suspension and ordered to impose a minor penalty of '**Censure**' upon the petitioner.*
- *One annual grade increment of the petitioner was withheld without cumulative effect for a period of one year for availing leave we.f. 01.07.2000 to 13.07.2000 without getting it granted from the competent authorities.*
- *One annual grade increment of the petitioner was withheld without cumulative effect for a period of one year for willful absent from duty we.f. 04.04.2001 to 16.04.2001.*
- *Penalty of stoppage of one annual grade increment without cumulative effect was imposed upon petitioner for his willful absent from duty we.f. 05.09.2002 to 07.09.2002, 17.10.2002 to 21.10.2002 and 28.11.2002 and 29.11.2002.*



- Penalty of '**Censure**' was imposed upon petitioner for remaining absent from duty w.e.f. 02.12.2004 to 05.12.2004, 14.01.2005 to 17.01.2005, 29.01.2005 to 09.02.2005.
- Vide this Court's Memo dated 05.06.2007, the petitioner was granted Extra Ordinary Leave (without pay) from 04.02.2006 to 07.02.2006 and was warned to remain careful in future and not to remain absent from duty.
- Penalty of stoppage of two increments without cumulative effect was imposed upon the petitioner after considering the regular departmental inquiry report dated 30.01.2009 submitted by Enquiry Officer and representation dated 28.03.2009 submitted by the petitioner.
- Penalty of stoppage of two increments without cumulative effect was imposed after examining the explanation of petitioner for remaining absent from duty and taking excess leave during the period between July 2008 to September 2008.
- Penalty of stoppage of two annual grade increments with cumulative effect was imposed after considering the regular departmental enquiry report dated 20.09.2008 submitted by Enquiry Officer as well as representation dated 25.07.2009 submitted by the petitioner for remaining absent from duty w.e.f. 01.09.2005 to 03.09.2005, 07.09.2005 to 10.09.2005 and 22.10.2005 without any leave application/intimation.
- Penalty of stoppage of one increment with cumulative effect was imposed after considering the reply dated 15.05.2010 to the show cause notice dated 25.03.2009 issued in the matter of availing casual leave disproportionately and remaining absent from duty on several days from February 2008 to May 2008.
- Penalty of stoppage of two increments with cumulative effect was imposed after considering the reply dated 09.05.2012 to the show cause notice dated 04.02.2012 issued for imposing major penalty.
- Penalty of stoppage of two increments without cumulative effect was imposed after considering the misconduct and reply dated 13.03.2012 of the petitioner.
- Again in the year 2013 a penalty of stoppage of two increments without cumulative effect was imposed after considering the misconduct of the petitioner.
- Penalty of stoppage of two annual grade increments with cumulative effect after considering the reply dated 21.02.2013 of the petitioner to the show cause notice dated 22.12.2012 for imposing major penalties.'

7. In view of the above extract, it is also clearly discernible that petitioner acted in a very irresponsible manner and disobeyed the orders of the authorities. He has been found to be habitual leave seeker without permission



and that is quite evident from the records of the case. Even the petitioner's integrity was recorded as 'doubtful' in his ACR for the year 2012 and the same was never upgraded; thus the action of respondent cannot be said to be unreasonable or arbitrary in any manner; rather, the same is just, fair and proportionate to the established guilt of petitioner.

8. In view of the above, there is no option, except to dismiss the present petition.

9. Ordered accordingly.

Pending application(s), if any, shall also stand disposed off.

06.09.2024
Adhikari/SN

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No