

*Before Tejinder Singh Dhindsa, J.*

**KASHMIR SINGH** —*Petitioner*

*versus*

**STATE OF PUNJAB AND OTHERS** —*Respondents*

**CWP No. 1182 of 2021**

February 10, 2021

*Constitution of India, 1950, Article 226 —Dismissal from service— Willful absence from duty over a prolonged period is a case of virtual abandonment of service—it is to be seen as continued misconduct—Held, mere non-mentioning of expression in order being guilty of continued misconduct and being unfit for police service would not vitiate the order of dismissal—Petition dismissed.*

*Held that* this Court finds that even though the order of dismissal dated 21.06.2005 (Annexure P-6) is not very happily worded inasmuch as the Punishing Authority has not employed the expression as regards petitioner being guilty of continued misconduct and thereby being unfit for police service, yet there would be no escape from the factual premise that the petitioner has been found guilty of having remained wilfully absent over a period of almost 1000 days in a regular departmental enquiry. Even thereafter for a period of 14 years the petitioner remained quiet and then chose to file an appeal against the order of dismissal. It is a case of virtual abandonment of service.

(Para 13)

*Held that* in the considered view of this Court wilful absence from duty over a prolonged period of time and that too by a member of a disciplined force would have to be seen as a continued misconduct. Mere non mentioning of the expression as regards the petitioner being guilty of continued misconduct and as such being unfit for police service would not vitiate an order of dismissal.

(Para 14)

Sandeep Bansal, Advocate  
*for the petitioner.*

**TEJINDER SINGH DHINDSA, J. oral**

(1) This case has been taken up through Video Conferencing via Webex facility in the light of Pandemic Covid-19 situation and as per instructions.

(2) Challenge in the instant petition is to the order dated 21.06.2005 (Annexure P-6) passed by the Senior Superintendent of Police, Hoshiarpur and whereby the major punishment of dismissal from service was imposed upon the petitioner who was serving as a Constable. Further challenge is to the order dated 07.09.2020 (Annexure P-9) passed by the Appellate Authority affirming the action of dismissal.

(3) Counsel submits that petitioner was appointed as Constable in Punjab Police on 24.05.1990. During his service tenure he earned various cash awards. Even commendation certificates were issued by the Department. However, petitioner suffered from some medical ailment and as such could not report for duty at Police Lines, Hoshiarpur w.e.f. 11.11.2002. It is averred that petitioner proceeded back to his village and was treated by local quacks. Under such circumstances petitioner was not mentally stable and as such could not convey to the authorities concerned the basis of absence. It has also been averred that various communications were received from the department but on account of being in a state of depression and ill health, he could not respond to the same. Ultimately he was served with the order of dismissal dated 21.06.2005 (Annexure P-6). A certificate issued by DMC Hospital, Ludhiana dated 24.02.2010 has been appended as Annexure P-7 to assert that petitioner was diagnosed as a Schizophrenic patient. Thereafter petitioner continued taking treatment from DMC Hospital as also other places. Ultimately he preferred an appeal dated 08.07.2020 (Annexure P-8) against the major penalty of dismissal and the same stands dismissed by the Appellate Authority vide impugned order dated 07.09.2020 (Annexure P-9) primarily on the ground of delay.

(4) Counsel would argue that the petitioner was having 12 years of service to his credit and for which due weightage has not been given while taking a decision to dismiss him from service. Further submitted that the impugned orders cannot sustain as they suffer from non-application of mind as the health ailment that the petitioner was suffering from was ignored. Further urged that absence of the petitioner from duty was unintentional and bona fide and as such cannot be construed as an act of misconduct. Yet another submission raised is that the major penalty of dismissal is not commensurate to the charge of being absent from duty and as such even a lesser punishment could have been imposed. Further argued that the Punishing Authority as also the Appellate Authority have not given due credit to the petitioner as

regards his unblemished service record as also length of service.

(5) Counsel for the petitioner has been heard at length and pleadings on record have been perused.

(6) Rule 16.2 of the Punjab Police Rules, 1934 mandates that dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service.

(7) What would constitute a gravest act of misconduct or continued misconduct proving complete unfitness for police service cannot be precisely defined and would depend on the facts and circumstances of each case.

(8) In the facts of the present case, petitioner admittedly has remained continuously absent from duty since 11.11.2002. Perusal of the impugned order of dismissal at Annexure P-6 would reveal that on 11.04.2003 he had been placed under suspension and a regular departmental enquiry was instituted. One Inspector Harbhajan Singh was appointed as the Enquiry Officer. Petitioner chose not to associate in the enquiry proceedings. Findings having been returned against him as regards being absent from duty without due authorisation, a show cause notice dated 20.10.2003 along with the enquiry report was sent to the petitioner contemplating the imposition of major penalty of dismissal and to treat the period of absence as without pay. The show cause notice was received by the father of the petitioner Sh.Sewa Singh on 25.10.2003. No reply was furnished to the show cause notice. Thereafter repeated notices on 05.05.2005, 27.05.2005 and 03.06.2005 were issued. The first notice was pasted on the gate of the house of the delinquent on 12.05.2005 in the presence of the Sarpanch of the village. The second and third notices were received by the father of the petitioner. In spite of 18 months having elapsed no reply was furnished by the petitioner to the show cause notice. It was under such circumstances that the Punishing Authority held the petitioner to be irresponsible, undisciplined and not interested in continuing in service and imposed the extreme penalty of dismissal from service.

(9) After passing of the impugned order of dismissal dated 21.06.2005 (Annexure P-6) petitioner has woken up and filed an appeal dated 08.07.2020 i.e. after a period of more than 14 years. Stand taken in the petition is that he had been undergoing treatment at DMC Hospital having been diagnosed as a Schizophrenic patient vide certificate dated 24.02.2010 (Annexure P-7). No document/material has

been placed on record to justify the delay in filing of the appeal over a period of 14 years on account of illness.

(10) In *B.C.Chaturvedi* versus *Union of India*<sup>1</sup> the Apex Court authoritatively laid down that judicial review is not an appeal from a decision but a review of the manner in which the decision is made. The power of judicial review would be exercised to ensure that the delinquent receives fair treatment but not to ensure that the conclusion which the authority reaches is necessarily correct in the eyes of the Court.

(11) The impugned order of dismissal in the present case has been passed after conducting a regular departmental enquiry. Counsel has not been able to point out any procedural illegality or infirmity in such proceedings. The service of a number of notices calling upon the petitioner to participate in the enquiry proceedings as also at the stage of issuance of show cause notice contemplating the imposition of a major penalty are conceded. Stand taken on behalf of the petitioner that he had remained unwell during this entire span commencing from the year 2002 till the passing of the order of dismissal by the Punishing Authority and thereafter filing of an appeal with a delay of 14 years does not inspire confidence. There is no document placed on record which would substantiate that the petitioner had through out remained under medical treatment.

(12) The order of dismissal has been passed on account of the petitioner having remained continuously absent from duty over a period of 2 years and 6 months approximately. Even thereafter he chose to keep quiet for a decade and a half before submitting an appeal and which has rightfully been rejected on the ground of delay.

(13) This Court finds that even though the order of dismissal dated 21.06.2005 (Annexure P-6) is not very happily worded inasmuch as the Punishing Authority has not employed the expression as regards petitioner being guilty of continued misconduct and thereby being unfit for police service, yet there would be no escape from the factual premise that the petitioner has been found guilty of having remained wilfully absent over a period of almost 1000 days in a regular departmental enquiry. Even thereafter for a period of 14 years the petitioner remained quiet and then chose to file an appeal against the order of dismissal. It is a case of virtual abandonment of service.

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<sup>1</sup> 1996(1) SCT 617

(14) In the considered view of this Court wilful absence from duty over a prolonged period of time and that too by a member of a disciplined force would have to be seen as a continued misconduct. Mere non-mentioning of the expression as regards the petitioner being guilty of continued misconduct and as such being unfit for police service would not vitiate an order of dismissal.

(15) Even as regards quantum of punishment, the principles governing interference in the same are well settled. It has been held in a catena of judgments rendered by the Apex Court that the High Court while exercising powers of judicial review cannot substitute its own opinion on penalty and impose some other penalty. It is only if the punishment imposed by the Disciplinary authority or the Appellate Authority shocks the conscience of the Court, then it would be appropriate to mould the relief either by directing the Disciplinary Authority to reconsider the punishment imposed or to shorten the litigation and in exceptional and rare cases, to pass an order imposing appropriate punishment in the light of cogent reasons being assigned.

(16) Petitioner herein was a member of a disciplined police force. In pursuance to a regular departmental enquiry conducted and after following due procedure and in consonance of the rules of natural justice he has been held guilty of wilful absence from duty over a prolonged length of time. Under such circumstances there would be no scope for interference and to take a different view even as regards quantum of punishment imposed by the Punishing Authority.

(17) For the reasons recorded above, the writ petition is dismissed.

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*Payel Mehta*