



Reserved on 13.09.2024
Pronounced on 14.10.2024
NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 227 of 2020

1 - Kudiam Bhima S/o Nanga Kudiam Aged About 50 Years R/o Village- Dhanaura, Tahsil- Bijapur, District- Bijapur, Chhattisgarh., District : Bijapur, Chhattisgarh

... Petitioner

versus

1 - State Of Chhattisgarh Through The Secretary, Home (Police) Department, Atal Nagar, Mantralaya, Nawa Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

2 - The Inspector General Of Police Bastar Range, Lalbag, Jagdalpur, District- Bastar, Chhattisgarh.

3 - The Superintendent Of Police Bijapur, District- Bijapur, Chhattisgarh.

4 - The Sub-Divisional Officer (Police) Bhopalpattnam, District- Bijapur, Chhattisgarh.

... Respondents

For the Petitioner	:	Mr. Kemlesh Kumar Pandey, Advocate along with Mr.
For Respondent/ State	:	Ms. Nupur Trivedi, Panel Lawyer

{{Hon'ble Shri Justice Sachin Singh Rajput}}

C A V Order

1. This Writ Petition has been filed by the petitioner seeking fro the following reliefs:-

(i) *That, this Hon'ble Court may kindly be pleased to call for the entire records of present case, from respondents.*

(ii) *That, this Hon'ble Court may kindly be pleased to issue an appropriate writ, thereby setting aside/quashing the impugned order dated 02.02.2019 and order dated 18.02.2016 and further be pleased to direct the respondent authorities to reinstate the petitioner in service, with all consequential benefits, in accordance with law.*

(iii) *That, any other relief/order which may deem fit and just in the facts and circumstances of the case including award of costs of petition may be given.*

2. The petitioner who was working as constable with the respondents faced a departmental enquiry with charges against him as quoted below-

1. दिनांक 28.02.2013 को रक्षित केन्द्र बीजापुर से मूल तैनाती थाना भोपटनम जाने के लिए रवाना होकर बिना किसी सूचना के कर्तव्य से अनाधिकृत गैरहाजिर होकर अत्यधिक लंबी अवधि पश्चात् दिनांक 16.10.2013 को कर्तव्य में उपस्थित होना एवं बार-बार गैरहाजिर होने का आदी होना ।

2. उपरोक्त कृत्य कर पदीय कर्तव्यों के निर्वहन में लापरवाही एवं उदासीनता बरतना तथा म.प्र./छ.ग. सिविल सेवा (आचरण) नियम, 1965 के नियम 03 (1) तथा पुलिस रेग्युलेशन के पैरा क्र.64 की कण्डिका (4) का स्पष्ट उल्लंघन करना ।

3. Learned Counsel for the petitioner argued that the findings recorded by the Enquiry Officer, disciplinary authority and appellate authority in dismissing the petitioner from service is bad in law, perverse to the record. He submitted that the petitioner had sufficient and valid reasons for his absence from duty as his wife was suffering from serious ailment and was being treated for a long time. The petitioner has submitted the treatment papers which have been ignored by the enquiry officer, disciplinary authority and appellate authority. The enquiry officer

has not given a finding that the absence of the petitioner from duty was willful and deliberate and the impugned orders cannot sustain the judicial scrutiny of this Court. He lastly submitted that the punishment imposed upon the petitioner is shockingly disproportionate to the charge as the petitioner has put in more than 23 years of service hence petitioner could have been awarded lesser punishment.

4. Per contra, learned State Counsel submitted that the petitioner remained in unauthorized absence for a long period of time and therefore the findings recorded by the enquiry officer, disciplinary authority and appellate authority is based upon proper appreciation of evidence brought on record. This Court cannot re-appreciate the evidence of the departmental enquiry and appellate authority. There is no merit in the writ petition and is liable to be dismissed.

5. I have heard the learned Counsel for the parties and perused the record and also perused the record of the departmental enquiry summoned.

6. The admitted fact of the case is that the petitioner remained in absence from duty from 28.02.2013 to 16.10.2013, and he made his report on 16.10.2013. When his reporting was accepted by respondents, note sheet was prepared (reflected from the records) in which it was proposed that on humanitarian ground his absence may be added in the earned leave. The Superintendent of Police directed that the matter be sent for enquiry. The note-sheet also indicates that the petitioner had 246 days earned leave in his account and 480 days half pay leave in his account. From the record of departmental enquiry, it appears that a charge-sheet was issued to the petitioner and the above stated charges and copy of the same was delivered to him.

The charge-sheet also indicated the details of the witnesses to be examined and the documents to be relied upon. The petitioner submitted reply to the charge-sheet and thereafter the departmental proceedings were carried forward. Time to time, the notices to appear in the charge during the course of departmental enquiry was issued. Four witnesses were examined by the Enquiry Officer who was not cross-examined by the petitioner. The petitioner was subject to cross-examination and he also submitted his defence evidence. On completion of departmental enquiry, the report was sent to the petitioner inviting his response and ultimately vide order dated 18.02.2016 (Annexure P-2), the petitioner was removed from the service. An appeal having been preferred against Annexure P-2 which was also dismissed vide order dated 02.02.2019 (Annexure P-1). The challenge is on the ground that the petitioner had sufficient and valid reasons for his unauthorized absence which have not been considered adequately by the Enquiry Officers or the Disciplinary Officer and the Appellate Authority.

7. The petitioner is also not disputed that during the period from 28.02.2013 to 16.10.2013, he was absent from duty and no intimation for his absence was given to the respondent department. The defence which has been put forth by the petitioner is that during that period, her wife was suffering from serious medical ailment of Cancer and other heart related issues and the petitioner was engaged in her treatment however she succumbed in the month of May 2013 and thereafter he was under mental trauma and was also engaged in performing the social rituals, could not joined his duty till 16.10.2013.

8. From the records of departmental enquiry as also writ petition it is quite vivid that documents with regard to treatment of the wife of the petitioner are available. From the record it

also indicated that in the note-sheet it has been observed that the case of the petitioner could be sympathetically considered and had sufficient earned leave and half day leave in his account. The law with regard to interference in the departmental enquiry is no longer *res-integra* in light of various decisions of Hon'ble Supreme Court. It is well settled that the High Court cannot sit as an appellate authority to re-appreciate the evidence. (Please see **B. C. Chaturvedi Vs. Union of India and others; (1995) 6 SCC 749, Deputy General Manager (Appellate Authority) and others Vs. Ajai Kumar Srivastava; (2021) 2 SCC 612**).

9. The case in hand whether this Court can interfere in the findings recorded in the departmental enquiry and the order of appellate authority. In the case of **Krushnakant B. Parmar Vs. Union of India & Anr** reported in **(2012) 3 SCC 178** in Para 17 & 18 Hon'ble Supreme Court observed as under:-

“17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence can not be held to be wilful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a Government servant.

18. In a Departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in absence of such finding, the absence will not amount to misconduct.”

10. In case of **Chhel Singh Vs. MGB Gramin Bank, Pali and others** reported in **(2014) 13 SCC 166** in paragraph 12 held as under:-

“12. From a plain reading of the charges we find that the main allegation is absence from duty from 11.12.89 to 24.10.90 (approximately 10 and ½ months),

for which no prior permission was obtained from the competent authority. In his reply, the appellant has taken the plea that he was seriously ill between 11.12.89 and 24.10.90, which was beyond his control; he never intended to contravene any of the provisions of the service regulations. He submitted the copies of medical certificates issued by Doctors in support of his claim after rejoining the post. The medical reports were submitted after about 24 days. There was no allegation that the appellant's unauthorized absence from duty was willful and deliberate. The Inquiry Officer has also not held that appellant's absence from duty was willful and deliberate. It is neither case of the Disciplinary Authority nor the Inquiry Officer that the medical reports submitted by the appellant were forged or fabricated or obtained for any consideration though he was not ill during the said period. In absence of such evidence and finding, it was not open to the Inquiry Officer or the Disciplinary Authority to disbelieve the medical certificates issued by the Doctors without any valid reason and on the ground of 24 days delay."

11. The question relating to jurisdiction of the Court in judicial review in a Departmental proceeding fell for consideration before this Court in **M.V. Bijlani Vs. Union of India and others** reported in **(2006) 5 SCC 88** wherein Hon'ble Supreme Court in Para 25 held as under:

"25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi- criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

12. In this case the petitioner just tried to justify his long absence by placing on record the treatment of medical paper of his wife. Though he may be unauthorizedly absent but the same could not be termed as deliberate or willful. The Enquiry Officer found the charges leveled against the petitioner is proved and should have placed on record the death certificate of his wife.

He also gave a finding that medical Form No.3 dated 10.08.2013, 11.09.2013 and Form No.3 dated 15.03.2013 was sent by him but he gave a finding that the petitioner remained in absent without any intimation or approval. It also gave a finding that the petitioner was relieved for Police Station BhopalPattnam from Bijapur on 28.02.2013 however the petitioner without any cogent reason remained in unauthorized absent from his duty for a long period. Though there is a finding that the petitioner remained in unauthorized absent but finding in the regard that his absence was unauthorized and willful is missing. The enquiry officer, disciplinary authority and appellate authority failed to give a positive finding that the unauthorized absence of petitioner was willful and deliberate. The charges leveled against the petitioner also does not reflect the same. Rather the petitioner has taken a specific defence that his wife was seriously ill and was under medical treatment for a long treatment and ultimately she passed away. The records of the departmental enquiry also suggest that the medical papers of the wife of the petitioner is duly placed on record. The enquiry officer failed to take this in account to its proper perspective. Therefore, in light of judgment of Supreme Court in the case of **Krushnakant B. Parmar** (Supra) and **Chhel Singh** (Supra) the writ petition deserves to be allowed. Hence the impugned orders dated 02.02.2019 (Annexure P/1) and 18.02.2016 (Annexure P/2) are hereby set aside. The petitioner is reinstated in service. He shall be considered in continuity in service during this period. For the purpose of back wages liberty is reserved in favour of the petitioner to represent before the competent authority.

13. No cost.

Sd/-
(Sachin Singh Rajput)
JUDGE