Ex-Constable, Ranjit Singh Vs State of Punjab and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Sept. 9, 2010

Hon'ble Judges: Ajai Lamba, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Ajai Lamba, J.
This Civil Writ Petition has been filed by Ex-Constable Ranjit Singh for issuance of a writ in the nature of certiorari

quashing order dated 30.4.1998 (Annexure P-1), passed by the Senior Superintendent of Police, Faridkot (respondent No. 2), order dated

20.8.1998 (Annexure P-2), passed by the Deputy Inspector General of Police, Faridkot Range, Faridkot (respondent No. 3), order dated

16.3.1999 (Annexure P-3), passed by the Inspector General of Police, Punjab (respondent No. 4), order dated 24.9.2004 (Annexure P-4),

passed by the Director General of Police, Punjab (respondent No. 5) and order dated 12.4.2010 (Annexure P-5), also passed by the Director

General of Police, Punjab (respondent No. 5).

2. The facts, in brief, are that the petitioner joined as a Constable in Punjab Police on 20.11.1989. It is not disputed that the petitioner remained

absent for a total period of little more than 149 days i.e. from 9.4.1996 to 24.6.1996 on the first count, and from 30.6.1996 to 12.9.1996 on the

second count, without leave, much less sanctioned leave. The petitioner did not even give information that he would not be coming to join duty.

3. In view of the misconduct of the petitioner, the departmental inquiry was initiated, while clearly giving out the nature of misconduct of the

petitioner.

4. Learned Counsel for the petitioner has not pointed out any defect in procedure provided under rules followed by the respondents that materially

affects the rights of the petitioner. Challenge to the impugned orders is only on merits.

5. Despite the fact that the petitioner was informed about the ongoing departmental proceedings, the petitioner chose not to join the inquiry

proceedings and, therefore, had to be proceeded ex-parte. Statements of witnesses were also recorded ex-parte. The inquiry report concluded

that the petitioner was guilty of remaining absent for the above mentioned periods. The punishing authority i.e. respondent No. 2, while agreeing

with the findings recorded by the Inquiry Officer, issued show cause notice dated 25.4.1997 to the petitioner/delinquent along with a copy of the

inquiry report, proposing punishment of dismissal from service, and to count the period of absence as non-duty period, without salary. 10 days

time was given to the petitioner to file reply to the notice.

6. Thereafter, attempts to serve the petitioner were made by various modes dated 26.6.1997, 29.11.1997, 29.1.1998, 11.4.1998 and 15.4.1998.

Other than the documented messages, attempts were made to serve the petitioner by way of wireless messages. At times, it was reported that the

petitioner was absent and, at other time, either he was not present at his house or he had gone on duty. Be that as it may, the petitioner was served

and was informed in regard to the opportunity of hearing being given to him. The petitioner, however, did not give any reply to the show cause

notice, whereupon respondent No. 2 considered the material against the petitioner and vide order (Annexure P-1), recorded that the petitioner is

habitual of remaining absent time and again, the police department is a disciplined force and absence for long period is a serious/gravest

misconduct. The proposed punishment of dismissal was, accordingly, imposed.

7. The petitioner filed an appeal before respondent No. 3 against the order (Annexure P-1) passed by respondent No. 2. The grounds of appeal

have not been placed on record, however, on perusal of order (Annexure P-2), it is reflected that the petitioner took the ground that the order of

dismissal had been passed without affording any chance of being heard; the proceedings were one sided; at the time of passing of the order by

respondent No. 2, Police Manual Rules had not been taken into account; the petitioner had never been served with a charge-sheet; the petitioner

was mentally upset during the period in question and was treated by some Chela and the petitioner was not absent from duty intentionally.

8. Respondent No. 3 considered the facts and circumstances of the case, in the context of the earlier record of the petitioner, also. It has been

noted in order (Annexure P-2) that service record of the petitioner indicates that 13 years of service of the petitioner had already been forfeited.

The departmental proceedings file indicated that sufficient opportunities were given to the petitioner to present his case, however, the petitioner did

not come present. In fact, even respondent No. 3 gave a chance to the petitioner to come personally and explain his case, however, the petitioner

did not present himself in the office of respondent No. 3. Considering the totality of facts and circumstances of the case, the punishment of

dismissal from service has been upheld vide order (Annexure P-2).

9. The petitioner, aggrieved by order (Annexure P-2), filed a revision before respondent No. 4.

10. The main contention of the petitioner before respondent No. 4, as is made out from order (Annexure P-3), is that the work and conduct of the

petitioner had remained satisfactory throughout his career and there had been no complaint. Absence for the period noticed above had been on

account of unavoidable circumstances. The petitioner again took the ground that he had not received any notice in regard to departmental

proceedings. The petitioner had not been heard by the appellate authority.

11. The revisional authority i.e. respondent No. 4, has specifically noticed from the departmental proceedings file that notice was served on the

petitioner and signatures in lieu of service indicated that the petitioner had received the notice. Respondent No. 4 has also recorded that there were

numerous red entries in the service record/character roll of the petitioner and, therefore, the petition filed by the petitioner was rejected vide order

(Annexure P-3).

12. The petitioner filed a mercy appeal before respondent No. 5, which has been dismissed vide order dated 24.9.2004 (Annexure P-4).

13. It seems that so as to bring the cause of action within proximity of time of filing this writ petition, the petitioner again filed a petition before

respondent No. 5 on 31.3.2010. However, in view of earlier order (Annexure P-4), passed by respondent No. 5, the second mercy petition was

consigned to record vide order dated 12.4.2010 (Annexure P-5).

14. The contention of the learned Counsel for the petitioner is that the petitioner has not shown incorrigible conduct and, therefore, the penalty of

dismissal from service is not justified and that the absence from departmental proceedings has been taken as a ground for imposing the penalty,

which is not permissible in law. It has been vehemently argued by the learned Counsel for the petitioner that no show cause notice had been served

in regard to absence in departmental proceedings and, therefore, no notice of the same could have been taken while imposing the penalty. It has

been contended that absence during inquiry proceedings has been taken as a mitigating circumstance for imposing the extreme penalty.

15. I have considered the contentions of the learned Counsel for the petitioner.

16. As noticed above, the petitioner has not pleaded before this writ court that there has been violation of any statutory provision so as to

materially affect the rights of the petitioner. Absence for 149 days is a fact admitted by the petitioner. The grounds taken before this Court are

different from the grounds taken before the authorities below.

17. So as to consider the arguments addressed before this Court, I am of the considered opinion that the misconduct of the petitioner has been of

such nature that the punishment of dismissal from service is justified. Order (Annexure P-1), passed by respondent No. 2, is a detailed order

noticing various facts and circumstances of the case. The incorrigibility in the conduct of the petitioner is evident from his conduct itself, as would

be reflected from the sequence of events given hereinabove. The petitioner belonged to a disciplined force and was required to conduct himself

accordingly. Surely, the conduct of the petitioner has not been of the nature that could be termed as befitting a soldier in a disciplined force.

18. Whether the misconduct is the gravest act, is not capable of being put in a straight jacket or confined to a definition. It relates to an action

which is of extreme gravity and implies utmost seriousness. In my considered opinion, the conduct of the petitioner has been such that it reflects

gravest misconduct inviting extreme penalty, as has been noticed by respondent No. 2 which, in judicial review, is not required to be interfered

with.

19. In regard to the absence during inquiry period, it is only a reference and not a reason for imposing the penalty of dismissal from service. The

penalty of dismissal has been imposed while taking into account the absence for 149 days without permission, of his own will, which has been

termed as the gravest misconduct.

20. I am also of the opinion that the petitioner has been dormant in his conduct as the departmental proceedings culminated in passing of final order

on 24.9.2004 (Annexure P-4) by respondent No. 5. Another mercy petition, which is not envisaged under the rules filed on 31.3.2010, would not

give leverage to the petitioner to create a ground to show that the writ does not suffer from delay and laches. Delay and laches, in the context of

the facts of the case, are required to be considered from passing of order dated 24.9.2004 (Annexure P-4). In view of the above, I am of the view

that the petition suffers from delay and laches and, therefore also, deserves to be dismissed.

21. The grounds taken in this petition were not taken before the appellate authority and, thereafter, before the revisional authority. The grounds

have been noticed in the earlier part of the order and are different from the arguments addressed before me.

22. Having regard to order (Annexure P-2), wherein it has been recorded that the service record of the petitioner contains forfeiture of 13 years of

service out of total period of approximately 8 years of service, would also reflect the incorrigible conduct of the petitioner. There is no challenge to

the finding thus recorded in order (Annexure P-2) either before respondent No. 4 or respondent No. 5 or even before this court.

23. Considering the totality of facts and circumstances of the case, I find that no case for interference in judicial review is made out.

24. The petition is, accordingly, dismissed in limine.