

MoinuddIn Vs. State of M.P. and ors.

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Court : Madhya Pradesh

Decided On : Feb-25-2004

Reported in : 2004(3)MPHT47

Judge : Deepak Verma and ;Uma Nath Singh, JJ.

Acts : Service Law; [Constitution of India](#) - Articles 227 and 311

Appeal No. : Writ Petition No. 1388/2003

Appellant : Moinuddin

Respondent : State of M.P. and ors.

Advocate for Def. : Meena Chaphekar, Govt. Adv.

Advocate for Pet/Ap. : A.K. Sethi, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

1. This is a petition under Article 227 of the [Constitution of India](#) against order dated 4-2-2003, passed by M.P. State Administrative Tribunal, Indore Bench, in petitioner's O.A. No. 2117/1989.

2. When this matter had come up for admission before us, we would have declined admission looking to grave misconduct said to have been committed by petitioner which was found proved in the departmental enquiry held against petitioner, but at that time, learned Counsel for petitioner submitted that for absence of seventy four days by petitioner, punishment of removal from service should prick judicial conscious and, therefore, minor punishment be awarded to petitioner. It was further submitted that in case petition is allowed, petitioner would be ready and willing to forego all monetary and consequential benefits arising out of reinstatement in service. Only after this submission having been made by learned Counsel for petitioner, we deemed it proper to issue notices to respondents. Respondents appeared and submitted that reply filed by them before the Tribunal, be treated as reply to this petition. Facts giving rise to this petition are mentioned hereinbelow :--

Petitioner was working as Police Constable with respondent No. 1-State. In the year 1988 a departmental enquiry was initiated against him for his unauthorised absence of 74 days. In the enquiry, charges have been found proved and punishment of dismissal from service has been imposed. Present petitioner preferred an appeal against this order, but the same also resulted in dismissal bringing no fruitful results. He, therefore, filed original application before Tribunal which also, after considering the matter from all angles, found that no case for any interference was made out and petitioner's O.A. came to be dismissed. Said order is being assailed on number of grounds including the one that punishment awarded to petitioner for his absence for a period of 74 days is too harsh and would not fall in the category of grave misconduct. Thus, it was a fit case where lesser punishment would meet the ends of justice.

3. It was also contended that looking to the fact that petitioner has already given up all monetary and consequential benefits of his reinstatement, his case deserves to be considered sympathetically. Lastly it was contended that having put in twelve years of service, he has remained out of employment little more than sixteen years and dismissal of this petition would cause grave injustice to him.

In reply to aforesaid contention, respondents have repelled the same by saying that petitioner was a habitual absentee. On earlier occasion also he had remained absent for a long period which compelled respondents to issue show-cause notice to him. Not being satisfied with the same, a departmental enquiry was held and punishment of stoppage of one increment was imposed on him. In fact, charge No. 2 of the charge-sheet dated 29-11-1988 is with regard to this fact only. It was also submitted that he had remained absent on earlier occasion after imposition of punishment of stoppage of one increment, for as many as on eighteen occasions he had absented without assigning any reasons and during this period also he remained absent for a continuous period of seventy four days unauthorisedly. It was further submitted that despite imposition of earlier penalty, he has not mended his ways nor has shown any improvement. Thus, he has been termed as incorrigible. It was further submitted that petitioner belongs to police department where certain degree of discipline is required to be maintained. His absence not only causes hardship and impediment in the working of respondent-State, but also creates amount of lethargy in the minds of other employees. In the light of aforesaid submission, it was contended that punishment awarded is neither harsh nor should prick judicial conscious of the Court.

4. Having heard learned Counsel for parties and after our anxious consideration, we find that there is no merit or substance in this petition. A recent judgment of Supreme Court, being pertinent on the point, can be put into service. It is reported in *Maan Singh v. Union of India and Ors.*, (2003) 3 SCC 464. This was also a case of Constable of Delhi Police who had remained absent unauthorisedly from duty for a long period. After regular departmental enquiry, disciplinary authority passed an order dismissing him from service and directing period of his absence to be treated as Leave Without Pay.

5. Supreme Court, while relying on its earlier judgment *State of Punjab and Ors. v. Ram Singh*, reported in (1992) 4 SCC 54, held that order of dismissal in given facts and circumstances of the case would neither be harsh nor should prick judicial conscious. In *Maan Singh (supra)*, it has been held that even after taking lenient view for making an improvement, however, there does not appear to be any signs of improvement and only punishment that can be imposed by

disciplinary authority is dismissal from service. It has been held :--

'If the delinquent officer is proved to be incorrigible and found completely unfit to remain in service then in order to maintain discipline in the service appropriate punishments can be given. Therefore, when the charge against the appellants in each of these cases is habitual absence for long periods on several occasions unauthorisedly, the view taken by the disciplinary authority is justified.'

6. In the light of said ratio, view taken by disciplinary authority that it was a fit case where only punishment that could have been awarded to petitioner was removal from service, appears to be proper. In the light of aforesaid discussion, we find that no case for interference is made out. Petition is accordingly hereby dismissed but without any order as to costs.

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