

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE RAVI MALIMATH,

CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE PURUSHAINDRA KUMAR KAURAV

WRIT PETITION No.4556 of 2005(S)

Between:-

**KIRTI KUMAR DWIVEDI S/O
H.S.DWIVEDI, AGED ABOUT 35 YEARS,
EX-PROCESS WRITER, KARERA,
DISTRICT-SHIVPURI, M.P.**

....PETITIONER

(BY SHRI MANOJ KUMAR SHARMA, ADVOCATE)

AND

1. **REGISTRAR GENERAL HIGH COURT OF
MADHYA PRADESH, JABALPUR M.P.**
2. **DISTRICT JUDGE, SHIVPURI, M.P.**
3. **STATE OF M.P. THROUGH ITS PRINCIPAL
SECRETARY, DEPARTMENT OF LAW &
LEGISLATIVE AFFAIRS DEPARTMENT,
MANTRALAYA, VINDHYACHAL BHAVAN,
BHOPAL.**

....RESPONDENTS

(BY SHRI VIVEKANAND AWASTHY, ADVOCATE)

Reserved on : 10.02.2022

Delivered on : 15.02.2022

Per : Justice Purushaindra Kumar Kaurav :

ORDER

The petitioner is challenging the order dated 25.06.2004 (Annx.P/6), whereby, he was removed from the services and the order

dated 22.12.2004 (Annex.P/8), whereby, his appeal against the order of removal has been dismissed.

2. The facts of the case in short are that petitioner was appointed by respondent No.2 as Process Writer on 14.07.1995. In the month of October 2003 (Annx.P/1), he was served with the notice along with the charge sheet, memo of charges, list of witnesses and other relevant documents to explain as to why a departmental inquiry should not be initiated against him on account of his misconduct of unauthorized leave and frequently remaining absent from duty. There were four charges against the petitioner. They are as under :-

“(i) Despite the fact that the petitioner was informed by the Additional District and Sessions Judge, Karera on 10.04.2003 that no “casual leave” was available in his account, the petitioner made an application and unauthorizedly remained absent and availed casual leave for 23.06.2003, 24.06.2003 and 27.6.2003.

(ii) As per Appendix “A” of the charge memo, the petitioner remained absent for 28 days without any application whatsoever.

(iii) The petitioner was earlier served with the show cause notice on 20.09.2002 for his indiscipline of remaining absent. He submitted his undertaking on 27.09.2002 that in future, he would not commit such mistake. Despite that, as per Appendix “B” of the charge memo, he availed as many as 47 days of “earned leave” unauthorizedly without obtaining sanction between 8.10.2002 to 02.09.2003.

(iv) Despite the fact that petitioner remained absent on 08th and 9th July, 2003, he illegally signed the attendance register to show his presence on those days.”

3. On the basis of aforesaid charges, it was stated that the conduct of the petitioner was in violation of Rule 3 and 7 of Madhya Pradesh Civil Services (Conduct) Rules, 1965 and, therefore, it attracts the punishment as per Rule 10 of Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966.

4. After conducting the departmental enquiry, the order of removal of the petitioner was passed on 25.06.2004 (Annx.P/6) which has been affirmed by the Appellate Authority vide order dated 22.12.2004 (Annex.P/8).

5. Learned counsel for the petitioner submits that not only the punishment is exorbitantly harsh but the long absence of the petitioner was on account of unforeseen, unavoidable and domestic problem which has not been considered by the disciplinary authority. He submits that the charge of unauthorized leave of 28 days is not such a grave misconduct which would necessarily require punishment of removal, therefore, some lesser punishment should have been awarded.

6. Learned counsel appearing for the respondents opposed the petition and contended that the instant petition deserves to be dismissed as there is no infirmity, whatsoever, in the order passed by the disciplinary authority. It is contended by the counsel for the respondents that overall conduct of the petitioner has to be considered for the purposes of judging proportionality of punishment and, if the same is done, it would appear that the petitioner is a highly indisciplined employee. On account of his indisciplined behavior of remaining absent without sanction of leave, he was given a show cause notice on 20.09.2002. In turn, he had given his undertaking on 27.09.2002 that he would not commit such mistake. Even after giving an undertaking, he took as many as 47 Earned leave within a period of

less than one year commencing from 08.10.2002 to 02.09.2003. Furthermore, Appendix "A" of the charge sheet clearly demonstrates that between 12.10.2002 to 18.02.2003, he remained absent for 28 days. Under such circumstances, it is apparent that the punishment of removal awarded to the petitioner was just and proper.

7. We have heard the learned counsel for the parties and perused the record.

8. Shri Ashok Kumar Gupta, Civil Judge Class-II, was appointed as the Inquiry Officer. As per record of the Inquiry Officer dated 05.03.2004, it is clear that petitioner accepted charge No.1 to 3 but denied charge No.4. On 22.4.2004, the departmental witnesses, namely, Shri Rajendra Joshi (Accountant), Shri Nandan Jain (Initiation Clerk) and Smt. Nitukanta Chhapariya (Civil Judge Class-II) were examined and their cross examination was also done. Documents were also produced in evidence. On 01.05.2004, another witness, namely, B.L.Jatav, Addl. District Judge, Karera was examined. On 12.05.2004, the petitioner gave up his right to cross-examine the said witness. On the said date his statement was recorded and he submitted that he did not want to examine any witness in defence. On 13.05.2004, his arguments were heard and the inquiry was closed for submission of Inquiry Report.

9. It is seen that on 14.5.2004, the Inquiry Officer had submitted the Inquiry report (Annx.P/4). Paragraph-9 of the Inquiry report clearly shows that while the charge No.1, 2 and 3 were accepted by the petitioner, the prosecution has also proved those charges by adducing sufficient evidence. With respect to charge No.4, specific finding was given by the Inquiry Officer in paragraph No.10 that the petitioner had illegally signed the attendance register of 08.07.2003 and 09.07.2003

despite the fact that he remained absent on those days. The petitioner tried to explain that the signature was made inadvertently. This explanation was not accepted by the Inquiry Officer.

10. The Inquiry report was served on the petitioner on 28.05.2004. The petitioner made an application for personal hearing which was also accepted vide Annexure P/5 and on 16.6.2004 he was heard by the disciplinary authority. Thereafter punishment of removal was awarded to the petitioner which has been confirmed in appeal.

11. The scope of judicial review in cases of disciplinary proceedings in a petition under Article 226 of the Constitution is limited. This court is not supposed to sit as a court of appeal to re-appreciate and reweigh the entire evidence. The subject matter of judicial review is the decision making process. If process runs contrary to the principles of natural justice and such violation prejudices the petitioner, interference can be made. If the conclusion or finding is such as no reasonable person would have ever reached, the court may interfere with the conclusion or the finding or mould the relief so as to make it appropriate to the facts of a case. While exercising the power of judicial review, High Court should not normally substitute its own conclusion on penalty and impose some other penalty. If punishment is shockingly disproportionate, then only this court can interfere in the quantum of punishment. *{See : Union of India and others v. P. Gunasekaran¹ and Union of India and others Vs. Ex.Constable Ram Karan²}*.

12. In the present case, the delinquent employee admitted charges No.1 to 3, therefore, these charges having been admitted were not required to be proved. However, as noticed above, the Inquiry Officer

¹ (2015) 2 SCC 610.

² (2022) 1 SCC 373.

has recorded the evidence in accordance with the principles of natural justice and conclusion has been arrived at by the Inquiry Officer finding the charges proved against the petitioner. There is no ground of either violation of principle of natural justice or error in the procedure followed by the department. In absence of any procedural illegality or irregularity in conduct of the departmental enquiry, it has to be held that the charges against the delinquent stood proved and warrant no interference. *{See :Chairman-cum-Managing Director, Coal India Limited and another Vs. Mukul Kumar Choudhauri and others³ and Chairman & Managing Director, V.S.P. and others Vs. Goparaju Sri Prabhakara Hari Babu⁴}*.

13. Unauthorized absence by an employee is an act of indiscipline. Whenever there is an unauthorized absence by an employee, two courses are open to the employer. The first is to condone the unauthorized absence by accepting the explanation and sanctioning leave for the period of the unauthorized absence, in which event, misconduct will stand condoned. The second is to treat the unauthorized absence as misconduct, hold an enquiry and impose the punishment for the misconduct. *{See :State of Punjab Vs. P.L.Singla⁵}*. In the present case, the petitioner was a repeated absentee but still the respondent-employer let him off by taking a lenient view of accepting his undertaking that such an act will not occur in future. The proceedings were initiated after repeated misconduct and the order of removal has been passed after following the due process of law i.e conducting full-fledged departmental enquiry.

³ (2009) 15 SCC 620.

⁴ (2008) 5 SCC 569.

⁵ (2008) 8 SCC 469.

14. On the question of punishment, taking into consideration the overall conduct of the petitioner and nature of allegations which have been found correct in the inquiry, we find that the punishment awarded to the petitioner is commensurate with the nature of misconduct. The disciplinary authority has decided the quantum of punishment, and keeping in view the misconduct of signing the attendance register in back date, the same does not call for any interference Hence, we decline to interfere with the punishment awarded to the petitioner.

15. In view of aforesaid, the instant writ petition fails and is hereby dismissed.

(RAVI MALIMATH)
CHIEF JUSTICE

(PURUSHAINDR KUMAR KAURAV)
JUDGE

MKL.