HIGH COURT OF MADHYA PRADESH, JABALPUR

WRIT APPEAL NO.286/2019

Anoop Singh Markam

-Versus-

State of Madhya Pradesh and another

CORAM:-

Hon'ble Shri Justice R.S.Jha, Acting Chief Justice,
Hon'ble Shri Justice Vijay Kumar Shukla, Judge.

Shri Sanjay Kumar Patel, Advocate for the appellant.

Shri Jagat Singh, Panel Lawyer for the respondents/State.

Whether approved for reporting ? Yes/No

Whether approved for reporting?	*Yes*
Law laid down	*(i) Every absence from duty is not a misconduct but if an employee has remained wilful absent from duty without there being any plausible cause to the satisfaction of the employer, in the facts of a case, the wilful absence would amount to misconduct.* *(ii) Scope of interference in the matter of punishment is very limited, as the courts cannot impose a particular punishment even in those cases where it was found that the penalty awarded by the employer is shockingly disproportionate.*
Significant paragraph Nos.	*6 to 11*

J U D G M E N T

JABALPUR: (24/07/2019)

Per: V.K.Shukla, J.

The present intra court appeal is filed under Section 2(1) of Madhya Pradesh Uchchaya Nyaylaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005, being aggrieved by the the order dated 14-11-2018 passed by the learned Single Judge, whereby the writ petition

challenging the order of punishment of removal from service, remained unsuccessful.

2. The brief facts of the case are that the appellant was working as a Constable in Special Security Force 6th Battalion, Jabalpur. A charge sheet dated 17-10-2014 was issued alleging two charges out of which first charge relates to his unauthorized absence for 196 days in violation of Para-64(2) & (4) of the Police Regulation and the second charge was relating to his previous punishment and despite that no improvement was noticed in his conduct. A full fledged enquiry was conducted and in the enquiry both the charges were found proved. The Disciplinary Authority considering the findings given by the Enquiry Officer passed the order of punishment of removal from service on 08-09-2015. Against the said order, an appeal was also preferred which was dismissed. Thereafter the appellant also filed a mercy appeal which also suffered dismissal by order dated 27-01-2016. All these orders were challenged in the writ petition, which has been dismissed by the impugned order.

3. Learned counsel for the appellant submitted that there was no wilful absence from duty and therefore, such absence shall not amount to misconduct and therefore, the order of punishment of removal is illegal and arbitrary. He further submitted that the order of punishment of removal is highly disproportionate and shocking to the conscience. In support of his submission on misconduct he relied the judgment passed by the Apex Court in the case **Krushnakant B.Parmar B.Parmar Vs. Union of India and another (2012)3 SCC 178.**

4. We do not find any merit in the contention of the counsel for the

appellant that in the present case the absence was not wilful. Counsel for the appellant has heavily relied on the statement of prosecution witness namely Madan Gopal, who stated that when he reached in the house of the appellant, he found the appellant, hale and hearty and on asking him about the unauthorized absence, he has answered that his brother is not well as he lost his mental balance and is under medication. He also stated that the appellant was advised to join the duties, but despite that, he did not submit his joining. We have also considered the statement of the appellant, wherein he has clearly admitted that he had not submitted any application for extension of leave for a period of 196 days. His excuse was only that he was busy in the treatment of his brother and therefore, he neither informed the department nor has submitted any application for grant of leave. He also admitted that all the notices sent by the department to his home address were received by him. Apart from this, the appellant has failed to produce sufficient material regarding the treatment of his brother. The Enquiry Officer, the Disciplinary Authority and the Appellate Authority have not accepted the explanation of the appellant that because of the treatment of his brother he was so busy that even he could not inform the department and could not submit any application for extension of leave. All the authorities, Enquiry Officer Disciplinary Authority and the Appellate Authority have recorded a specific finding that the appellant has remained absent for a period of 196 days without leave. Thus, we do not find any illegality in the order of punishment.

5. The appellant has relied on the judgment passed by the Apex

Court in the case of **Krushnakaant B. Thakur(supra).** In the facts of the present case, the said judgment wound not render any assistance to the appellant. In the said case the employee had remained unauthorizedly absent from duty due to compelling circumstances under which he could not perform the duties. In the said case, it was found that the employee was prevented from attending duty for reasonable cause and there was no wilful absence. But, in the present case , the appellant has remained absent for 196 days without any information to the department or any application for extension of leave despite the fact that an employee of the department was sent to him and he asked him to resume the duty but he did not resume the duty and also did not submit any application for extension of leave. He has admitted that he did not submit any application for extension of leave. Thus, the judgment relied by the learned counsel for the appellant does not apply to the facts of the present case.

6. The next argument of the learned counsel for the appellant is that the punishment is highly disproportionate and harsh, the learned Single Judge has placed reliance on the judgment passed by the Apex Court in the case of **Ashok Kumar Vs. Union of India (2009) 17 SCC 481.** The scope of interference in the matter of punishment is no longer *res integra.* In the case of **Union of India & Others Vs. R. K. Sharma – (2001)9 SCC 592** the Apex Court held that *High Court under Article 226 or 227 and Supreme Court under Article 32 should not interfere with the punishment so imposed merely on compassionate grounds such as it being disproportionately harsh; except in ex facie cases of perversity or irrationality.*

7. In the case of **Delhi Police through Commissioner of Police & Others Vs. Sat Narayan Kaushik – (2016)6 SCC 303,** the Apex Court held that *"the High Court can interfere with quantum of punishment only after taking into consideration totality of facts and circumstances of case, such as nature and gravity of charges leveled against employee, its gravity, seriousness, work done in the past, remaining tenure of the delinquent employee left,etc."* In other words it is necessary for the High Court to take these factors into consideration before interfering with the quantum of punishment.

8. In the case of **Chief Executive Officer, Krishna Distt. Cooperative Central Bank Ltd. & Another Vs. K. anumantha Rao & another – (2017)2 SCC 528,** the Apex Court reiterated the legal position and held that it is not the function of the High Court to impose a particular punishment even in those cases where it was found that the penalty awarded by the employer is shockingly disproportionate. - On facts held, since punishment imposed was not shockingly disproportionate to misconduct proved, there was no question of remitting case to disciplinary authority arises.

9. The petitioner was working as a constable in a disciplinary force and had remained wilfully absent for a period of 196 days and therefore, we do not find that the punishment imposed on the appellant is disproportionate or shocking to the conscience.

10. In view of the conspectus of the present case and enunciation of law, we find that the order of punishment of removal is neither disproportionate nor shocking to conscience hence, the order of punishment and dismissal of appeal/ representation does not warrant

any interference in the present intra-court appeal.

11. In the case of Baddula Lakshmaiah and others vs. Sri Anjaneya Swami Temple and others, (1996) 3 SCC 52 , the Apex Court ruled that in an intra-court appeal the appellate Court is a Court of Correction which corrects its own orders, in exercise of the same jurisdiction as was vested in the Single Bench. Such is not an appeal against an order of subordinate court. In such appellate jurisdiction the High Court exercises the powers of a Court of Error.

12. Accordingly, the writ appeal is **dismissed**. No orders as to costs.

(R.S.JHA) **(VIJAY KUMAR SHUKLA)**
ACTING CHIEF JUSTICE **JUDGE**

hsp