W.A. No. 659 of 2024

IN THE HIGH COURT OF MADHYA PRADESH

AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJEEV SACHDEVA,

ACTING CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE VINAY SARAF

WRIT APPEAL No. 659 of 2024

KARAN SINGH MARAVI

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

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Appearance:

Shri Vidya Shankar Mishra - Advocate for appellant.

Shri S.S.Chouhan – Government Advocate for respondents.

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Reserved on - 30.07.2024

Pronounced on - 19.09.2024

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ORDER

Per: Sanjeev Sachdeva, Acting Chief Justice

1. Appellant impugns order dated 7th February 2024 in writ petition i.e. W.P.No.12079 of 2016 filed by the appellant challenging order dated 13.12.2015 whereby appellant was visited with the penalty of removal from service on account of unauthorised absence from 03.05.2014 to 01.08.2015 for a period of 455 days. The appeal

filed to the Inspector General of police is also dismissed by order dated 01.02.2016.

2. Appellant was appointed on the post of G.D. Constable in the Special Armed Force of the Madhya Pradesh Police on 13.05.2003. He unauthorisedly absented himself from duty for 455 days from 03.05.2014 to 01.08.2015. Appellant was issued a charge-sheet and thereafter a departmental inquiry was conducted and being found guilty, penalty of removal from the service on account of unauthorised absence for a period of 455 days was passed. The appeal filed by the Appellant was also dismissed by order dated 01.02.2016, leading to the filing of the subject Writ Petition.

3. The explanation of the Appellant for his unauthorised absence is that his wife was suffering from problem of successive abortion and he was mentally disturbed and was financially suffering as he had to travel several times to his home and could not afford to travel.

4. Appellant places reliance on judgment of the Supreme Court in the case of ***Krushna Kant B. Parmar Vs. Union of India and another, (2012) 3 SCC 178***, to contend that absence for a reason cannot be said to be a wilful absence.

5. It is contended that the absence was the result of compelling circumstances under which it was not possible to report or perform duty and thus his absence could not be held to be wilful. It is contended that the absence of the Appellant was not wilful and he was prevented on account of the illness of his wife from reporting to duty. He submits that Appellant was absent from the duty primarily

because of the health condition of his wife which required him being by her side, and therefore his case is clearly covered under the exception carved out by the Supreme Court in ***Krushna Kant B Parmar*** *(supra)*.

6. Learned Single Judge has held that unauthorised absence is a major misconduct under the Police Regulations. He has noticed that in the present case neither petitioner was suffering from illness or had met with an accident or was hospitalised. Even the medical documents of his wife showed that she was under treatment and had undergone Sonography on 23.06.2013 and thereafter was under treatment at Yoyale Hospital and Research Centre, Garha Railway Crossing, Jabalpur but nowhere it was shown that she was under hospitalisation till 03.05.2014 when she was diagnosed with Premature Infertility. There was no discharge card available on record to show as to when petitioner's wife was discharged from the Nursing Home. Learned Single Judge has held that the for unauthorised absence from 02.05.2014 to 01.08.2015 (455 days) there was no explanation.

7. Reference may be had to the judgment of the Supreme Court in ***Krushna Kant B Parmar*** *(supra).* The Supreme Court has held as under:

> *"16. In the case of the appellant referring to unauthorised absence the disciplinary authority alleged that he failed to maintain devotion to duty and his behaviour was unbecoming of a government servant. The question whether "unauthorised absence from duty" amounts to failure of devotion to duty or behaviour unbecoming of a government servant cannot be decided without deciding the question*

> *whether absence is wilful or because of compelling circumstances.*
>
> *17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot 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 the absence of such finding, the absence will not amount to misconduct."*

8. In ***Krushna Kant B Parmar*** *(supra)*, the Supreme Court has held that the question whether "unauthorised absence from duty" amounts to failure of devotion to duty or behaviour unbecoming of a government servant cannot be decided without deciding the question whether absence is wilful or because of compelling circumstances. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot 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 compelling circumstances beyond his control like illness, accident, hospitalisation, etc., and in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a government servant. If allegation of unauthorised absence from duty is made, the disciplinary authority is

required to prove that the absence is wilful, in the absence of such finding, the absence will not amount to misconduct.

9. Reference may further be had to the Judgment of the Supreme Court of India in ***Chennai Metropolitan Water Supply & Sewerage Board v. T.T. Murali Babu, (2014) 4 SCC 108****,* wherein the Supreme Court has explained ***Krushna Kant B Parmar*** *(supra)* and has held as under:

> *"23. We have quoted in extenso as we are disposed to think that the Court in Krushnakant B. Parmar case has, while dealing with the charge of failure of devotion to duty or behaviour unbecoming of a government servant, expressed the afore stated view and further the learned Judges have also opined that there may be compelling circumstances which are beyond the control of an employee. That apart, the facts in the said case were different as the appellant on certain occasions was prevented to sign the attendance register and the absence was intermittent. Quite apart from that, it has been stated therein that it is obligatory on the part of the disciplinary authority to come to a conclusion that the absence is wilful. On an apposite understanding of the judgment Krushnakant B. Parmar case we are of the opinion that the view expressed in the said case has to be restricted to the facts of the said case regard being had to the rule position, the nature of the charge levelled against the employee and the material that had come on record during the enquiry. It cannot be stated as an absolute proposition in law that whenever there is a long unauthorised absence, it is obligatory on the part of the disciplinary authority to record a finding that the said absence is wilful even if the employee fails to show the compelling circumstances to remain absent.*
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> *24. In this context, it is seemly to refer to certain other authorities relating to unauthorised absence and the view expressed by this Court. In State of Punjab v. P.L. Singla , (2008) 8 SCC 469 the Court, dealing with unauthorised absence, has stated thus :*

> *11. Unauthorised absence (or overstaying leave), is an act of indiscipline. Whenever there is an unauthorised absence by an employee, two courses are open to the employer. The first is to condone the unauthorised absence by accepting the explanation and sanctioning leave for the period of the unauthorised absence in which event the misconduct stood condoned. The second is to treat the unauthorised absence as a misconduct, hold an enquiry and impose a punishment for the misconduct.*

25. Again, while dealing with the concept of punishment the Court ruled as follows :

> *14. Where the employee who is unauthorisedly absent does not report back to duty and offer any satisfactory explanation, or where the explanation offered by the employee is not satisfactory, the employer will take recourse to disciplinary action in regard to the unauthorised absence. Such disciplinary proceedings may lead to imposition of punishment ranging from a major penalty like dismissal or removal from service to a minor penalty like withholding of increments without cumulative effect. The extent of penalty will depend upon the nature of service, the position held by the employee, the period of absence and the cause/explanation for the absence.*

26. In Tushar D. Bhatt v. State of Gujarat (2009) 11 SCC 678, the appellant therein had remained unauthorisedly absent for a period of six months and further had also written threatening letters and conducted some other acts of misconduct. Eventually, the employee was visited with order of dismissal and the High Court had given the stamp of approval to the same. Commenting on the conduct of the appellant the Court stated that he was not justified in remaining unauthorisedly absent from official duty for more than six months because in the interest of discipline of any institution or organisation such an approach and attitude of the employee cannot be countenanced.

> *27. Thus, the unauthorised absence by an employee, as a misconduct, cannot be put into a straitjacket formula for imposition of punishment. It will depend upon many a factor as has been laid down in P.L. Singla."*

10. The Supreme Court in ***Chennai Metropolitan Water Supply & Sewerage Board*** *(supra)* after examining ***Krushna Kant B Parmar*** *(supra)* has held that the view expressed in ***Krushna Kant B Parmar*** *(supra),* that there may be compelling circumstances which are beyond the control of an employee and that it is obligatory on the part of the disciplinary authority to come to a conclusion that the absence is wilful, has to be restricted to the facts of the said case regard being had to the rule position, the nature of the charge levelled against the employee and the material that had come on record during the enquiry. It cannot be stated as an absolute proposition in law that whenever there is a long unauthorised absence, it is obligatory on the part of the disciplinary authority to record a finding that the said absence is wilful even if the employee fails to show the compelling circumstances to remain absent.

11. The Supreme Court thereafter referred to the Judgment in ***P.L. Singla*** *(supra)* wherein it is held that Unauthorised absence (or overstaying leave), is an act of indiscipline and whenever there is an unauthorised absence by an employee, two courses are open to the employer. First is to condone the unauthorised absence by accepting the explanation and sanctioning leave for the period of the unauthorised absence in which event the misconduct stood condoned and the second is to treat the unauthorised absence as a misconduct, hold an enquiry and impose a punishment for the misconduct. Where

the explanation offered by the employee is not satisfactory, the employer would take recourse to disciplinary action in regard to the unauthorised absence. Such disciplinary proceedings may lead to imposition of punishment ranging from a major penalty like dismissal or removal from service to a minor penalty like withholding of increments without cumulative effect. The extent of penalty would depend upon the nature of service, the position held by the employee, the period of absence and the cause/explanation for the absence.

12. The Supreme Court held that unauthorised absence by an employee, as a misconduct, cannot be put into a straitjacket formula for imposition of punishment. It will depend upon many a factor as has been laid down in *P.L. Singla (supra)*.

13. Supreme Court has laid down the scope, extent and parameters of judicial review in disciplinary action. Supreme Court in ***Railways v. Rajendra Kumar Dubey*, *(2021) 14 SCC 735*** has held as under:

> ***"****21.1. We will first discuss the scope of interference by the High Court in exercise of its writ jurisdiction with respect to disciplinary proceedings. It is well settled that the High Court must not act as an appellate authority, and reappreciate the evidence led before the enquiry officer. We will advert to some of the decisions of this Court with respect to interference by the High Courts with findings in a departmental enquiry against a public servant.*
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> *21.2. In State of A.P. v. S. Sree Rama Rao, AIR 1963 SC 1723] , a three-Judge Bench of this Court held that the High Court under Article 226 of the Constitution is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is not the function of the High Court under its writ jurisdiction to review the evidence, and arrive at an independent finding on the evidence. The High Court may, however, interfere where*

the departmental authority which has held the proceedings against the delinquent officer are inconsistent with the principles of natural justice, where the findings are based on no evidence, which may reasonably support the conclusion that the delinquent officer is guilty of the charge, or in violation of the statutory rules prescribing the mode of enquiry, or the authorities were actuated by some extraneous considerations and failed to reach a fair decision, or allowed themselves to be influenced by irrelevant considerations, or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. If, however, the enquiry is properly held, the departmental authority is the sole judge of facts, and if there is some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a writ petition.

21.3. These principles were further reiterated in State of A.P. v. Chitra Venkata Rao, (1975) 2 SCC 557. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The court exercises the power not as an appellate court. The findings of fact reached by an inferior court or tribunal on the appreciation of evidence, are not re-opened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ court, but not an error of fact, however grave it may be. A writ can be issued if it is shown that in recording the finding of fact, the tribunal has erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence. A finding of fact recorded by the tribunal cannot be challenged on the ground that the material evidence adduced before the tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point, and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the tribunal.

21.4. In subsequent decisions of this Court, including Union of India v. G. Ganayutham , (1997) 7 SCC 463, RPF v. Sai Babu , (2003) 4 SCC 331, Chennai Metropolitan Water Supply & Sewerage Board v. T.T. MuraliBabu, (2014) 4 SCC 108, Union of India v. Manab Kumar Guha , (2011) 11 SCC 535, these principles have been consistently followed.

21.5. In a recent judgment delivered by this Court in State of Rajasthan v. Heem Singh , (2021) 12 SCC 569 this Court has summed up the law in following words:

> *37. In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy — deference to the position of the disciplinary authority as a fact-finding authority and autonomy of the employer in maintaining discipline and efficiency of the service. At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognised it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or*

> *misconduct. Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review. To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the court to reappreciate evidentiary findings in a disciplinary enquiry or to substitute a view which appears to the judge to be more appropriate. To do so would offend the first principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the judges' craft is in vain."*

14. The Supreme Court in ***Railways v. Rajendra Kumar Dubey*** *(supra)* after referring to various decisions has laid down principles which can be summarised as follows:

i. *the jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction;*

ii. *the High Court under Article 226 of the Constitution is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant;*

iii. *it is not the function of the High Court under its writ jurisdiction to review the evidence, and arrive at an independent finding on the evidence;*

iv. *High Court may interfere with the proceedings:*

(a) where principles of natural justice has not been complied with,

(b) where the findings are based on no evidence, which may reasonably support the conclusion of guilt, or

(c) there is violation of the statutory rules prescribing the mode of enquiry, or

(d) the authorities were actuated by some extraneous considerations and failed to reach a fair decision, or

(e) allowed themselves to be influenced by irrelevant considerations, or

(f) where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion.;

v. if, the enquiry is properly held, the departmental authority is the sole judge of facts, and if there is some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a writ petition;

vi. findings of fact reached by an inferior court or tribunal on the appreciation of evidence, are not re-opened or questioned in writ proceedings; and

vii. an error of law which is apparent on the face of the record can be corrected by a writ court, but not an error of fact, however grave it may be.

15. The Supreme Court relying upon *State of* ***Rajasthan v. Heem Singh*** *(supra)* held that in exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible.

16. The rule of restraint constricts the ambit of judicial review for the reason that the determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the

idea that it is the employer who is responsible for the efficient conduct of their service. Though Disciplinary Enquiries have to abide by the rules of natural justice, they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities.

17. The Supreme Court further held that at the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence.

18. If the above principles are applied to the facts of the present case, we may note that in the present case, the explanation given by the Appellant was that he was prevented by the illness of his wife from reporting for duty. He has contended that the health condition of his wife required him being by her side.

19. Petitioner was serving as G.D. Constable in the Special Armed Force of the Madhya Pradesh Police. The employer found his explanation as unsatisfactory. As noticed by the learned Single Judge petitioner was not suffering from any illness or was hospitalised. The medical documents of his wife showed that she was under treatment for premature infertility. It is not even the case of the Appellant that she required any form of hospitalisation. During his entire period of absence from 02.05.2014 to 01.08.2015 (455 days) there is no

document of her having been hospitalised or receiving treatment. There is no explanation for the said period leave alone satisfactory plausible explanation to satisfy the test laid down by the Supreme Court in ***P.L. Singla*** *(supra)*.

20. Looked at from any angle, there is no infirmity in the view taken by the learned Single Judge. The explanation for the unauthorised absence was not found satisfactory in the departmental enquiry and by the learned Single Judge. Even before us Appellant has not been able to show that the explanation was even plausible. In view of the above, we find no merit in the appeal. The same is consequently dismissed.

(SANJEEV SACHDEVA)
ACTING CHIEF JUSTICE

(VINAY SARAF)
JUDGE

C.