

(2014) 05 CAL CK 0015
In the Calcutta High Court
Case No : Writ Petition S.T. No. 80 of 2014

Lagan Chandra Pandey

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 06-05-2014

Acts Referred:

Citation : (2015) 1 CHN 247

Hon'ble Judges : Nishita Mhatre, J;Asim Kumar Mondal, J.

Bench : Division Bench

Advocate : Chitta Ranjan Chakraborty and Somnath Banerjee, for the Appellant;
Joytosh Majumder and S. Pal, for the Respondent

Final Decision : Dismissed

Judgement

1. The Petitioner is a constable who was charge-sheeted for having been absent from duty. After an enquiry was held he was dismissed from service. The Petitioner was sanctioned leave for twenty days from 7th October, 2004 to 27th October, 2004 because his son was seriously ill. According to the Petitioner, after his son recovered, he fell ill and was hospitalized in Durgapur. The Petitioner has also contended that his father suffered a serious illness and, therefore, all these illnesses in the family prevented him from joining duty.

2. The Petitioner did send photocopies of an OPD ticket to the Respondents for extension of the earned leave granted to him as the doctor had advised him complete rest. It appears after that the Petitioner did not join duty at all even after he recovered nor did he send a fitness certificate to the Respondents.

3. A charge-sheet was issued to the Petitioner on 1st February, 2006 alleging that he had committed acts of misconduct by remaining absent unauthorisedly which amounted to gross dereliction of duty. An enquiry was instituted against the Petitioner. As the Petitioner did not attend the enquiry, the Enquiry Officer proceeded ex parte and found that the Petitioner was guilty of the misconduct alleged against him.

4. According to the Petitioner, the second show-cause notice was not issued to him and, therefore, he could not respond to the enquiry report.

5. After considering the report of the Enquiry Officer, an order of dismissal was issued against the Petitioner with effect from 7th April, 2010. Aggrieved by that order, the Petitioner preferred a statutory appeal. That appeal was dismissed by the Appellate Authority.

6. Throughout all these proceedings before the Enquiry Officer till the Disciplinary Authority passed the order, the Petitioner did not bother to attend duty. Thus, from the year 2004 till he was dismissed from service in the year 2010 the Petitioner was absent from duty.

7. Even assuming the Petitioner had some justifiable reason for his absence in the year 2004, there is no indication as to why it was necessary for him to be absent after he, his son and his father had recovered from their respective illnesses.

8. It is submitted on behalf of the Petitioner that since the second show-cause notice has not been issued to the Petitioner the enquiry proceedings are vitiated. This issue was not raised before the Tribunal, nor has it been raised before this Court. It is now well-settled that unless a delinquent employee is able to show that he was caused to prejudice because of the fact that he was not served with a second show-cause notice, after the enquiry report was submitted, the enquiry cannot be said to be vitiated.

9. The absence of the second show-cause notice has not caused any prejudice to the Petitioner, as he has not raised this issue before the Tribunal. Whether or not prejudice has been caused to a person is a question of fact which must be pleaded before the Court of the first instance. It is not possible to, therefore, accept the contention at this stage that because the second show-cause notice was not issued, the enquiry is vitiated. Furthermore, there is no pleading in this regard in the present petition either.

10. The Petitioner made no attempt at all to report for duty after he recovered from his illness. There is no material on record to indicate that he was prevented from working, as contended on his behalf, nor is there any material to show that he had protested against such hurdles in his path to report for duty. Therefore, it is apparent that this submission is nothing but an afterthought.

11. It is true that the past service record of the Petitioner since he joined duty in the year 1990 is not entirely blameworthy. We would have, therefore, considered directing the Respondents to impose a lesser punishment. However, the Petitioner did not bother to report for duty at all after he recovered from his illness in the year 2006 till he was dismissed from service in the year 2010. There is no explanation whatsoever as to why it was necessary for the Petitioner to remain absent till 2010. The contention of the Petitioner that he was not permitted to work by the Respondents after the year 2006 is not acceptable

because there is no such pleading in his application.

12. In our opinion, therefore, the Petitioner does not deserve to be shown any indulgence.

13. The writ petition is dismissed.

14. There shall be no order as to costs. Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.