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**(2012) 06 MP CK 0030**

**In the Madhya Pradesh High Court**

**Case No : Writ Petition (S) No. 2489 of 2004**

Munni Singh Chauhan

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

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**Date of Decision : 26-06-2012**

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2012) 135 FLR 263 : (2012) 3 MPLJ 612

**Hon'ble Judges :** Sujoy Paul, J

**Bench :** Single Bench

**Advocate :** S.K. Sharma, for the Appellant; Sangeeta Pachouri, Deputy Govt. Advocate for State, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Sujoy Paul, J.—In this petition filed under Article 226 of the Constitution, petitioner has called in question the punishment order, whereby petitioner was dismissed from service and also the appellate order, whereby his appeal has been rejected by the appellate authority. Petitioner was served with a charge-sheet Annexure-P/1, wherein it was alleged that petitioner remained unauthorizedly absent from 8-3-2002 to 19-6-2002 (104 days) without intimation and thereby caused dereliction of duties. The second charge against the petitioner was that he is a habitual absentee.

2. In the charge-sheet it is alleged against the petitioner that he was appointed on 24-8-1965 as Constable and till issuance of charge-sheet he was unauthorizedly absent on 47 occasions, which shows that he is a habitual absentee.

3. Learned counsel for the petitioner assailed the disciplinary proceedings on following grounds :-- (1) The leave were available in the credit of petitioner which could have been sanctioned in terms of Regulation 178 of the Police Regulations. (2) The punishment can be imposed only in accordance with

Regulation 226 of the Police Regulations and considering the aforesaid, punishment was extremely disproportionate. (3) Petitioner was at the fag end of his career and has rendered more than 38 years of service, in which he was given prizes on 40 occasions. Learned counsel submits that punishment is shockingly disproportionate and at best respondents could have inflicted a punishment of compulsory retirement, which could have at least provided him some financial aid to keep his body and soul together in the December of his life. Thus, the basic ground of attack is on the proportionality of punishment imposed on him.

4. Per Contra, Ms. Pachouri learned Dy. Government Advocate supported the order and by drawing attention of the Court on page 2 of the return submits that on 7 occasions, petitioner was inflicted with punishment of withholding one increment without cumulative effect on the allegations of unauthorized absent. On 32 times, he was censured for the same misconduct of remaining unauthorizedly absent, whereas on 2 times he was inflicted with gross censure and whereas for 18 occasions a punishment of P.D. was awarded to the petitioner for the same misconduct. The learned Government Advocate is unable to tell the full form of the "P.D.".

5. I have heard learned counsel for the parties and perused the record.

6. The petitioner applied for leave which was disallowed on the ground that his leave application is not supported by a medical certificate. Regulation 178 of Police Regulation reads as under :-

178 (i) Leave is earned by duty only. Leave is earned under the ordinary leave rules at the rate 1/11 of the period spent on duty. Leave is calculated in terms of leave on average pay, so that leave taken on half average pay will count as half the period actually spent on leave.

(ii) The maximum amount of leave on average pay which may be granted at one time is four months without medical certificate and eight months on medical certificate [Fundamental Rule 81 (b)(ii)].

The underlined portion of Regulation 178(ii) makes it crystal clear that the leave could have been granted to the petitioner without any medical certificate up to a period of four months. It is relevant to mention here that respondents have not doubted the genuineness of ailment of the petitioner. The leave was rejected solely on a technical ground that medical certificate was not filed. This also runs contrary to the enabling provision of Regulation 178(ii). The respondents have not chosen to direct the petitioner to appear before any medical board etc. for medical examination.

7. As per the return of the respondents, the petitioner was inflicted with a series of minor punishments for remaining unauthorizedly absent. However, at no point of time any major punishment is inflicted on the petitioner on the ground of his absence. Regulation 226 of the Police Regulations reads as under:-

226. The following rules should be observed in determining what penalty should be awarded for any particular offence :-

(i) (a) Dismissal is the last resource and should, ordinarily, not be inflicted until all other means of corrections have failed.

A bare perusal of this Regulation shows that the intention of rule making authority is to use the weapon of dismissal order as a last recourse when no other punishment can serve the purpose. The basic intention of this regulation is not to snatch the livelihood of an employee until all other means of correction have failed. The scope of this regulation was considered by this Court in Deo Sharan Singh vs. State of M.P. and others, reported in 2006(3) MPWN 117. Relevant portion of para 9 reads as under:-

9..... Moreover, the petitioner has been rewarded with 25 rewards whereas, he was punished with 12 minor punishments. No major punishment was imposed on him prior to the impugned order. Keeping this in mind, the Disciplinary authority ought to have taken into consideration Regulation 226 of M.P. Police Regulations which lays down that dismissal is the last resource and should, ordinarily, not be inflicted until all other means of corrections have failed. The Disciplinary authority has failed to take into consideration the said 25 rewards given to the petitioner by the department for his appreciable work.

(Emphasis Supplied)

8. In the light of aforesaid, I have no hesitation to hold that punishment of dismissal from service should not be inflicted mechanically.

9. Apart from this, there is a distinction between wilful absence without justification and absence because of some compelling reasons. This aspect was considered by a Division Bench of Gauhati High Court. Hon"ble Shri Justice A.K. Patnaik, while speaking for the Bench (as he then was), held that once ailment of the employee is not in dispute, the punishment of dismissal from service is a harsh punishment. This judgment is reported in Dulal Chandra Sarma Vs. State of Mizoram and Others,

10. In the light of aforesaid backdrop, it is crystal clear that petitioner has rendered more than 38 years of service in which he had earned 40 awards/prizes as well. At the december of his career and life he was inflicted with the punishment of dismissal from service. It cannot be disputed that the other punishments were available to the disciplinary authority like reduction of pay with cumulative effect, reduction in post, stoppage of increments with cumulative effect, compulsory retirement etc. The respondents have never chosen to inflict a major punishment on the petitioner on the ground of his unauthorized absence. For the first time severe most punishment of dismissal was inflicted on the petitioner. The petitioner took these grounds in his appeal. The appellate authority did not address itself on the question of quantum of punishment in the light of Regulation 226 and also did not consider the effect of several prizes

received by the petitioner. The Supreme Court in the case of Ram Chander Vs. Union of India (UOI) and Others, , and its recent judgment reported in Vijay Singh Vs. State of U.P. and Others, held that the appellate authority is under a statutory obligation to examine every question raised by the petitioner including the question of proportionality of the punishment. The appellate authority erred in not examining the said aspect in its proper perspective.

11. On the basis of aforesaid analysis, in the considered opinion of this Court, the punishment of dismissal imposed on the petitioner is harsh and excessive. Consequently, the punishment order, Annexure P/2, and the order of appellate authority, Annexure P/4, are set aside. The matter is remitted back to the disciplinary authority to reconsider the question of quantum of punishment on the petitioner and pass the appropriate orders within 60 days. The said authority shall be at liberty to impose any other punishment on the petitioner after due application of mind except the punishment of dismissal or removal from service. Petition is allowed to the extent indicated above. No costs.