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**(2013) 05 P&H CK 0167**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : CWP No. 9295 of 2013**

Raj Singh

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

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**Date of Decision :** 01-05-2013

**Acts Referred:**

Constitution of India, 1950 — Article 14, 226

**Citation :** (2013) 171 PLR 217

**Hon'ble Judges :** Tejinder Singh Dhindsa, J

**Bench :** Single Bench

**Advocate :** H.S. Saini, for the Appellant;

**Final Decision :** Dismissed

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## Judgement

Tejinder Singh Dhindsa, J.—The petitioner who had been serving as a driver under the Haryana Roadways has filed the instant writ petition impugning the order dated 16.02.2005 (Annexure P-1) passed by the General Manager, Haryana Stale Transport, Rohtak whereby his services have been terminated. Still further challenge is to the order dated 06.04.2011 (Annexure P-4) passed by the Additional Transport Commissioner, Haryana as also order dated 22.06.2012 (Annexure P-6) passed by the Additional Chief Secretary to Government Haryana Transport Department whereby the first appeal and second appeal preferred by the petitioner against the order of termination have been rejected. A perusal of the impugned order (Annexure P-1) would reveal that the petitioner had absented himself continuously w.e.f. 01.07.2001. Such period of absence continued up to 05.08.2003. In the light of having remained absent for such period, the petitioner was served with a chargesheet for imposition of a major penalty under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987. The petitioner chose not to respond to the charge-sheet. An Enquiry Officer was appointed vide order dated 02.06.2003. The petitioner again for the reasons best known to him did not associate himself with the enquiry proceedings. The enquiry report furnished, recorded a finding against the

petitioner holding him to be willfully absent from duty for the period 01.07.2001 to 05.08.2003. The competent authority agreeing with the findings recorded by the Enquiry Officer, issued a show cause notice dated 16.09.2003 which was received by the petitioner on 19.09.2003. Yet again the petitioner did not submit any reply to the show cause notice. Apparently, the petitioner thereafter was given a number of opportunities for grant of personal hearing but he did not avail the same. Under such circumstances, the respondent-department got a notice published in the leading newspaper of the State for affording opportunity of personal hearing to the petitioner. It is against such factual position whereby the petitioner having not even availed the opportunity of personal hearing that the impugned order of termination from service was passed holding him to be willfully absent from duty from 01.07.2001 to 05.08.2003. Such a view stands affirmed in the first appeal as also the second appeal preferred by the petitioner.

2. Learned counsel appearing for the petitioner would vehemently argue that respondent no. 3 while dismissing the first appeal and respondent no. 2 while dismissing the second appeal, have taken into consideration certain facts & circumstances which were not even a part of the chargesheet and enquiry proceedings. The precise submission raised is that the past record of the petitioner and other punishments that have been imposed could not have been taken into consideration while deciding the first and second appeals preferred by the petitioner. Even a plea of discrimination has been raised by adverting to the orders Annexure P-7 and Annexure P-8 along with the petition wherein other employees of the Haryana State Transport Department against whom also a similar charge of being absent from duty having been duly proved have been dealt with leniently and instead of imposing the extreme penalty of termination, such employees have been put to certain financial loss in terms of withholding of increments/placing of the employees at the initial stage of pay scale. Furthermore, the petitioner has also placed reliance upon a judgment of the Hon'ble Apex Court in *Krushnakant B. Parmar Vs. Union of India (UOI)* and Another, to contend that the question as regards willful absence from duty could only be seen upon due appreciation of evidence and a finding having been returned as to whether such absence was on account of certain compelling circumstances or otherwise.

3. Having heard learned counsel for the petitioner at length and having perused the pleadings on record, this Court is of the considered view that the present writ petition deserves dismissal.

4. The factual position that the petitioner has remained absent from duty from 01.07.2001 to 05.08.2003, has not been disputed. Rather counsel for the petitioner during the course of arguments has very fairly conceded to such fact.

5. There is no rebuttal even on the issue of the petitioner having not responded to the charge-sheet, having not associated himself with the enquiry proceedings and having not even submitted any reply to the show cause notice issued to him. It is in the light of such backdrop where the petitioner having remained absent

from duty for a period of more than two years that the punishing authority has taken a decision to impose the penalty of termination of service. Such impugned order has been passed after following due procedure as envisaged under the Haryana Civil Services (Punishment and Appeal) Rules, 1987. It is by now well settled that the scope of judicial scrutiny in such matters while exercising the extra ordinary writ jurisdiction under Article 226 of the Constitution of India would be limited to the decision making process and not to the decision itself. Neither in the pleadings nor at the stage of arguments any irregularity in the enquiry process has been pointed out. Even in the orders passed in first appeal and second appeal, notice has been taken as regards the willful absence of the petitioner over a period of time. I find no basis to interfere in the impugned order as also in the orders passed in the first appeal as also second appeal.

6. The argument as regards discrimination having been raised by adverting to the orders at Annexure P-7 and Annexure P-8, is also without merit. The concept of equality in Article 14 of the Constitution of India, is couched in positive terms. Even if the respondent-department in case of certain other employees, has taken a lenient view, the same would not vest any right in the petitioner. The impugned order of termination is based on the admitted position of facts & circumstances pertaining to willful absence from duty for a period of more than two years. No infirmity in the same can be inferred.

7. Even the reliance placed upon Krushnakant B. Parmar's case (supra) is wholly mis-placed. In the facts of that case the charge against the employee concerned was also in relation to being absent from duty wherein the employee had associated himself with the enquiry proceedings and had even produced relevant evidence before the Enquiry Officer justifying his absence. It is in the light of such circumstances that a plea had been accepted by the Hon''ble Apex Court that such evidence was required to be examined and appreciated by the Enquiry Officer before recording a finding of being willfully absent from duty. In the present case, the petitioner had not even associated with the enquiry proceedings much less having led any evidence justifying his absence from duty.

8. This judgment is clearly distinguishable on facts. For the reasons recorded above, I find no merit in this petition and the same is accordingly dismissed.