(2025) 5 ILRA 518
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 23.05.2025

BEFORE

THE HON'BLE J.J. MUNIR, J.

Writ A No. 17495 of 2024

Vinod Kumar Mishra ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Siddharth Khare

Counsel for the Respondents:
Amit Verma, C.S.C., Satyam Singh

Service Law – Disciplinary Proceedings – Unauthorized Absence – Employee of Cooperative Bank – Incarceration in Jail pending trial in false NDPS case – Acquittal.

Held: Where an employee was continuously incarcerated in judicial custody during the period alleged as unauthorized absence, the charge of misconduct cannot stand. Service of notices at his residential address, ignoring the fact of incarceration well within the employer's knowledge, is no valid service and vitiates the entire proceedings. Further, dismissal from service for such absence, despite honorable acquittal in the criminal case, is perverse, arbitrary, and violative of Articles 14 and 21 of the Constitution. Order of dismissal quashed. Petitioner directed to be reinSt.d with continuity and seniority; entitled to 50% back wages for the period of incarceration till reinSt.ment.

Writ Petition Allowed.

Case Law Discussed:

Krushnakant B. Parmar Vs U.O.I.& anr., (2012) 3 SCC 178.

(Delivered by Hon'ble J.J. Munir, J.)

1. This writ petition is directed against the order of the Secretary/ Chief Executive Officer, Agra District Cooperative Bank Limited, Mahatma Gandhi Marg, Agra dated 28.12.2023, dismissing the petitioner from service, after holding disciplinary proceedings.

2. The Agra District Cooperative Bank Limited, Mahatma Gandhi Marg, Agra (for short, 'the Bank') is a Cooperative Society registered under the U.P. Cooperative Societies Act, 1965 (for short, 'the Act') and its rules. The conditions of service of employees of the Bank are governed by the provisions of The U.P. Cooperative Societies Employees' Service Regulations, 1975 (for short, 'the Regulations of 1975'). The petitioner was appointed on 27.01.1996 on the post of a *Sahyogi*. Ever since, he has remained in the Bank's service continuously. On the 28th of April, 2015, the petitioner was promoted as Clerk-cum-Cashier. He asserts that his work and conduct have been satisfactory and unblemished. On the 5th of September, 2021, while the petitioner was travelling in Kullu in the State of Himachal Pradesh, he was apprehended and falsely implicated in a criminal case by the Narcotics Control Bureau (for short, 'NCB') under Sections 8, 20 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act'). He was arrested and remanded to judicial custody, pending trial.

3. The case against the petitioner was registered as Crime No.58 of 2021 for offences punishable under Sections 20 and 29 of the NDPS Act. He was tried by the Special Judge-I, Kullu, Himachal Pradesh vide Case No.14 (24) of 2022 and acquitted vide judgment and order dated 28.06.2024. He remained incarcerated in Kullu, Himachal Pradesh from 05.09.2021 to

28.06.2024. The Special Judge-I, Kullu, while acquitting the petitioner, recorded a finding that the prosecution had utterly failed to establish the charge against the petitioner, and it would be highly unsafe to return a finding of guilt, on the basis of 'highly discrepant evidence led by the prosecution'. While the petitioner was in jail, he suffered a heart attack and was admitted to the Dr. Rajendra Prasad Rajkiya Ayurvigyan Mahavidyalaya and Chikitsalaya, District Tanda. While still incarcerated, the petitioner was dismissed from service by the Bank, a fact of which he was vicariously informed through his family members at his residence. The information, however, was not conveyed to the petitioner on account of his medical condition at the time the order was made. On being released from jail, the petitioner made inquiries with regard to the order of dismissal. He has proceeded to institute the present writ petition, challenging the order of dismissal from service.

4. The petitioner's case is that while he was in jail, the Authorities of the Bank, treating his absence to be unauthorized, issued notices dated 28.09.2021 and 06.12.2021. Later on, on the basis of what was regarded as unauthorized absence from duty, disciplinary proceedings were instituted against the petitioner and the Deputy General Manager (Administration) of the Bank appointed the Inquiry Officer. The Inquiry Officer issued notices dated 14.02.2022, 08.03.2022, 15.03.2022 and 18.06.2022, requiring the petitioner to participate in the departmental inquiry. It appears that on 21.12.2021, a decision was taken by the Committee of Management of the Bank to institute departmental proceedings against him *vide* Resolution No.9 and an Inquiry Officer nominated.

5. The Inquiry Officer issued a charge-sheet to the petitioner dated 18.06.2022, directing him to submit a reply. The Inquiry Officer issued notices dated 14.02.2022, 08.03.2022 and 15.03.2022, directing the petitioner to participate in the departmental inquiry, but the petitioner did not turn up. The Inquiry Officer submitted his inquiry report on 18.06.2022. The Committee of Management, by their Proposal No.15 dated 17.01.2023, decided to publish news of the petitioner's unauthorized absence. In consequence, a press note dated 18.05.2023 was published in the newspaper ‘Hindustan’, directing the petitioner to appear, but he did not turn up. The Committee of Management, through Proposal No.9 dated 07.07.2023, decided to terminate the petitioner's services and forwarded the papers to the U.P. Cooperative Institutional Service Board (for short, 'the Board') for prior approval of the major penalty in accordance with the Regulations of 1975. The Board, vide their order dated 22.12.2023, granted approval. The impugned order, dismissing the petitioner from service, was then passed on 28.12.2023, which, the respondents say, was made after full opportunity.

6. Aggrieved by the impugned order dated 28.12.2023, the present writ petition has been instituted under Article 226 of the Constitution.

7. A notice of motion was issued by this Court vide order dated 11.11.2024. In compliance, a counter affidavit was filed on behalf of respondent No.3 by Mr. Satyam Singh, learned Advocate and another counter affidavit, on behalf of respondent No.4, the Board, by Mr. Amit Verma, Advocate.

8. On 10.12.2024, when this petition came up, the parties having exchanged affidavits, it was admitted to hearing, which proceeded forthwith. Judgment was reserved.

9. Heard Mr. Siddharth Khare, learned Counsel for the petitioner, Ms. Shivangi Singh, Advocate holding brief of Mr. Satyam Singh, learned Counsel for respondent Nos. 2 and 3 and Mr. Sharad Chandra Upadhyay, learned Standing Counsel on behalf of respondent No. 1.

10. This is a case where the petitioner was not given an opportunity of the slightest kind to meet the case against him. The granting of opportunity becomes complete after the opportunity offered at various stages of proceedings comes within the cognizance of the employee, and by his circumstances then obtaining, the employee is in a position to avail that opportunity to defend himself. If opportunity is given to answer charges in a disciplinary proceeding, or at a stage prior to initiation of proceedings by issue of notice to an employee, to whom the notice cannot be communicated for any reason, the issue of notice or tendering of information does not qualify as valid opportunity. Even if the notice or information about a contemplated or ongoing proceedings is received by the employee, but he is not in a position, by his circumstances, to come forward and answer, then too, there is absolutely no opportunity provided.

11. If one were to take the case of a sick man, who is admitted to a hospital and comatose, can it be said that a notice to show cause against a proposed departmental inquiry or the service of a charge-sheet is granting him opportunity? In the aforesaid illustration, the notice, though physically delivered to the sick man's bedside, is not within his cognizance. There would be no opportunity. If notice were delivered to an employee by service at his residence, granting him opportunity to show cause or answer the charge-sheet, but the man has been abducted and held hostage by any kind of outlaws, can it be said that he has notice of the proceedings against him? The answer is obviously in the negative.

12. Apart from these extreme illustrations, what we have in hand, is no less, except for one feature. The fact that the subject matter of the charge is inextricably connected with the petitioner's incarceration in prison pending trial, it offers an emergent situation, where, the petitioner would not be regarded as served with the notices issued to him through his relatives or publication in newspapers. Even if the notices could be regarded served vicariously through his relatives, about whom, it may be said that they would have met him in prison, a man in jail does not have the capacity to come forward and defend himself by answering notices at the pre-inquiry stage, the charge-sheet issued against him and produce evidence in defence. Possibly, those acts could not have been done by the petitioner, while in jail, assuming that he would have notice of the proceedings against him through his relatives back home. The charges against the petitioner, as these appear from the impugned order, are two in number, to wit:

"आरोप सं0-1-आप दिनांक 06.09.2021 से बिना किसी सूचना के बैंक से पलायित चल रहे हैं एवं बैंक मुख्यालय के पत्रांक-2362-64/ प्रशासन/ 2021-22 दिनांक 28.09.2021 व पत्रांक-3330-32/ प्रशासन/ 2021-22 दिनांक 06.12.2021 के द्वारा आपको शाखा-फतेहपुर सीकरी पर योगदान करने हेतु निर्देशित किये जाने पर भी आपके द्वारा शाखा

पर योगदान नहीं किया गया जो उ०प्र० सहकारी कर्मचारी सेवा विनियमावली, 1975 के प्रविधानों का उल्लंघन है।

आरोप सं0-2- मुख्यालय के आदेश पत्रांक-3708-11/ सचिव कक्ष/2021-22, दिनांक 23.12.2021 के क्रम में आपको कार्यालय पत्रांक-4248-49/ प्रशासन/ 2021-22 दिनांक 14.02.2022, 4603-04/प्रशासन/2021-22 दिनांक 08.03.2022 एवं 4759-61/प्रशासन/ 2021-22 दिनांक 15.03.2022 जारी किये गये जिनमें कमशः आपको दिनांक-24.02.2022, 14.03.2022 एवं 25.03.2022 को पूर्वान्ह 11:00 बजे बैंक मुख्यालय पर उपस्थित होकर अपना पक्ष प्रस्तुत करने हेतु निर्देशित किया गया परन्तु आप उपरोक्त तिथियों में कार्यालय में उपस्थित नहीं हुए।"

13. A perusal of the charges against the petitioner would show that the first charge imputes to him the misconduct of absenting from his duties unauthorizedly from Branch Fatehpur Seekri w.e.f. 06.09.2021 and not joining duties despite directions in that behalf dated 06.12.2021. The other charge is about the petitioner's failure to join his duties despite notices dated 14.02.2022, 08.03.2022 and 15.03.2022, requiring the petitioner to join his duties on 24.02.2022, 14.03.2022 and 25.03.2022, respectively. A perusal of the notices dated 28.09.2021, 06.12.2021 and the later notices dated 14.02.2022, 08.03.2022 and 15.03.2022 would all show that these notices were sent to the petitioner at his residential address, described as follows in each of these letters/ notices: *Sri Vinod Kumar Mishra, Li0/Cashier, Agra Zila Sahkari Bank Ltd., Branch Fatehpur Seekri, Address: E-165, Belanganj, Kachauda Bazar, Agra.*

14. The petitioner, during all this while, was incarcerated in a jail in the State of Himachal Pradesh, facing trial in the criminal case under the NDPS Act brought against him by the NCB. One fails to understand how service of notice upon the petitioner at his residential address would be any good service. In paragraph No.21 of the writ petition, there is a specific case pleaded to the effect that the factum of the petitioner's arrest was well within the knowledge of the petitioner (an obvious erroneous reference to the respondent) and it is further asserted that intimation of the fact had been duly given to the Authorities of the Bank by the petitioner's family members. In answering paragraph No.21 of the writ petition, vide paragraph No.10 of the counter affidavit, where paragraph Nos.18 to 32 of the writ petition have been answered, the fact that the respondents were intimated by the petitioner's family members that he had been arrested, has not been denied. The assertions, therefore, in paragraph No.21 of the writ petition, stand admitted by non-traverse. If the respondents were aware of the fact that the petitioner had been arrested, it was their duty to find out the circumstances of his arrest and the place of incarceration. The notices that were sent to the petitioner at the pre-inquiry stage of proceedings, or those asking him to join duties or the charge-sheet they sent at his residential address, should all have been served upon the petitioner through the jailer of the prison, where he was incarcerated. He should then have been given opportunity with permission of the jail authorities, if their rules permitted and the jurisdiction to grant such permission was exercised. If not, the disciplinary proceedings against the petitioner ought have been deferred for a reasonable period of time. The departmental proceedings against the petitioner, including services of all notices, service of charge-sheet and the show-cause notice, seem to have proceeded 'turning a Nelson's eye' to the fact that the petitioner

was suffering incarceration all along in a prison in Himachal Pradesh, pending trial.

15. Therefore, to impute to the petitioner the failure to answer notices to join the inquiry and defend himself, is a view of the matter that is clearly perverse.

16. That apart, on the merits of the charges as well, the entire gamut of allegations, comprising the two charges against the petitioner is about his unauthorized absence from 06.09.2021 until the conclusion of inquiry against him, the report whereof was first considered in the meeting of the Committee of Management of the Bank on 17.01.2023. The petitioner was released from prison on 28.06.2024. The order of dismissal had been passed on 28.12.2023. The very terms of the charge, imputing unauthorized absence to the petitioner, when there is judicial record to show that he was in judicial custody pending trial from 06.09.2021 until 28.06.2024, that is, when acquitted, knocks out the bottom of the charge about unauthorized absence. The findings of the Inquiry Officer and the Disciplinary Authority, ignoring from consideration the fact that during the entire period of absence, the petitioner was in judicial custody, and, a *fortiori,* not in a position to attend duties, renders the findings of the Inquiry Officer as well as the Disciplinary Authority, perverse.

17. The fact, that the petitioner was in jail and subsequently acquitted, has not been denied. What is of utmost importance is the event in the trial on criminal charges, in connection with which the petitioner spent time in jail from 06.09.2021 to 28.06.2024. It is not just the event in the trial that ended in a judgment of acquittal in his favour, but the findings of the learned Special Judge, acquitting him. The relevant findings of the learned Special Judge, carried in his judgment dated 28.06.2024 passed in Case No.14 (24) of 2022, NCB v. Prashant Kumar @ Pankaj and another, are of prime importance. These read:

> "In the ultimate analysis, the only inference which can be drawn in the case at hand, is that the prosecution has utterly failed to establish the charge against the accused, as portrayed in the chargesheet, and it would be highly unsafe to return findings of guilt against the accused, on the basis of the highly discrepant evidence led by the prosecution."

18. The petitioner's time spent in jail was apparently the handiwork of the NCB in bringing utterly false and bogus charges against him. The prosecution case was rejected by the learned Special Judge with all the contempt that it deserved. The petitioner has been tried on charges that were found to be utterly bogus and not proved, which carry with it an element of injustice at the hands of the law for the petitioner. In such circumstances, to punish the petitioner with dismissal from service on no other charge, except unauthorized absence, for the period that he was in jail on these charges, is not only the manifestation of an extremely perverse and insensitive approach on the respondents' part, but an instance of the most unfair and arbitrary treatment meted out to the petitioner by his employers, the Bank. The fact that the impugned order does not take note of the petitioner's incarceration in prison in a case, where he was honourably acquitted, shows a motivated approach by the employer, from which, an inference of mala fides, in fact, must be drawn. The fact that the petitioner was facing criminal charges and incarcerated in prison in

Himachal Pradesh cannot be regarded a fact that was not within the employer's cognizance. In fact, the respondents have never said that it was not in their cognizance. They have simply chosen to ignore it despite the fact being pleaded in the writ petition and brought to their notice by the family members. The ignorance of the fact, that the petitioner was in jail during the relevant period of time, is apparently deliberate, betraying mala fides on the part of the respondents.

19. In circumstances, that were far more benign than those obtaining here, their Lordships of the Supreme Court in **Krushnakant B. Parmar v. Union of India and another, (2012) 3 SCC 178** had before them an employee, who was punished for unauthorized absence from duty for three consecutive periods of time, holding him guilty of the misconduct of not maintaining devotion to duty and exhibiting behaviour unbecoming of a government servant. The employee's defence in that case was that in the period of time that he was imputed unauthorized absence from duty, he was prevented from signing the attendance register and performing his duties by a particular officer of the establishment. He led evidence about it, which was not considered by the Inquiry Officer, the Disciplinary Authority or the Appellate Authority. On the charge of unauthorized absence, the Court held that the charge cannot be held proved, unless it is established that the absence was willful or not the result of compelling circumstances. In **Krushnakant B. Parmar** *(supra),* it was held by the Supreme Court:

"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.

19. In the present case the inquiry officer on appreciation of evidence though held that the appellant was unauthorisedly absent from duty but failed to hold that the absence was wilful; the disciplinary authority as also the appellate authority, failed to appreciate the same and wrongly held the appellant guilty.

21. In the present case, the disciplinary authority failed to prove that the absence from duty was wilful, no such finding has been given by the inquiry officer or the appellate authority. Though the appellant had taken a specific defence

that he was prevented from attending duty by Shri P. Venkateswarlu, DCIO, Palanpur who prevented him to sign the attendance register and also brought on record 11 defence exhibits in support of his defence that he was prevented to sign the attendance register, this includes his letter dated 3-10-1995 addressed to Shri K.P. Jain, JD, SIB, Ahmedabad, receipts from STD/PCO office of telephone calls dated 29-9-1995, etc. but such defence and evidence were ignored and on the basis of irrelevant fact and surmises the inquiry officer held the appellant guilty."

20. In **Krushnakant B. Parmar**, their Lordships set aside the orders rendered by the Disciplinary Authority, the Appellate Authority, the Central Administrative Tribunal, the High Court and reinstated the petitioner. They, however, remarked that the matter was not being remitted to the Disciplinary Authority for further action, bearing in mind the fact that the charged officer had suffered a lot since commencement of proceedings drawn in the year 1996. Now, **Krushnakant B. Parmar** was a case where the inquiry had been conducted, committing procedural lapses or adopting an erroneous approach, where the Inquiry Officer and the Disciplinary Authority failed to consider the petitioner's evidence about his absence from duty and record a finding if the absence was willful. That might have required a remit of the matter to the Disciplinary Authority to reconsider if the circumstances were not very hard for the employee, which their Lordships took into consideration to put an end to all proceedings against the employee.

21. The present case is one, which, on the face of the record on facts, that are admitted to the respondents, shows that the sole allegation of being absent unauthorizedly from duty for the relevant period of time, and then, failure in answering the notices issued to rejoin duties, is belied by the petitioner's irrefragable defence that during the period of time charged against him for unauthorized absence, he was in judicial custody in connection with a crime falsely charged. He was honourably acquitted after trial, holding the prosecution to be utterly bogus. In these circumstances, to punish the petitioner on the charge of willful and unauthorized absence and not reporting for duty, despite intimation, cannot be regarded as a charge worth inquiry at all. No proceedings ought have been drawn against the petitioner. There is no case, in the return filed before this Court by the respondents, which may show any blameworthy conduct on the petitioner's part, that might still require the scrutiny of a departmental inquiry, may be, on a lesser or different charge. We think that the petitioner has suffered enough and to expose him to the vagaries of further departmental proceedings, arising out of his unauthorized absence due to incarceration in jail, would be utterly arbitrary and violative of his rights under Articles 14 and 21 of the Constitution.

22. A question, that further merits consideration in this case, is if for the period of time that the petitioner has remained out of service, should he receive full emoluments or a part of it, or none at all. The petitioner, for whatever reason, has not served the respondents from 06.09.2021 to 28.06.2024. Nor could he have served them during this period of time being in jail, albeit for no fault of his, as now proven by the judgment of the learned Special Judge. In the entirety of circumstances, it would be appropriate that he be paid 50%

of the emoluments, to which he was entitled for the period of his absence from duties on account of his incarceration, followed by dismissal from service.

23. In the circumstances, this writ petition **succeeds** and is **allowed**. The impugned order dated 28.12.2023, passed by the Secretary/ Chief Executive Officer of the Bank, is hereby **quashed.** The petitioner shall be reinstated in service forthwith with consequential benefits of continuity and seniority. He will be paid his current salary forthwith. The petitioner will be entitled to receive 50% of his emoluments since the date his emoluments have not been paid until reinstatement in service.

24. There shall be no order as to costs.

25. Let a copy of this judgment be communicated to the Secretary/ Chief Executive Officer, Agra District Cooperative Bank Limited, Mahatma Gandhi Marg, Agra, the Chairman, Agra District Cooperative Bank Limited, Mahatma Gandhi Marg, Agra and the Secretary, U.P. Cooperative Institutional Service Board, Lucknow by the Registrar (Compliance).

(2025) 5 ILRA 525
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 06.05.2025

BEFORE

THE HON'BLE J.J. MUNIR, J.

Writ A No. 46867 of 2014

Suresh Chandra Shukla ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Sri Srinath Dwivedi, Ms. Harshita Raghuvanshi

Counsel for the Respondents:
Sri Harsh Vardhan Gupta, Sri Vivek Varma, Sri Sharad Chandra Upadhyay (S.C.)

Service Law - Pension - U.P. Nagar Palika Non-Centralised Services Retirement Benefit Regulations, 1984 - U.P. Qualifying Services for Pension and Validation Act, 2021 - Reckoning of service rendered as Daily Wager towards qualifying service for pension. Petitioner, appointed as a daily wager in Nagar Nigam, in 1985, was illegally terminated in 1986. By award of Labour Court termination was set aside and his services were directed to be treated as continuous. He was reinstated, later regularized in 2006, and retired in 2019. His claim that entire service from 1985 be reckoned for seniority, pension and retiral benefits was rejected. *Held : O*nly issue surviving post-retirement is whether entire service rendered by the petitioner as a Daily Wager is to be credited to his account to work out his pension or that period of time is to be reckoned towards his qualifying service alone in order to enable him to pension and other post-retiral benefits. *Court held that service rendered outside the regular establishment can only be accorded weightage to the extent that it entitles the petitioner to grant pension and other post-retiral benefits. It cannot be added to his regular service to work out his pension and other post-retiral entitlement.* Mandamus issued directing respondents to reckon petitioner's daily wage service from 19.02.1985 to 26.01.2006 as a Daily Wager for the purpose of qualifying service, though not counting those services for quantifying the entitlement either to pension or other post-retiral benefits for qualifying service towards pension; arrears with 6% interest directed to be paid within three months. (Para 15, 16)

Allowed. (E-5)