



RSA-1597-2022

201

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-1597-2022

DATE OF DECISION : JANUARY 22, 2025

**UTTAR HARYANA BIJLI VITRAN NIGAM LTD. AND ANR
...APPELLANTS**
Versus
AMANDEEP SINGH DECEASED THROUGH LRS AND OTHERS

...RESPONDENTS

CORAM : HON'BLE MS. JUSTICE LAPITA BANERJI

Present : Mr. Jayant Puneet Bamal, Advocate for
Mr. Harmanjot Singh Gill, Advocate for the appellants.

Mr. Ashutosh Kaushik, Advocate for the respondents.

LAPITA BANERJI, J.(ORAL)

Under challenge in the present RSA is the judgment and order passed by the Additional District Judge, Kurukshetra dated December 01, 2021 (hereinafter referred to as the impugned judgment), whereby the learned Additional District Judge had partly allowed the appeal and granted the following reliefs to the heirs of the deceased employee/plaintiff:-

- (i) arrears of salary and all his regular annual increments, 1st ACP Scale/pay band of Rs.5200-20200 with grade pay of 3200/- w.e.f. 01.04.2010 admissible as per rules;
- (ii) fixation of pay properly on 01.01.2006 after grant of annual increment in existing old pay scale with next date of increment as

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01.07.2006 and release of all his arrears of pay accruing thereto along with interest from the date of reinstatement till payment;

- (iii) the “suspension period” of the appellant-plaintiff w.e.f. 10.04.2007 to 10.12.2009 to be treated as “*duty period*” for all intents and purposes with all legal and consequential benefits and
- (iv) payment of his entire arrears of salary and all his regular annual increments, 1st ACP Scale, cited above and release of his arrears of pay accruing thereto along with interest @ 6% per annum from the date of reinstatement of the appellant-plaintiff till payment to his heirs.

2. The brief facts leading to the present appeal are as follows:-

(i) The husband of respondent No.1 was employed with the appellant-Corporation as a Lower Division Clerk (LDC) on March 10, 2000. He was suspended from service on April 10, 2007 due to his purported involvement in a criminal case under Section 302 of the Indian Penal Code. The departmental proceedings were conducted against him by filing a charge-sheet under Section 7 of the Punishment and Appeal Rules. The departmental proceedings were culminated into ‘*a minor punishment of censure*’ on May 10, 2011. The appellant was acquitted of all the criminal charges against him vide a judgment dated April 06, 2009 passed by the learned Sessions Judge, Kurukshetra. The plaintiff-employee was reinstated in service on December 10, 2009 with immediate effect.

(ii) Vide an order dated September 30, 2011, the Superintending Engineer-defendant No.2 in the suit, directed that the suspension period

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of the plaintiff-employee between April 10, 2007 and December 10, 2009 to be treated as “*leave of kind due*”. It was held that nothing further was required to be paid to the plaintiff-employee more than the amount of suspension allowance.

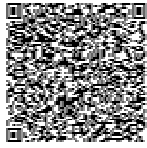
(iii) The plaintiff-employee claimed that he was entitled to full salary for the said period along with all consequential benefits. He prayed for regularization of the suspension period for the purpose of annual increment by treating the suspension period as period “*on duty*”.

(iv) According to the plaintiff-employee, his prayer for regularization treating the period of suspension as period “*on duty*” was rejected by a cryptic and non-speaking order dated September 30, 2012, issued by Superintending Engineer.

(v) The Trial Court on August 26, 2016 held that the plaintiff-employee was not entitled to relief claimed by him and dismissed the suit against the plaintiff-employee, holding that already a lenient view had been taken by the employer by regularizing his suspension period as “*leave of kind due*”.

(vi) The first appeal was filed by the plaintiff-employee on October 10, 2016. During the pendency of the appeal, unfortunately the appellant-plaintiff passed away and his widow and minor children were substituted as heirs/legal representatives.

(vii) Upon hearing the appeal, the Additional District Judge, Kurukshetra vide the impugned order dated December 01, 2021 granted the reliefs mentioned hereinabove.

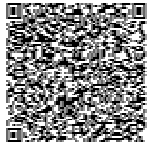
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3. The present RSA arises out of the said impugned order dated December 01, 2021.

4. Learned counsel appearing on behalf of the appellants submits that by an impugned order dated December 01, 2021, the learned Additional District Judge, Kurukshetra erred in setting aside the order passed by the learned Additional Civil Judge, (Senior Division), Kurukshetra dated August 26, 2016.

5. The trial Judge correctly held that since the plaintiff absented himself from duty without intimation to the defendant as he was in custody being involved in a criminal matter which was unconnected with the employer, the plaintiff-employee was not entitled to the payment of his entire salary during the period of suspension. The trial Judge correctly held that the defendants-appellants had taken a lenient view by awarding a punishment of “*censure*.” The said period of suspension was treated as “*leave of the kind due*” but was not treated as “*duty period*”. Therefore, the plaintiff was unable to show that prejudice was caused to him by any act or conduct of the defendants as the FIR was unconnected with any act on the part of the employer. The learned trial Judge had correctly dismissed the suit.

6. Vide the impugned order the First Appellate Court recorded that an FIR under Sections 302 and 323 read with Section 34 of IPC was lodged against the employee on February 16, 2007. He was suspended from service vide order dated April 10, 2007. He was acquitted by the learned Sessions Judge, Kurukshetra vide judgment and an order dated April 6, 2009. The employee-plaintiff was reinstated vide order dated December 10, 2009. Therefore, the First Appellate Court was of the view that the suspension period of the employee during the pendency of a criminal case which ultimately resulted in an acquittal should be deemed to be “*duty period*” for all intents and purposes. It held that the

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plaintiff was entitled to full salary during the suspension period. The trial Court had committed an error in dismissing the suit of the appellant-plaintiff. He directed the balance amount of salary to be paid along with interest @ 6% per annum.

7. Learned counsel appearing on behalf of the appellants submits that the First Appellate Court erred in allowing the appeal while directing release of the arrears of the employee along with interest @ 6% per annum from the date of reinstatement of the appellant-plaintiff till payment.

8. Learned counsel appearing on behalf of the respondents draws the attention of this Court to a Division Bench judgment of this Hon'ble Court dated December 19, 1991 passed in CWP No.2453 of 1991 "**Y.P. Sehgal versus State of Punjab**", wherein it has been noted that it is settled rule of law that when an employee is disallowed the arrears of salary and allowances and he is paid nothing beyond the subsistence allowance, an opportunity of hearing by issuing a notice to him has to be granted. Unless such an opportunity is granted, the impugned order would be wholly arbitrary and violative of the principles of natural justice. He then draws the attention of this Court vide office Order No.478 dated September 30, 2012 whereby the suspension period of the official was held to be regularized as the "*leave of kind due*" implying no further payment apart from subsistence allowance was directed to be made to the official.

9. On January 14, 2025 when this Court was hearing the appeal, it had granted time to the appellants-Corporation to produce the records to show that while passing the cryptic order dated September 30, 2012, an opportunity of hearing was given to the plaintiff-employee.

10. Today, certain documents regarding the departmental proceedings have been handed over to this Court. The said documents are

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taken on record. From a perusal of the said documents, it appears that the deceased-employee himself admitted to the non-attendance of his duties due to pressing domestic issues leading to severe mental strain. He had prayed for a lenient view to be taken in the departmental proceedings.

11. Learned counsel appearing on behalf of the appellants relied on a judgment of the Supreme Court in Civil Appeal No.554 of 1986 **Management of Reserve Bank of India, Delhi Vs. Bhopal Singh Panchal** decided on 03.11.1993. He contended that the Apex Court has held that if an employee is absent for the reasons of his own involvement in an offence and did not discharge his duties, the bank could not be saddled with liability to pay his whole salary and allowances for the period under suspension. Furthermore, the reliance is placed on the judgment of the Supreme Court in **Ranchhodji Chaterji Thakore Vs. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar (Gujarat) and another**, reported in 1996(11) SCC 603.

12. Learned counsel for the contesting respondents/heirs of the deceased employee contended that there is no doubt with regard to the legal proposition but the question here is whether the competent authority before disallowing the arrears of salary and allowances beyond the subsistence allowance, gave an opportunity of hearing to the delinquent employee.

13. There is no doubt in the mind of this Court that after fairly conducting the departmental proceedings, the lenient view was taken by awarding a punishment of “*censure*” against the delinquent employee.

14. The legal issue that requires to be determined in the present proceedings is whether before arriving at a finding that the suspension period



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is to be regularized as “*leave of kind due*” thereby making the employee not eligible to payments over and above the subsistence allowance, the authorities had to mandatorily grant the delinquent employee an opportunity of hearing.

15. This Court is in agreement with the view of the judgment passed by a Division Bench of this Court in **Y.P. Sehgal** (supra). The Additional District Judge, Kurukshetra correctly came to the conclusion that in the event the delinquent employee was disallowed the arrears of salary and allowances and had to be paid nothing beyond the subsistence allowance, an opportunity of hearing by issuing of a notice had to be granted. Since nothing has been brought on record to show that an opportunity of hearing was granted to the employee before passing the impugned order dated September 30, 2012, this Court upholds the decision passed by the learned Additional District Judge, Kurukshetra and holds that the impugned action of the appellant was wholly arbitrary and violative of principles of natural justice. Therefore, learned Additional District Judge, Kurukshetra had correctly quashed the impugned order dated September 30, 2012.

16. Consequently, RSA-1597-2022 is **dismissed**. The learned Executing Court is free to proceed with the execution proceedings in accordance with law.

17. Connected application(s), if any, shall also stand disposed of.

(LAPITA BANERJI)
JUDGE

JANUARY 22, 2025

Prince

Whether speaking/reasoned :

Yes/No

Whether reportable :

Yes/No