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

RSA-4911-2002 (O&M)
Date of decision : 23.12.2015

State of Haryana and another

...Appellants

Versus

Ex. Head Constable Vikram Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ravi Pratap Singh, AAG, Haryana
for the appellants.

Mr. R.K. Malik, Senior Advocate with
Mr. Ramandeep Singh, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

CM-13290-C-2015

Prayer in the instant application is for fixing the appeal
for some actual date on behalf of the applicant/respondent.

For the reasons mentioned in the application, the
application is allowed and the main appeal is taken on board for
hearing today itself.

CM stands disposed of.

RSA-4911-2002

The appellants-defendants is in Regular Second Appeal
against the concurrent findings of fact and law whereby, the suit
filed by the respondent-plaintiff has been decreed by setting aside

the impugned orders and it has been held that he will be deemed to in service of the State and entitled for all due pay and allowances, in essence, the period of absence has been treated as leave of the kind due. The appeal preferred by the appellants-State has been dismissed by the Lower Appellate Court but gave the liberty to the defendants-appellants to pass the punishment order against the respondent-plaintiff in accordance with law, on the premise, as to whether the period of absence has to be treated without leave of the kind due or with leave of the kind due.

Mr. Ravi Pratap Singh, Assistant Advocate General, Haryana appearing on behalf of the appellants-defendants submits, that the Lower Appellate Court has committed illegality and perversity, in essence, once the respondent-plaintiff had remained absent without getting the leave approved/sanctioned, he was dismissed from the service on 14.01.1992, after holding a departmental inquiry, not entitled to the benefit. Even the appeal and revision filed against the same had also been dismissed. However, the trial Court decreed the suit on basis of the evidence brought on record which according to him, does not support the case of the respondent-plaintiff. It is a settled law that once an employee has remained absent without getting leave sanctioned, his period of absence cannot be treated as leave of the kind due in essence the order of dismissal is set aside, thus, the substantial question of law arises for determination by this Court.

Mr. R.K. Malik, learned Senior Counsel assisted by Mr.

Mr. Ramandeep Singh, learned counsel appearing on behalf of the

respondent-plaintiff submits, that wherever the order of dismissal has been set aside, the period of absence would be treated as leave of the kind due. In support of his contentions, he has drawn the attention of this Court to the judgment rendered by Hon'ble Supreme Court in "**State of Punjab and others V/s Bakshish Singh' AIR 1999 (SC) 2626** and the judgment rendered by this Court in "**Punjab State V/s Rur Singh (died) through his LRs", 2000(2) S.C.T. 60**, to contend that once the order of dismissal has been set aside, the misconduct does not survive.

I have heard the learned counsel for the parties and appraised the paper book.

Now it is a settled law that where the dismissal order has been set aside, the period of absence has to be treated as leave of the kind due. I draw support from the judgment rendered by Hon'ble Supreme Court in Bakshish Singh's case (supra) and the judgment rendered by this Court in Rur Singh's case (supra) as well as the judgment rendered in **RSA No.1065-2001, titled as 'Haryana State and others V/s Rishal Singh'**. It is strange that the State has chosen to file an appeal once it has been given a liberty to pass an appropriate order, as to how and what manner, the period of absence has to be treated as leave of the kind due.

Keeping in view the aforementioned facts, there is no merit in the appeal. Particularly, once a direction had been taken by the Lower Appellate Court. Accordingly, no substantial questions of law arises for determination by this Court as the impugned judgment and decree are based on the appreciation of the oral and

documentary evidence, much less, settled law.

Accordingly, the appeal stands dismissed.

23.12.2015
yogesh

(AMIT RAWAL)
JUDGE