

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

R.S.A No. 1193 of 2012 (O&M)

Date of decision:- 04.05.2015

Tarlochan Singh

...Appellant

Versus

U.O.I & others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Sarwan Singh, Sr. Advocate with
Mr. N.S. Rapri, Advocate
for the appellant.

Mr. Sanjay Vashishth, Advocate
for the respondents.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI J.

The present regular second appeal is directed against the judgment and decree dated 06.12.2011 passed by Addl. District Judge, Jalandhar whereby the judgment and decree dated 28.02.2009 passed by Civil Judge (Jr Divn.) Jalandhar was set aside, which was partly allowed.

The appellant filed a suit for declaration to the effect that order dated 21.05.1999 of defendant No. 3/respondent No. 3 of removing the appellant from service and order show cause notice

dated 24.03.1999 are illegal, ultra virus, unlawful and against the principles of natural justice.

Brief facts of the case put forth by the appellant is that he was appointed as a Senior Mathematics Teacher in B.S.F Higher Secondary School, Jalandhar Cantt (herein after referred to as 'the School') vide order dated 18.04.1981 issued by Inspector General, B.S.F Higher Secondary School, Jalandhar Cantt. It has been stated that the appellant is to be governed by the Central Civil Services Rules and rules of natural justice. He was transferred to Shillong on 20.03.1991 against which he filed a suit challenging the transfer order and the appeal qua the same was pending in this Court at the time of filing of the present suit. On account of his ill health, he could not attend the school at Jalandhar as he was being treated in various hospitals from 01.04.1991 to 21.06.1991. He received a show cause notice dated 24.03.1999 requiring him to show cause as to why his services should not be terminated on the allegation of willful absence from duties for a continuous period of more than one year. The appellant vide letter dated 31.03.1999 made a demand of documents through his counsel, but not such documents were ever supplied to the appellant. Subsequently, inquiry was conducted at the back of the appellant without giving him any opportunity of scrutiny of documents, cross

examination of witnesses examined by the defendants/respondents (for short 'the respondents') and adducing of evidence by the appellant. He was removed from service vide order dated 21.05.1999 on account of being absent without leave.

On notice, the respondents appeared and filed their written statement and admitted the factum of appointment of the appellant as Senior Teacher in Mathematics in School, vide letter dated 18.04.1981. However, they denied the remaining averments and took objection that the appellant is estopped by his own act from preferring the present suit. Further no notice as required under Section 80 CPC was served upon the respondents before filing the present suit. The appellant was transferred from Jalandhar to Shillong on administrative grounds as per the policy of the BSF School on 20.03.1991. He was relieved from Jalandhar but he failed to join the place of posting at Shillong. He had preferred the civil suit against the said transfer, which was dismissed up to this Court. Despite this fact, the appellant did not join the place of posting at Shillong and remained on continuous willful absence from duties for a period of more than 8 years. Consequently, he was served with a show cause notice dated 24.03.1999 and despite opportunities, the appellant willfully failed to appear and contest the disciplinary proceedings

against him. Resultantly, the order dated 21.05.1999 was passed terminating him from the service (Ex D4).

From the pleading of the parties, the trial Court framed the following issues:-

- “1. Whether the order dated 21.05.1999 of defendant No. 3 is illegal, null and void? OPP*
- 2. Whether the plaintiff is entitled to declaration as prayed for? OPP*
- 3. Whether the plaintiff is entitled to mandatory injunction as prayed for? OPP*
- 4. Whether the suit is bad for non-joinder of necessary parties? OPD*
- 5. Whether no notice under Section 80 CPC was given? If so, its effect? OPD*
- 6. Whether this Court has no territorial jurisdiction to try the present suit? OPD*
- 7. Relief.”*

After going through the entire evidence led by the parties, the trial Court held that after the transfer orders were passed on 20.03.1991, the appellant filed a suit for permanent injunction on 04.05.1991 before the Sub Judge 1st Class, Jalandhar and then

approached the respondents to resume his duties. An application filed under Order 39 Rule 1 and 2 of CPC by the appellant was dismissed up to this Court and ultimately the suit was also dismissed and had held his transfer order to be lawful but still he did not prefer to join the place of his new posting at Shillong. Further, there is nothing on record to show that he had remained ill throughout this period rather his last prescription placed on record is dated 01.06.1991 and since 01.06.1991 till 24.05.1999 i.e for a period of 08 years there is no explanation given by the appellant that why he did not join his new place of posting. The appellant admitted that he received a show cause notice dated 24.03.1999 (Ex D3) and despite the fact that he refused to join the enquiry proceedings. Thereafter, the trial Court partly decreed the suit of the appellant to the effect that show cause notice dated 24.03.1999 and order dated 21.05.1999 passed by respondent No. 3 are illegal, ultra vires, unlawful and against the principles of natural justice. The trial Court came to a conclusion that The appellant vide letter dated 31.03.1999 made a demand of documents through his counsel, but not such documents were ever supplied to the appellant and nor he was provided any opportunity to defend himself. No defence nominee was appointed to defend the appellant. The request of the appellant was not replied by the

respondents as per enquiry report (Ex D14) which does not contain any averment that any correspondence was exchanged with the appellant intimating him regarding the disciplinary proceedings.

Reference was made to judgment of Hon'ble Rajasthan High Court in a case of ***D.I.G Q.S.F Sector Head Quarter Bikaner v. Pushkar Giri decided on 15.11.2007*** wherein it was held that the employees of B.S.F Residential Schools being managed centrally with all India transfer liability are Civil Government Servants and are governed by CCA Rules and in case if there is any departmental inquiry is to be conducted, the procedure prescribed under these Rules is required to be followed mandatory. Under these rules, the procedure for imposing minor penalties is prescribed under Rule 16 and for imposing major penalties, procedure is prescribed under Rule 14. Under Rule 14, whenever the Disciplinary Authority comes to a conclusion that there are grounds for conducting inquiry against any imputation of misconduct or misbehaviour, he either has to inquire himself or appoint an inquiry officer. On receipt of the inquiry officer's report, the disciplinary authority is to issue copy of the articles of charges, statements of imputation of misconduct and list of documents and witnesses. Thereafter, the Disciplinary Authority may himself inquire into or can appoint the Enquiry Officer. Thereafter, the

delinquent may move for any other government servant to be provided as defence nominee to plead the case of the delinquent. The Inquiry Officer on demand is to submit the documents relief upon and the statement of the allegations. Thereafter, opportunity of cross examination of the witnesses was to be given.

In the present case, the appellant was not given documents as sought by him and hence the show cause notice dated 24.03.1999 and order dated 21.05.1999 passed by respondent No. 3 were found to be null and void.

Against the judgment passed by the trial Court, the appellant as well as the respondent preferred appeal before the Lower Appellate Court. The Lower Appellate Court in para 19 of its judgment has referred to Ex PW2/1 wherein it is established that Central Civil Service Rules are not applicable to the appellant because grant in aid was not from the side of Union of India and found that the Government had not extended any help to the school for payment of its wages of its employees. Reference was made to ***Executive Committee of Vaish Degree College, Shamli and others vs. Lakshmi Narain and others AIR 1976 SC 888*** that a contract of personal service cannot ordinarily be specifically enforced and a Court normally would not give a declaration that a contract subsists and the

employee, after having been removed from service can be deemed to be into service against the will and consent of the employer. This rule is however, subject to three conditions mentioned below:-

(i) Where a public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India (ii) Where a worker is sought to be reinstated on being dismissed under the Industrial Law and (iii) where a statutory body acts in breach or violation of the mandatory provisions of the statute. Per majority, the relief of declaration and injunction under the provisions of the Specific Relief Act is purely discretionary and the plaintiff cannot claim it as a matter of right.

The case of the appellant was not found to be covered in any of the above mentioned three conditions as he had been terminated from service on the ground of his habitually and perpetually remaining absent from his duties without permission. The appellant remained absent from duty for a period of 08 years and despite receiving show cause notice, he did not join his new place of posting at Shillong and further he had lost the legal battle against the transfer order but still he did not join his duties. Now he cannot seek a decree of declaration and injunction in favour of himself under the Specific Relief Act. The Lower Appellate accepted the appeal of the

School and dismissed the appeal filed by the appellant and the suit was dismissed.

The judgment and decree dated 06.12.2011 passed by Addl. District Judge, Jalandhar, calls for no interference. No substantial question of law arises for adjudication by this Court.

Accordingly, appeal is dismissed.

May 04, 2015

G Arora

(**RITU BAHRI**)
JUDGE