

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

RSA No.4311 of 2012(O&M)

Date of Decision: September 16, 2015

Jaspal Singh

.....Appellant.

Versus

The State of Punjab & Ors.

.....Respondents.

CORAM:- HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. D.S. Patwalia, Senior Advocate,
with Mr. Bikramjit Singh Patwalia, Advocate,
for the appellant.

Mr. Vaibhav Sharma, DAG, Punjab.

RITU BAHRI, J.

Plaintiff-appellant has filed the present second appeal against the judgment of reversal dated 01.06.2012 passed by the Additional District Judge, Jalandhar, whereby appeal filed by the State of Punjab-defendant against the judgment and decree dated 06.05.2011 passed by the Civil Judge (Junior Division), Jalandhar, has been accepted and his suit for declaration to the effect that orders dated 28.07.2003 passed by the Commandant 7th Battalion, PAP, Jalandhar Cantt., imposing punishment of dismissal from service and order dated 4.9.2006 passed by Deputy Inspector General of Police, Admn. PAP, Jalandhar Cantt. rejecting his appeal are illegal, arbitrary, wrong, biased and against the principles of natural justice, has been dismissed.

In brief, facts of the case are that plaintiff (appellant herein) joined the Police Department as Constable No.7/958 on 2.10.1992 in PAP Lines, Jalandhar in 7th Batallion, which is a Punjab State Government undertaking. He had proceeded on sanctioned Ex-India leave w.e.f. 23.07.2002 to 18.01.2003 and the department was duly informed about the address of his stay in UK during Ex-India Leave. Before the expiry of the aforesaid Ex-India leave, plaintiff applied for extension of leave for another five years in order to establish his business, which was received in the office of respondent No.2, but plaintiff did not receive any intimation regarding non sanctioning of his leave at the address of UK. Due to non establishment of his business in UK, he returned to India and reported for duty to defendant No.2, but was not allowed to join on the ground that his services stood dismissed vide order dated 28.07.2003 passed by the Commandant, 7th Batallion, PAP, Jalandhar Cantonment. It was further averred that the plaintiff was never informed about the aforesaid order of dismissal of service, however, he was orally told that his application for sanction of five years leave was rejected and he was dismissed from service vide aforesaid order dated 28.07.2003, which was illegal, arbitrary and against the principles of natural justice. Aggrieved against the same plaintiff had preferred a departmental appeal on 17.3.2006 before the Deputy Inspector General of Police, Administration, PAP, Jalandhar Cantonment, which was also rejected vide order dated 4.9.2006. Plaintiff challenged the aforesaid orders by filing a suit.

Upon notice, defendants-respondents appeared and filed written statement taking preliminary objections with regard to maintainability of the suit; non service of notice under Section 80 CPC and plaintiff having not

come to the court with clean hands. On merits it was stated that plaintiff was to report for duty on 18.01.2003 on completion of his 180 days Ex-India Leave. Before proceeding on Ex-India leave, he had submitted an affidavit to the effect that he would be responsible to join his duties after the expiry of Ex-India Leave and in case of his failure to do so, the department could take action against him. Instead of joining the duty, plaintiff had applied for extension of five years leave from United Kingdom, which was not sanctioned. It was further stated that after adopting due process and holding departmental inquiry, the plaintiff was rightly dismissed from service vide order dated 28.07.2003 and copy of the same was sent at his address through special messenger, which was received by his mother on 09.08.2003.

Replication was also filed by the plaintiff-appellant wherein the entire contents of the plaint were reiterated and those of the written statement filed by the defendants were denied.

From the pleadings of the parties, following issues were framed:-

- 1. Whether the plaintiff is entitled to the relief of declaration to the effect that the order dated 28.07.2003 passed by defendant no.2 imposing the punishment of dismissal from service upon the plaintiff and the appellate order dated 4.9.2006 passed by defendant no.3 rejecting the appeal of the plaintiff and further appellate order passed by defendant no.4 dated 17.11.2006 is illegal as prayed for?OPP.*
- 2. Whether the plaintiff is entitled to be reinstated into service on the post held by him with continuity of service and full back*

wages with all consequential benefits as prayed for?OPD.

3. Whether the suit of the plaintiff is within time?OPP.

4. Whether the plaintiff has not come to the court with clean hands?OPP.(sic)

5. Whether the plaintiff has no cause of action to file the present suit?OPP.

6. Relief.

Before the trial Court, DSP Lek Raj (DW-1) tendered his affidavit (Ex.DW1/A) and reiterated the averments mentioned in the written statement. In his cross-examination he had admitted that when Ex-India leave is sanctioned to an employee, his address of abroad is to be taken in the shape of a duly sworn affidavit. Similarly, the plaintiff-appellant had furnished an affidavit (Ex.DX/2) to the department. He further admitted that plaintiff had moved an application for extension of Ex-India leave, which was received by the defendant-department on 11.01.2003. No address of abroad was mentioned on Ex.DX/3. The department never communicated the outcome of application, Ex.DX/3, to the plaintiff on the address mentioned by him. Order on the application for extension of leave was passed vide Ex.DX/4. However, notice regarding enquiry had been issued on all available addresses of the plaintiff-appellant. The dismissal order was conveyed to the mother of plaintiff in the presence of one independent witness. There was no document in the enquiry file to show that the notice, Ex.DX/5 was communicated to the plaintiff. The finding of the enquiry officer, Ex.DX/6, was never communicated to the plaintiff. The plaintiff returned India and reported to the department in March, 2006 to join his duty. Before the trial Court, the department could not produce any

dispatch register to show that notice(s) and order(s), Ex.DX/3, Ex.DX/5, Ex.DX/6 and Ex.DX/7 were sent to the plaintiff on the address mentioned on Ex.DX/2 and Ex.DX/4. Accordingly, an adverse inference was drawn against the defendant-department that despite the fact that plaintiff had given his address of abroad before proceeding on Ex-India leave, no attempt was made to serve notice on the said address. The service of dismissal order to the mother of plaintiff was of no avail, as it could not be presumed that the said order was conveyed to the plaintiff. On the basis of above findings, the suit of the plaintiff was decreed by the trial Court and dismissal order was set aside being against the principles of natural justice and against the mandatory provisions of Punjab Police Rules and Punjab Civil Service Rules. He was held entitled for reinstatement and full back wages along with interest at the rate of 18% per annum. However, liberty was granted to the defendant-department to conduct a de novo regular enquiry against the plaintiff.

Against the above judgment and decree, State of Punjab-defendant went in appeal. The plaintiff-appellant also filed cross-objections challenging the order, whereby defendant-department was directed to conduct de novo enquiry. The lower appellate Court accepted the appeal filed by the State of Punjab by referring to the judgment of the Hon'ble Supreme Court in **State of Uttar Pradesh Vs. J.P. Saraswat**, 2011 (4) SCC 546, wherein it was held that if an employee had overstayed leave for years and also gone abroad without sanctioned leave and Government had not responded to his application for extension/grant of leave or that during the long period of his absence the Government had not sent him any notice asking to resume duties, it could not be a ground to set aside the punishment

order passed by the Government and to replace it by its own set of directions. In the case before the Hon'ble Supreme Court, the employee-respondent had gone to USA and overstayed his leave for over a year and a half on the first occasion and on the second occasion, he went to USA without even caring to obtain leave and remained there for over four years. The punishment of termination of service was upheld by the Hon'ble Supreme Court.

After hearing learned counsel for the parties, there is no merit in this appeal and the same is liable to be dismissed. The Hon'ble Supreme Court in **Punjab and Sind Bank Vs. Sakattar Singh**, 2001 (1) SCT 265, was examining the case of an employee of a bank, who had overstayed the period of leave. It was held that as per bipartite settlement between the bank and its employee, there would be presumption that there was automatic retirement, if an employee absents from duty for 90 or more consecutive days beyond leave granted. As per the agreement, if the employee despite giving opportunity to rejoin within a stipulated time, does not join back his duty, a presumption would be drawn that he does not intend to join and he should be retired from service. This could not amount to punishment for misconduct. In the absence of any explanation, there was no occasion to conduct an enquiry. In similar circumstances, the Hon'ble Supreme Court in **Syndicate Bank Vs. The General Secretary, Syndicate Bank Staff Association and another**, 2000 (2) SCT 765 was examining a case of an employee, who had abandoned his job. He was given an opportunity to explain by giving a notice and to join back within 30 days. On failure to join back his duties, as per clause 16 of Bipartite Settlement, the employee was voluntarily retired from service of the bank. The Hon'ble Supreme

Court held that principles of natural justice were inbuilt in clause 16 of the Bipartite Settlement. It was further held as under:-

“16. It is no point laying stress on the principles of natural justice without understanding their scope or real meaning. There are two essential elements of natural justice which are : (a) no man shall be judge in his own cause; and (b) no man shall be condemned, either civilly or criminally, without being afforded an opportunity of being heard in answer to the charge made against him. In course of time by various judicial pronouncements these two principles of natural justice have been expanded, i.e. a party must have due notice when the Tribunal will proceed; Tribunal should not act on irrelevant evidence or shut out relevant evidence; if the Tribunal consists of several members they all must sit together at all times; Tribunal should act independently and should not be biased against any party; its action should be based on good faith and order and should act in just, fair and reasonable manner. These in fact are the extensions or refinements of the main principles of nature justice stated above.”

The consistent view of the Hon'ble Supreme Court has been that in the case of absence of an employee after he has overstayed his leave, order of termination of his service should not ordinarily be interfered by the Courts. Any interference on the question of punishment is permissible in very rare cases where the punishment is so disproportionate to the established charge that it would appear unconscionable and actuated by malice.

In the present case, the plaintiff-appellant had proceeded on sanctioned Ex-India leave on 23.07.2002 to 18.01.2003. Before expiry of the leave, he had applied from U.K. for extension of leave for another five years for establishment of his business there. No information regarding non sanctioning of his leave was given to the plaintiff-appellant at his address during Ex-India leave. The business of the plaintiff could not be established in U.K., therefore, he came back to India and reported for duty in March,

2006. He was informed that his services stood terminated on 28.07.2003. The respondents-defendants further stated that his application for extension of leave had been rejected and thereafter, he was marked absent, suspended and departmental enquiry was initiated. Thereafter, on the basis of report of the Enquiry Officer, his services were dismissed vide order dated 28.07.2003. The termination orders were received by his mother and the plaintiff-appellant chose to file an appeal against the said order after a gap of 2½ years. The Hon'ble Supreme Court in **J.P. Saraswat's** case (supra) has held that even if on an application for extension of leave, the State Government had not responded and had not sent any notice asking him to resume duties by a certain date, it could not be a ground for the Court to set aside the punishment order passed by the State Government and to replace it by its own set of directions. The ratio of aforesaid judgment passed by the Hon'ble Supreme Court is directly application to the facts of the present case. The plaintiff-appellant had been clever in giving two different addresses to the department before proceeding on Ex-India leave, so that the necessary notices could not be served upon him. His application for extension of leave was rejected and the department had initiated enquiry after serving notice on the address given by him. Further, the Enquiry Officer had sent notice at the home address of the plaintiff-appellant, which was received by his family member (mother) and thereafter, the order of dismissal was passed after following due departmental proceedings. All the communications by the department, right from sending of notices, appointment of Enquiry officer and notice for dismissal from service, were served through special messenger at the home address of the plaintiff-appellant, which were received by his family member(s). Therefore, the

plaintiff-appellant now cannot take a plea that he was not aware with regard to non sanctioning of his leave.

In view of the above, the impugned judgment passed by the lower appellate Court does not require any interference as the same has been passed on correct appreciation of evidence led by the parties. No illegality, much less perversity, has been found therein warranting interference by this Court.

No substantial question of law arises for consideration by this Court.

Dismissed.

16.09.2015
ajp

(RITU BAHRI)
JUDGE