

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

Regular Second Appeal 136 of 2013 (O&M)

Date of decision: 18.11.2015

Harmesh Kumar Bansal

..Appellant

versus

Punjabi University Patiala and others

...Respondents

Regular Second Appeal 137 of 2013 (O&M)

Harmesh Kumar Bansal

..Appellant

versus

Punjabi University Patiala and others

...Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Appellant in person

Mr.Kanwaljit Singh, Senior Advocate with

Mr.Vikram Gupta, Advocates for the respondents

1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?

2. To be referred to the Reporters or not ?

3. Whether the judgment should be reported in the Digest?

Kuldip Singh, J.

By this judgment, I shall dispose of two regular second appeals bearing RSA Nos.136 and 137 of 2013, arising out of the same judgment and decree dated 24.8.2012, passed by the learned Additional District Judge, Patiala, vide which, the appeal filed by the present appellant against the judgment and decree dated 20.7.2010,

passed by the Civil Judge (Senior Division), Patiala was dismissed and that of the defendants Punjabi University was allowed. Consequently, the suit of the plaintiff-appellant stood dismissed.

Brief facts of the case which are necessary for the purpose of disposal of the appeals are that the plaintiff had joined service in the Punjabi University, Patiala as Clerk on 27.10.1973. He was promoted as Junior Assistant w.e.f. 1.1.1986. He applied for earned leave from 11.3.1992 to 12.6.1992. The same was sanctioned and later on extended upto 7.8.1992. As the plaintiff did not join back, the preliminary inquiry was ordered and in the preliminary inquiry report dated 13.1.1993, the inquiry officer opined that due to family circumstances, the plaintiff could not join the duty as he is to look after the parents. The inquiry officer recommended the sanctioning of leave without pay. Therefore, medical commuted leave on half pay was sanctioned vide order dated 3.9.1992 and again vide order dated 15.2.1993, he was granted half pay leave for the period from 10.10.1992 to 9.11.1992 and 10.11.1992 to 11.5.1993. However, while granting the leave till 10.5.1993, it was directed by the defendants that the leave of the plaintiff would not be further extended under any circumstances. Plaintiff did not join the duty after the expiry of the said leave and moved an application on 10.5.1993 for extension of leave without pay and furlough leave since he is to look after his ailing mother. Similar request was also made vide letters dated 27.5.1993, 14.6.1993, 21.6.1993 and 23.8.1993. The medical certificates were also sent with the application for leave. Thereafter, the University sent a letter dated 20.5.1993 asking the plaintiff to join

duty within one week after the receipt of the letter otherwise his post would be declared vacant and he will be considered absent from duty. Another similar letter was issued on 8.6.1993. Vide letter dated 6.7.1993, the plaintiff was asked to obtain certificate from Chief Medical Officer of Punjabi University, Patiala regarding the illness of his mother. Thereafter, another letter was sent on 20.7.1993, asking the plaintiff to join duty within one week otherwise his post will be declared vacant. Similar letter was also issued on 16.8.1993. However, the plaintiff did not join duty. Therefore, the plaintiff was charge sheeted on 26.2.1994 and Dr.O.P.Dhiman, Ex Principal, Multani Mal Modi College, Patiala was appointed as an Inquiry Officer. On the receipt of the inquiry report, the defendant University passed the order on 22.7.1994, declaring the post of the plaintiff as vacant under Statute 35 of the Punjabi University Calender. Plaintiff challenged the said orders before the Civil Court. The Civil Judge, Junior Division, Patiala vide judgment and decree dated 5.1.2002, dismissed the suit. However, the judgment was reversed in appeal. The appellate Court vide judgment and decree dated 8.9.2003, directed the defendant to hold fresh inquiry by appointing fresh Inquiry Officer. Accordingly, new inquiry was got conducted from Shri G.S.Bains (retired IAS). In the meanwhile, the plaintiff re-joined the duties by submitting application dated 24.9.2003. The Inquiry Officer in the fresh inquiry, held that the plaintiff remained willfully absent from duty which was act of indiscipline. The inquiry officer held that the plaintiff remained absent from duty w.e.f. 10.5.1993 because of the serious illness of his mother and there are extenuating

circumstances which need to be taken into consideration. However, it was held that charge of remaining absent from duty from 10.5.1993 is proved but extenuating circumstances do exist. The competent authority after considering the report, took the view that absence from duty without getting the leave sanctioned was act of sheer carelessness and the plaintiff remained dishonest towards his duty. Vide show cause notice dated 23.4.2004 plaintiff was asked to explain as to why his services be not terminated. After considering the reply and giving personal hearing, the services of the plaintiff were terminated vide order dated 8.7.2004. His appeal was dismissed by the appellate authority on 4.2.2005.

I have heard the appellant in person, learned counsel for the respondents and have also carefully gone through the file.

The factual position regarding sanctioning of leave and absence from duty are not disputed.

The contention of the appellant is that his mother was ill and therefore, he was unable to attend the duties. Therefore, his absence was not intentional. It has been further pleaded that his act of absence from duty is not an act of serious misconduct and therefore, his services could not be terminated. It was argued that though the grant of leave is discretion of the competent authority but discretion is to be exercised judiciously and if there are circumstances and material justifying the leave, the leave should have been granted. Reliance has been placed on authority of the Hon'ble Apex Court in Uptron India Ltd. V. Shammi Bhan, 1998(6) SCC 538 and reference has been made to the following observations:-

“The discretion has to be based on an objective consideration of all the circumstances and material which may be available on record. What are the circumstances which compelled the employee to proceed on leave; why he overstayed the leave; was there any just and reasonable cause for overstaying the leave; whether he gave any further application for extension of leave; whether any medical certificate was sent if he had, in the meantime, fallen ill?”

Further reliance has been placed on the following authorities:-

1.	S.S.Ramachandra Rao v. Singareni Collieries Company Ltd., Kothagudem and another	2003(7) SLR 94
2.	Smt.Ruby Joyce Charles v. Air Force School and others	1998(3) WLC 484
3.	B.D.Gupta v. State of Haryana	1973 (3) SCC 149
4.	Ex-Constable Kulwant Singh v. State of Punjab and others	2008(4) SCT 201
5.	State of Haryana and others v. Vidyawanti	2002(2) RSJ 588
6.	Dilwar Singh v. Haryana Power Generation Corporation Ltd. and others	2006(2) PLR 732

It has been argued that mere absence from duty is not a misconduct. It was further argued that there is satisfactory explanation in the form of the medical certificate that the mother of the plaintiff was ill, therefore, he could not attend his duties. It was further argued that the plaintiff has already superannuated and that the impugned order of dismissal is not justified.

The contention has been vehemently controverted by learned counsel for the respondents University. Reliance has been

placed on the judgment of the Hon'ble Supreme Court tilted as High Court of Gujarat v. Hitendra Vrajlal Ashara and another, 2015(2) SCT 89, wherein it has been held that the High Court cannot re-appraise evidence in the regular second appeal. It has been further argued that once the order is passed, the judicial review is not possible. The Court cannot act as appellate authority to sit over the findings of the disciplinary authority and re-appreciate the evidence and hold that wrong punishment has been awarded. The learned counsel for the respondents has further argued that learned Civil Judge, Senior Division, Patiala vide judgment and decree dated 20.7.2010 had granted partial relief to the plaintiff by declaring the order of dismissal dated 8.7.2004 and the order of the appellate authority dated 4.2.2005 as illegal, null and void, against the services rules and the mandatory injunction was issued, directing the defendants to decide the matter afresh, keeping in view the opinion expressed by the inquiry officer in the report dated 18.3.2004.

Appellant has extensively referred to the findings of the learned Civil Judge, Senior Division to support his contention that though the inquiry officer had held that the plaintiff was absent from duty from 10.5.1993 but he had also expressed the opinion that there were extenuating circumstances for remaining absent on account of illness of the mother of the plaintiff. Therefore, it has been argued that it is not a careless or dishonest act towards the duty.

After considering the submissions of both the parties and going through the case law produced in support of their contentions, I am of the view that after the first inquiry was set aside by the learned

Additional District Judge, a fresh inquiry was held by Shri G.S.Bains (retired IAS) and the charges of absence were proved. Opinion of the inquiry officer that there were extenuating circumstances for absence was mere recommendation to the competent authority to take lenient view. The competent authority was not bound by the advice given by the inquiry officer. The history of the case shows that the plaintiff initially proceeded on leave from 11.3.1992. Earlier a preliminary inquiry was held and on the basis of the report of the preliminary inquiry dated 13.1.1993, recommending grant of leave on account of family circumstances of the plaintiff, leave was sanctioned. The leave was again extended upto 10.5.1993 with a rider that no further leave shall be granted. By that time, the plaintiff had already availed the leave of than one year and two months. Even thereafter, the University acted with restraint. It issued several letters to the plaintiff as mentioned above, asking him to join his duties within seven days otherwise his post will be declared vacant and he will be declared absent from duty. The last such letter was issued on 16.8.1993. However, despite issuance of such repeated letters which were in the form of warning within the period of more than three months, the plaintiff did not respond and did not join duties for another one year and two months till 22.7.1994 when his services were terminated. If the mother of the plaintiff was ill, there were other family members. Plaintiff was to weigh between his duties and the illness of the mother. What the plaintiff could do is to immediately report for duty and produce the entire medical record before the authorities. If he was of the view that due to illness of his mother, he cannot continue with the

duty, he could apply for retirement. However, on the excuse of continuous illness of his mother, he cannot be allowed to remain absent from duty for indefinite period. It was only when after the repeated attempts the University failed to compel the plaintiff to report for the duty that the disciplinary proceedings were initiated. Now the question would arise whether such leave amounts to misconduct? I am of the view that it is in fact a gross misconduct. Plaintiff initially remained on leave from 11.3.1992 to 10.5.1993 (i.e. One year and two months). While granting the last leave on the recommendations of the inquiry officer, it was made clear to him that no further extension will be given. Even then plaintiff sought extension, which was declined and repeated letters were issued to him on 20.5.1993, 8.6.1993, 6.7.1993, 20.7.1993 and 16.8.1993, warning him that due to continuous absence, his post will be declared vacant under Statute 35 of University Calender Volume I. However, the plaintiff adopted an adamant attitude and did not report for duty. Such a long absence and not reporting for duty even for one day, despite such letters and warnings, amounts to gross misconduct. The same was considered by the competent authority and the dismissal order was passed.

It also comes out from the record that during the inquiry, full opportunity was given to the plaintiff to put forward his case. All the principles of natural justice have been complied with. Therefore, I am of the view that the lower appellate authority was justified in holding that the Court cannot sit over the judgment of the competent authority. The work of the competent authority was suffering due to

continuous absence of the plaintiff for one or the other reason. His wife and other family members were there. The plaintiff could make alternative arrangements for the treatment of his mother. The mother of the plaintiff died much later. Now the plaintiff has already superannuated w.e.f. 31.7.2013. In authority of the Uptron India Ltd. (*supra*), period of absence was for seven days, whereas in the present case, the absence was continuous and much longer as discussed above. Findings of facts have been recorded by the lower appellate Court. No substantial question of law arises. Hence no ground is made out to interfere in the impugned judgment and decree dated 24.8.2012, passed by the learned Additional District Judge, Patiala.

Consequently, both the appeals fail and are dismissed.

18.11.2015

gk

**(Kuldip Singh)
Judge**