

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

RSA No. 4069 of 2014 (O&M)

Date of decision: September 11, 2015

Harjit Singh

...Appellant

Versus

The State of Punjab and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

1. **Whether Reporters of local papers 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?**

Present: Mr. ADS Bal, Advocate,
for the appellant.

K. KANNAN, J. (Oral)

1. The appeal is at the instance of the plaintiff who sought for a declaration that the termination of service effected through the order dated 5.9.20013 passed by the State through the Secretary of Higher Education was illegal, unlawful and invalid. He had sought for a direction for reinstatement on a plea that the departmental inquiry alleged to have been instituted against him for alleged abandonment of service was against the rules of natural justice and against the procedure prescribed under the relevant rules and instructions.

2. The contention was that the plaintiff had applied for leave when he was a Lecturer in Physical Education under the control of the 2nd respondent DPI Colleges. He had sought for ex-India leave on 15.2.1996

which was extended upto 6.8.1998. The plaintiff could not join on the date when leave period had expired since his wife had suffered serious injuries requiring hospitalization and hence he had to go back to USA. According to the plaintiff, he had sought for extension of leave which was refused unjustly and the department ultimately issued a charge sheet on 2.2.2000 for remaining absent inspite of leave having been declined. The plaintiff sought for another date from the date which was fixed for inquiry and it was adjourned by a month and when he did not appear the department proceeded to conclude that there was abandonment of service and that his absence without authority was a grave misconduct that was required to be meted out with punishment of dismissal from service.

2. Although it is stated in the plaint that the plaintiff re-joined duty on some day, it is not very clear from the pleadings or even by the submissions made by the counsel as to when he re-joined the duty. If he had availed of leave which had been sanctioned on 14.8.1998 and by the averments in the plaint, it would show that he returned from the USA and he could not join back duty. The fact of whether he came to India or not is not relevant. Admittedly, there was no leave for him beyond the period of 6.8.1998 and it is an admitted fact that till the notice was issued imputing the charge on 2.2.1997, he had not re-joined the duty. He had also not been sanctioned any leave. The inquiry, according to the plaintiff, was vitiated by the fact that his application for leave had not been duly sanctioned which ought to have been granted. It is further a plea that the Inquiry Officer did not have the benefit of any presenting officer and did not have any document and hence the proof of charges could not have been accepted by

the punishing authority to inflict major punishment.

3. The nature of proof necessary by documentary evidence would depend on a fact which is disputed. In this case, the charge was that he had over stayed his leave and his leave was not sanctioned beyond 6.8.1998. There was no document necessary for an admitted fact of actual absence beyond the period of the sanctioned leave. I, therefore, reject the argument made by the counsel that there was no proof of charge. The absence was an admitted fact and the justification for a person to stay without authority was required to be shown only by the employee. If he could not avail of an extended date of inquiry by one month by the Inquiry Officer and the order was passed, the plaintiff ought to have a reason to state that if he had been permitted an opportunity to have an enquiry afresh, he would have proved something which was not allowed to be shown. This is another manner of showing that there was grave prejudice caused to him in the proceedings with enquiry in his absence by the Inquiry Officer and by not accommodating a plea for further adjournment, when he was seeking for time beyond the period of one month for the date of his inquiry. Neither before the trial court nor before the Appellate Court any proof was adduced to show that there was any regulation which was breached or that there was any disputed fact which has not been considered. Even now before me, the counsel has no argument except to state general principles of law that mere fact of absence of an employee cannot dispense with proof of charges. I have already referred to the fact that the charge of abandonment was by reference to an employee over staying his leave period and the moment the fact of absence without leave was admitted but the employee was giving his

own justification, that justification must come within the four corners of the regulation and given compulsive reason for accommodating his request. A public servant staying away from India on permission and unable to return even for personal reason must match a public interest of being retained in service. No public interest could be served by keeping him in service but outside India that advances no cause for the establishment of the government. It was rightfully a case of inference of abandonment and a deserving punishment of dismissal from service.

4. I find nothing perverse in the judgments of the courts below warranting intervention in the second appeal. The second appeal is dismissed as being devoid of merit.

September 11, 2015
prem

(K.KANNAN)
JUDGE