

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

RSA No.2139 of 1994

Date of Decision:09.12.2016

State of Punjab and others

... Petitioners

Vs.

Suresh Kumar

... Respondent

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. M.S. Naryal, Addl. A.G. Punjab.

Mr. D.R. Bansal, Advocate for the respondent.

P.B. BAJANTHRI J.

In the instant appeal, the appellant-State of Punjab has questioned the validity of the trial court as well as appellate court orders dated 30.3.1993 and 11.2.1994 respectively.

The respondent was stated to be appointed as Veterinary Officer on 2.6.1980. Pursuant to the communication dated 25.12.1977 issued by the Director, Animal Husbandry Department, Punjab Chandigarh relating to private practice by the Veterinary Officers wherein all PVS Class I and II Officers Animal Husbandry Department were permitted to commence private practice after availing due leave and for the rest period leave without pay and during intervening period lien of such officer would be retained in the department. The petitioner submitted leave application to the department on 1.10.1986. Without sanctioning the leave, the respondent proceeded to start his private practice. In this background, the department initiated disciplinary proceedings by framing a charge of unauthorized absent on 17.12.1987. The disciplinary proceedings were concluded in imposing the penalty of removal from service on 26.12.1989. Respondent's review application before the Government was turned down on 11.7.1990. Thus,

the respondent filed suit for declaration in respect of removal from service and order passed by the Government on the review application of the respondent. The respondent's suit was decreed on 30.3.1993. The appellants assailed the order of the trial court dated 30.3.1993 before the appellate court. The appellate court while affirming the order of the trial court dated 30.3.1993 rejected the appellants' appeal on 11.2.1994. Thus, the appellants have presented the present appeal.

Learned counsel for the appellants submitted that admittedly the respondent has taken undue advantage of the communication dated 25.12.1977 issued by the Director, Animal Husbandry Department, Punjab Chandigarh to the extent that all PVS Class I and II Officers Animal Husbandry Department were permitted to commence private practice after availing due leave and for the rest period would be treated as without pay and during intervening period lien of such officer would be retained in the department. It is further submitted that it is true that the respondent has availed the benefit of communication dated 25.12.1977. However merely making of an application for leave would not permit the respondent to start private practice until and unless leave is sanctioned by the competent authority. In the present case, leave was not sanctioned and further for remaining unauthorized absent from 1.10.1986 onwards, the appellants have initiated disciplinary proceedings on 17.12.1987. Even thereafter the respondent failed to report for duty and continued to do private practice. Question of adducing of any evidence before the inquiry officer may not be necessary for the reasons that admittedly respondent remained unauthorized absent from 1.10.1986 without their being a leave sanctioned. At the best respondent should have insisted for sanction of leave and which has not

been done. Therefore, if at all it is only a procedural error and the respondent is not entitled for re-inquiry or further inquiry.

On the other hand, learned counsel for the respondent submitted that the trial court has noticed that the respondent has not been provided an opportunity before the inquiry officer. Abruptly inquiry officer has changed the venue of the inquiry which has not been informed to the respondent. Consequently, respondent could not participate in the inquiry proceedings. It is an ex parte inquiry. On this ground, the suit was decreed. Further an observation has been made by the trial court that the appellants can hold inquiry if they so desired. The appellants have not resorted for holding fresh inquiry. On the other hand, they preferred an appeal and suffered. Thus, order passed by the trial court has attained finality and there is no infirmity in the same. Moreover with reference to communication dated 25.12.1977 respondent applied for leave to commence his private practice. If the department was not in a position to sanction leave they could have recalled his services instead of initiating disciplinary proceedings. Hence, the appellants have not made out a case so as to interfere with finding recorded by the trial court as well as appellate court.

Heard learned counsel for the parties.

The respondent being an officer of the Veterinary Department submitted leave application to commence his private practice as per communication dated 25.12.1977 that does not mean that respondent can apply for leave and go for private practice until and unless leave is sanctioned. Even the respondent failed to know about whether the leave is sanctioned or till the date on which the charge-sheet is filed. Further the respondent failed to report back to duty when he came to know that leave

has not been sanctioned. Having regard to the conduct of the respondent, the appellants have rightly initiated proceedings and removed from service. However, the inquiry officer has given ex party report as is evident from the record that respondent has not been heard by the inquiry officer. In fact, the inquiry officer should have notified the change of venue to hold an inquiry against the respondent. The same has not been done which is evident on the record. In view of the said lacuna, it is necessary to remand the matter to the department to commence inquiry from the defective stage. Since the respondent has attained the age of superannuation and retired from service, appellants-department are directed to complete the process of inquiry and pass final order within a period of six months from today. The respondent is directed to co-operate in the inquiry proceedings.

Accordingly, the present appeal is allowed.

09.12.2016
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**