

In the High Court of Punjab and Haryana at Chandigarh

Regular Second Appeal No. 5194 of 2015
Date of Decision: 19.2.2016.

Daljit Singh

.....Appellant

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Amit Kaith, Advocate
for the appellant.

SABINA, J.

Appellant had filed suit for declaration challenging the orders dated 30.4.2009/11.5.2009 and 30.7.2010/5.8.2010.

Case of the appellant, in brief, was that he was working as a driver with the defendants and availed rest in lieu of over time from 1.4.2007 to 2.4.2007. On account of his sickness, appellant could not join his duty and had sent medical leave through Under Postal Cover ('UPC' for short). Thereafter appellant made several representations for extension of his leave and joined his duty on 22.4.2008 after he was declared fit by the doctor. In departmental proceedings, enquiry officer had exonerated the appellant but the punishing authority did not agree with the enquiry report and passed the punishment order without giving any reasons. The punishing authority ordered that two increments of the appellant be withheld with cumulative effect. Appeal filed by the appellant against the said order was dismissed by passing a non-speaking order.

Defendants, in their written statement, denied the fact that the appellant had sent his medical leave through UPC. It was averred that the appellant had remained absent from duty intentionally. Appellant was directed to join duty by sending him a telegram and publication was also made in the newspaper but he had failed to join his duty. Thereafter, departmental proceedings were held against the appellant. The punishing authority did not agree with the report of the enquiry officer and passed the punishment order, in accordance with law. Appeal filed by the appellant was also dismissed by passing a well reasoned order.

On the pleadings of the parties, following issues were framed by the Trial Court:-

- “1. Whether the plaintiff is entitled to declaration as prayed for? OPP*
- 2. Whether plaintiff is entitled to mandatory injunction as prayed for ? OPP*
- 3. Whether plaintiff has not come to the Court with clean hands. ? OPD*
- 4. Whether suit is not maintainable ? OPD*
- 5. Whether present suit is not properly valued ? OPD*
- 6. Relief.”*

Suit filed by the appellant-plaintiff was dismissed by the Trial Court vide judgment/decreed dated 7.3.2013. Aggrieved against the said judgment and decree, appellant preferred an appeal and the same was dismissed by the First Appellate Court vide judgment/decreed dated 30.3.2015. Hence, the present appeal by appellant-plaintiff.

I have heard the learned counsel for the appellant and

have gone through the record available on the file carefully.

In the present case, admittedly, appellant had not joined his duty after 2.4.2007 and remained absent with effect from 3.4.2007 to 22.4.2008. The case of the appellant was that he could not join his duty on account of sickness and had sent medical leave through UPC whereas the case of the respondents is that despite notice, appellant had failed to join his duty. Departmental proceedings were initiated against the appellant. Admittedly, the enquiry officer submitted the report in favour of the appellant and held that the absence of the appellant was not intentional. The punishing authority could have either accepted the report of the enquiry officer or could have differed with it. In case the punishing authority did not agree with the report of the enquiry officer then it was required to record reasons for taking a dissenting view. The punishing authority in the present case did not agree with the enquiry report and gave a dissenting note. The said dissenting note was admittedly conveyed to the appellant. In the said note, the punishing authority had given its opinion as to why he disagreed with the finding of the enquiry officer. Show cause notice was issued to the appellant by the punishing authority. The punishing authority had specifically mentioned that it was expected from the appellant that he should have sent the medical application through his family member or close relative in case he was ill instead of forwarding the same through UPC. Although, the punishing authority had not given any reasons for not accepting the findings of the enquiry officer in the punishment order but the dissenting order had been duly conveyed to the appellant and show cause notice was issued to him. In these circumstances, the Courts

below rightly held that it could not be said that the appellant had suffered any prejudice because the reasons which weighed with the punishing authority in not accepting the report of the enquiry officer were duly conveyed to him.

In the facts and circumstances of the present case, no substantial question of law arises in this case warranting interference by this Court.

Dismissed.

**(SABINA)
JUDGE**

February 19, 2016
Gurpreet