

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

RSA No. 3438 of 2002 (O&M)
Date of decision : December 05, 2017

Madan Lal Gupta,

..... Appellant

v.

State of Punjab and another,

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Ajaivir Singh, Advocate
for the appellant.

Mr. Aditya Sharda, AAG Punjab

Ajay Tewari, J (Oral)

This appeal has been filed against the concurrent judgments of the Courts below dismissing the suit filed by the appellant.

Allegations in the plaint were that the appellant was at the fag end of his clean career when he suddenly suffered an attack of ashthma and had to proceed on leave from 1.11.1993 to 10.7.1995. At that time, he had leave of 358 days with full pay and 806 days with half pay to his credit. However, except for a period of six days, the entire absence was treated as leave without pay.

The case of the respondent, on the other hand, was that except for the aforesaid period of six days, none of the leave applications submitted by the appellant was accompanied by a valid medical certificate in so much as he had appended medical certificates by private doctor/s instead of

government hospitals and it is only for those six days that the medical certificate from a government hospital had been appended. It is also the case of the respondents that prior to the filing of the present suit, the appellant had filed CWP No.9826 of 1996 in which also he had made a challenge to the action of the respondents in granting him leave without pay for that period but no relief was granted by this Court, and not having challenged that decision further, the present suit was barred by the principles of res-judicata.

Learned counsel for the appellant has argued that in fact it is not a case where the relief was denied to the appellant but somehow this aspect was not adverted to at all since the main relief was for expediting the payment of retiral dues.

In my considered opinion, this argument would not get over the bar of res-judicata. If no relief was granted to the appellant in the aforesaid writ petition, it was open to him to challenge that decision further but he abandoned that litigation and embarked upon the instant civil suit and that is what has been held by both the Courts below. Consequently, finding no merit in this appeal, the same is dismissed.

Since the main case has been decided, the pending C.Ms, if any, also stand disposed of.

December 05, 2017
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(AJAY TEWARI)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No