

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

Date of decision: 19.04.2017

RSA No.450 of 1993 (O&M)

Gurmit Singh

...Appellant

Vs.

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Akaant Kumar, Advocate, for
Mr. Gaurav Chopra, Advocate, for the appellant.

Mr. Rahul Verma, AAG, Punjab.

RAJIV NARAIN RAINA, J.

The plaintiff was removed from service on 22.09.1988 for remaining willfully absent after lapse of the period of leave sanctioned for four days i.e. from 16.08.1985 to 20.08.1985. He was Driver in the Punjab Roadways serving in Depot No.1, Jalandhar City. Instead of joining duty on 21.08.1985, he sent an application for extension of leave from 21.08.1985 to 20.09.1985. The application was received in the office of the General Manager, Punjab Roadways, Jalandhar through registered post on 29.08.1985. In the application, he gave his address of Bombay. The application was rejected and the plaintiff was informed of its fate through telegram dated 09.09.1985 as well as through registered letter of even date. He was asked to resume duty immediately, but instead of joining duty, he kept asking for extensions from time to time. Faced with this situation, the plaintiff was issued charge-sheet vide memo dated 25.11.1985 framed by the disciplinary authority. The charge-sheet was sent to both his native village in

District Hoshiarpur and at the address of Bombay given in his first application for extension. Despite that, he made yet another application for leave from 19.02.1986 to 20.08.1986 through registered post, but did not submit reply to the charge-sheet.

The Department followed the procedure in Rule 22 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 by resorting to substituted service effected through publication in two leading newspapers of the region in circulation at the last known address, which notice was sufficient to bear stamp of deemed service and due warning of the consequences of overstay without approval of the competent authority entail. An ex parte enquiry followed. The enquiry officer informed the plaintiff through registered post of initiation of proceedings to enable him to appear in the enquiry on the date, time and venue fixed and be associated with it, but the registered post was received back with the remarks by the Postal Authorities “not known having left with no other alternative”, which meant that the plaintiff was not available at the two given addresses. He was proceeded against ex parte. The charge of willful absence without due permission was proven ex parte and the removal order was passed, but with retrospective effect. This is how the order dated 22.09.1988 was passed which gave birth to the suit.

The trial Court dismissed the suit, but rightly held that removal could not take place retrospectively as is the settled law and the same has to take effect from the date of communication. The suit was rejected by the Sub Judge IInd Class, Jalandhar on 25.11.1991. The appeal to the Additional District Judge, Jalandhar was unsuccessful. The verdict of the trial Court was upheld. The lower Appellate Court rightly found no legal infirmity or

lacuna in the ex parte enquiry proceedings or the enquiry report and the consequences that followed.

This appeal is against the concurrent judgments of the Courts below. I have heard learned counsel for the parties and find no reason to interfere with the well considered judgments in appeal. The authorities were rather patient in dealing with the plaintiff. It is only when they exhausted available channels that followed the ex parte path with the whereabouts of the plaintiff undisclosed. Four days of sanctioned leave was converted by the plaintiff for years leaving no option to the disciplinary authority except to follow the route of enquiry by service of charge-sheet. There was no explanation for the absence except a generalized statement that it was under compelling circumstances. This is hardly any defence deserving acceptance. In absence of any valid reason for remaining absent for such a long period and applying for extension after extension, I find no question of service law involved in this appeal for consideration on the second appeal side of this Court. Consequently, the appeal is devoid of merit and is hereby dismissed.

19.04.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>