

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

Date of decision: 13.01.2017

RSA No.2393 of 1995

Punjab State & others

...Appellants

Vs.

Sewa Singh (deceased) through LRs

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Dr. Puneet Kaur Sekhon, Addl. AG, Punjab.

None for the respondents.

RAJIV NARAIN RAINA, J.

The respondent is dead and his estate is represented through his legal representatives. However, no one appears on behalf of the legal representatives when the case is called for final hearing. Since it is an old appeal preferred by the State of Punjab, with no assistance offered by the LRs I have proceeded with dismay to hear the Law Officer for Punjab for final disposal and with her help perused the papers on file to pronounce judgment on what I think is just and meet on the facts and the law on the subject matter.

State of Punjab - defendant is in second appeal aggrieved against the judgment of reversal, whereby suit for declaration challenging the order of removal from service on account of long unauthorized absence from service was decreed by the learned first Appellate Court by setting aside the order of removal from service.

Respondent - plaintiff was appointed as Gram Sewak on 05.05.1957 in the Department of Rural Development and Panchyats and was scheduled to retire on 10.07.1988. In the year 1982, he availed Ex-India leave, which was granted/extended till 11.02.1984 vide order(s) dated 24.09.1982 and 17.10.1983. Subsequent request of the respondent – plaintiff for extension of his leave was declined vide letter dated 29.01.1984. Later on, vide letter dated 16.05.1985 and 18.07.1985 respondent - plaintiff was asked to join duty, but he chose not to do so.

It is averred that it was a case of voluntary abandonment of service and no further action was required on the part of appellant – defendant to sever employment relationship which was already severed by act and conduct of the plaintiff. However, appellant - defendant served charge-sheet upon respondent-plaintiff on 16.03.1989 vide registered post for his willful unauthorized absence from his duty. Respondent – plaintiff did not avail the opportunity provided to him to defend himself against the charges. Resultantly, on the basis of ex parte enquiry report dated 31.01.1990 order of removal from service was passed on 21.08.1990. Respondent – plaintiff challenged the said order by way of civil suit instituted on 16.08.1991. The said suit was dismissed by the learned trial Court by recording a finding of fact that plaintiff never appeared before the enquiry officer to defend the charge of willful absence and it was not feasible for the punishing authority to hear the plaintiff personally when he never turned up at any time during the course of enquiry despite best efforts made by the Department.

However, in the appeal preferred by the respondent - plaintiff, the judgment and decree of the learned trial Court was reversed by setting aside the order of removal from service primarily on the grounds:

- (i) Non supply of enquiry report to the respondent - plaintiff before passing the order of removal from service; &
- (ii) Enquiry was instituted after retirement in respect of an event which took place more than 4 year before such institution.

In the present second appeal, the appellant – State has claimed the following substantial questions of law:

- (i) Whether a person not availing the opportunity to defend the charges can later on complain violation of the principles of natural justice, that too, without establishing any prejudice caused to him on account of alleged violation?
- (ii) Whether the long voluntary unauthorized absence amounts to abandonment of service?

Having heard Dr. Puneet Kaur Sekhon on the substantial questions of law, I find that non supply of enquiry report before passing the order of removal from service would be inconsequential as the respondent - plaintiff has not proved that any prejudice is caused to him on this account. In the present case, on the admitted and undisputed fact of long unauthorized absence from duty only one view is possible, therefore, the ‘Useless formality’ theory would come into play and the order of removal from service would not be vitiated on this account. Reference is made to the judgment reported as Haryana Financial Corporation & another Vs. Kailash Chandra Ahuja, 2008 (9) SCC 31.

That apart, the second ground for setting aside the order of removal from service is also not sustainable as the appellant - defendant asked the respondent - plaintiff to join the duties vide letter dated 16.05.1985 and 18.07.1985. Therefore, the proceedings initiated on

16.03.1989 would be well within a period of 4 years as the misconduct was of continuous nature.

Practically speaking, this was a case of voluntary abandonment of job by the respondent - plaintiff by his long unauthorized absence from duty. This position is waiver of right to retain job in view of the ratio of the judgment of the Supreme Court in State of M.P. & others Vs. B.S. Bhadoriya, 2014 (5) Scale 180, wherein it observed as follows:

“... Absence from duty in the beginning may be a misconduct but when the absence is for a long period, it amounts to voluntary abandonment of service and in that situation, the bonds of service come to an end automatically without requiring any order to be passed by the employer.”

Recently, in CWP No.18903 of 2016 titled 'Jai Pal Sharma Vs. State of Haryana & others' decided on 14.09.2016, I also observed that long absence from duty amounts to abandonment of service and such an inference can be drawn by the conduct of an employee, while relying upon the law laid down by the Supreme Court in Vijay S. Sathaye Vs. Indian Airlines Ltd. & others, (2013) 10 SCC 253. In the present case, conduct of the respondent - plaintiff in refusing to join his post on duty despite being called upon to do so and duly forewarned of the consequences absence might entail the plaintiff has only himself to blame. Not only for this misadventure but absence was compounded by not offering any defence in the enquiry proceedings and letting it go ex parte. Further still, by not even attempting to offer any plausible explanation for his long unauthorized absence in the plaint filed in civil suit establishes beyond reasonable doubt that a case of voluntary abandonment of service had been made out by the defendant - State. The lower appellate court fell in error in decreeing the suit.

In view thereof, while answering the substantial questions of law framed in favour of the appellant – State, the instant appeal is allowed and the judgment and decree rendered by the learned lower Appellate Court is set aside and the suit dismissed. The plaintiff – respondent is held not entitled to any relief as claimed in the suit. The amount, if any, already paid to the appellant shall not be recovered from his LRs.

13.01.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>Yes</i>