

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Letters Patent Appeal No.2116 of 2016 (O&M)

Date of Decision: March 07, 2017

Jai Pal Sharma

.....Appellant

versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.

HON'BLE MR.JUSTICE SUDIP AHLUWALIA.

Present: Mr.Anurag Goyal, Advocate, for the appellant.

Mr.Vijesh Sharma, DAG, Haryana.

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Surya Kant, J. (Oral)

Notice of motion.

On our asking, Mr.Vijesh Sharma, learned Deputy Advocate General, Haryana, accepts notice on behalf of the respondents.

Let four copies of the complete paper book be handed-over to him during the course of day.

This letters patent appeal assails the order dated 14.09.2016 whereby learned Single Judge has dismissed the appellant's writ petition in which he laid challenge to the order dated 20/22.07.2015 (P-10) terminating his services.

[2] The facts are broadly admitted. The appellant joined the Education Department, Haryana, as Sanskrit Teacher on 09.04.1987 on *ad hoc* basis. His services were regularized w.e.f. 01.01.1991. On 12.06.2006, the appellant was transferred from Government Girls High

School, Nath Mandir, Thanesar, District Kurukshetra to Government Senior Secondary School, Shahabad Markanda, District Kurukshetra. He was relieved from duty on 15.06.2006 but he did not submit his joining report at the new place of posting.

[3] The appellant is said to have sent the joining report by post on 22.06.2006. He thereafter did not resume the duties till 30.11.2012.

[4] The appellant suddenly appeared after six years and wanted to join the above-stated new place of posting.

[5] The authorities of the Education Department had also gone into slumber and are to be equally blamed. While the appellant remained willfully absent from duty for six years, the authorities also sat silent and took no action against him. It was only when he reported for duty in the year 2012 that the authorities suddenly woke up and without issuing even the charge-sheet or a departmental enquiry, impugned order dated 20/22.07.2015 was passed by the District Elementary Education Officer, Kurukshetra holding that the appellant is guilty of unauthorized absent from duty which is “an act of indiscipline” and that “employer may treat the unauthorized absent as misconduct and impose a punishment for misconduct”. Consequently, the officer has held that he is not “hesitant in terminating the services or passing an order of removal”.

[6] Though the above-stated order is punitive in nature for all intents and purposes, nevertheless the appellant did not file any departmental appeal under the Haryana Civil Services (Punishment and Appeal) Rules, 1987 and instead filed the writ petition which has been dismissed by learned Single Judge though with liberty to him to approach the administrative authorities.

[7] Still aggrieved, the appellant has filed this intra-court appeal.

[8] We have heard learned counsel for the parties and perused the record.

[9] Learned counsel for the appellant submits that the impugned order which has used both expressions, 'termination' as well as 'removal' from service, is based upon a specific misconduct of absent from duty, hence such a punitive order which is *ex-facie* stigmatic, could not have been passed without observing the principles of natural justice, namely the mandatory procedure prescribed under the statutory Service Rules.

[10] On the other hand, learned State counsel submits that the appellant is guilty of willful absent from duty and since he abandoned the employment, no fault can be found with the impugned order.

[11] Having given our thoughtful consideration to the rival submissions, we do not deem it appropriate to express any views on merits of the contentions. It is a fact that the appellant served the department for almost 19 years before he willfully absented from duty. This is also a fact that the appellant *prima-facie* abandoned the employment. Whether the punishment of termination/removal from service is disproportionate to the nature of allegation (which has not been proved in enquiry) or ends of justice can well be met with by compulsorily retiring the appellant, is an issue which can be effectively determined by the Appellate Authority under the 1987 Rules. Consequently and for the reasons afore-stated, we allow this appeal in part; modify the order passed by the learned Single Judge and grant liberty to the appellant to file an appeal under the 1987 Rules. If such an appeal is filed within one month from the date of receiving a certified

copy of this order, the Appellate Authority is directed to entertain the same on merits for the reason that the appellant is pursuing his remedy before this Court. The appeal will be decided preferably within a period of four months from the date of its filing. It shall be appreciated if the appellant is heard in person before deciding the appeal.

[SURYA KANT]
JUDGE

March 07, 2017
mohinder

[SUDIP AHLUWALIA]
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No