

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.4429 of 2015 (O&M)

Date of Decision: 15.05.2017

Surjeet Singh Nanhwan

... Appellant

Versus

State of Punjab and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. D.V. Sharma, Senior Advocate,
with Ms. Shivani Sharma, Advocate,
for the appellant.

RAJIV NARAIN RAINA, J.

1. This appeal came on for hearing for the first time on December 18, 2015 when an adjournment was sought to place on record some documents. Thereafter, the case has been adjourned by orders and has come for effective hearing for the first time on May 15, 2017 today and I have heard the learned Senior counsel for the appellant at some length and was of the view that the appeal deserves to be rejected. Accordingly I had dismissed the appeal with reasons to follow. The reasons are hereinbelow.

2. Though time was taken long ago to place on record some documents what has been filed is an affidavit of N.S. Rattan, I.A.S. (Retired) Ex-Principal Secretary, Department of Higher Education, Punjab, Chandigarh. The affidavit dated March 04, 2016 declares as follows:-

"2. That the Appellant had brought the record obtained under the Right to Information Act, 2005 which reveals that the Appellants were working as Assistant Director in the Languages Department and he was placed under

suspension. He submitted an application dated 2.8.2003 (wrongly mentioned as 2.8.2002). In the application the Appellant had mentioned that he is to go abroad and his ticket is confirmed of Japan Airlines for 14.8.2013. Therefore, he prayed that he may be reinstated in service and his earned leave be sanctioned.

3. *That on the application the deponent had passed the order on 4.8.2003 to put up the file at once. Accordingly, the file was put up before the deponent on 12.8.2013 and the deponent had passed the order that the Appellant had accepted his mistakes and sought pardon for the same. On account of this, the deponent was reinstated in service and he was posted as District Language Officer, Ferozepur. Order to this effect were issued vide endorsement No. 6/10/2003-I E.D: Cell/18848 dated 12.8.2003.*

4. *That the deponent to the best of his memory remembers that on the basis of the verbal orders of the deponent, the appellant was allowed to proceed on ex-India leave."*

3. This appeal is by an unsuccessful plaintiff assailing the judgment and decree of the Additional District Judge, Chandigarh dated March 20, 2015. The appeal by the State of Punjab stands accepted and the judgment of the trial Court erroneously setting aside the impugned order dated June 02, 2009 has been set aside.

4. The charge against the appellant was that he proceeded on ex India leave without getting leave sanctioned from the department prior to departure. Even though prior permission was not granted plaintiff still proceeded to USA on August 18, 2003. He remained unauthorizedly absent from March 18, 2003 to February 18, 2005. He obtained a social security number in the USA. The department proceeded to inquire into his misconduct alleged to be in violation of Rule 3.10 of PCS Rules, Part-1 and Rule 3 (I) of the Government Employees (Conduct) Rules, 1966. A regular

inquiry was conducted by the Additional Director, Language Department, Punjab.

5. The plaintiff appeared before the Inquiry Officer on March 25, 2008. The Inquiry Officer recorded his statement in March 2008 where he admitted in toto almost all the allegations levelled against him in the charge-sheet. He candidly admitted that he proceeded abroad without getting his ex India leave sanctioned. The center of his defence was that before proceeding on leave he was verbally allowed to travel abroad by the then Secretary (Higher Education), Punjab. This was an admission that there was no written permission. The case was based on official record which spoke for itself. Because there was admission the Inquiry Officer did not record statement of witnesses who were cited in the charge-sheet. Plaintiff assailed this procedure without realizing what prejudice was caused to him by his own admission. He admitted that his in-laws had arranged for his immigration and he was a green card holder which would eventually earn him permanent residency status in USA. He remained absent from August 18, 2003 to 2007 which clearly showed that he intended to relinquish his job in India and permanently settle down with his family in California, USA.

6. The learned Additional District Judge, Chandigarh thought that the plaintiff could not have his cake and eat it too and enjoy the best of both worlds. The Court below did not agree with the plaintiff that the ruling in State of Punjab v. Dr. Harbhajan Singh Greasy, 1996 (3) RSJ 82 was in his favour. Accordingly, he accepted the appeal and dismissed the suit together with the cross objections filed under Order 41 Rule 22 CPC by the plaintiff in appeal. The trial Court had fallen in error in making too much of the

inquiry procedure adopted by the Inquiry Officer. I would only say that this is a clear case of abandonment of service and there was no legal necessity even to hold an inquiry. See Vijay S. Sathaye v. Indian Airlines Ltd., (2013) 10 SCC 253.

7. The affidavit filed by N.S. Rattan obtained by the plaintiff has no evidentiary value and deserves to be discarded and ruled out of consideration. It does not qualify as additional evidence. A verbal order is of no legal consequence nor has any binding value, to bind the State irrevocably. When the Secretary to Government speaks he must do so in writing on the file while holding office. Even recollecting what is deposed to in the affidavit after 13 years is highly improbable to believe when the Secretary and the plaintiff have no special connection and the case was dealt with departmentally. I am surprised that a senior retired IAS officer would append his signature to the affidavit and expect Court to rely on it. Maybe, retirement gives him the licence.

8. No question of law, much less substantial, is involved in the appeal. The appeal has no life and is accordingly dismissed.

(RAJIV NARAIN RAINA)
JUDGE

15.05.2017
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<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>