

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

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**RSA-2981-1996 (O&M)
Date of decision:09.03.2018**

Rattan Lal Anand

...Appellant

Versus

State of Haryana and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. R.K.Malik, Senior Advocate with
Mr. Sunil Hooda, Advocate for the appellant.

Mr. Rajesh Gaur, Addl. A.G. Haryana.

P.B. BAJANTHRI, J. (ORAL)

In the instant appeal, appellant has questioned the order of trial and appellate court dated 01.12.1994 and 24.08.1996.

2. Appellant was appointed as a Lab Attendant on 24.02.1968. Thereafter, directly he was appointed as Dark Room Assistant on 11.08.1970. Consequently, his services were confirmed in the post of Dark Room Assistant on 11.12.1972. When he was working at Narnaul he was transferred to Ambala on 04.07.1984. He did not obey the order of transfer for more than 6 months for which the respondents had issued notice to him and asking him to report at transferred place at Ambala. Pursuant to the

notice he has reported on 15.01.1985. Thereafter, he remained absent. In fact from 15.07.1984 he remained absent up to 15.01.1985. Thereafter, he continued to remain absent on the sole ground that his wife was suffering from certain illness. Thereafter, number of notices were issued by the respondents asking him to report for duty for which there was no response. Consequently, respondents issued show cause notice dated 07.10.1985 stating as to why the appellants services cannot be terminated for which there was no response. Consequently, order of termination was issued on 17.10.1985.

3. Feeling aggrieved by the order of termination appellant filed a suit before the trial court. Trial court rejected the suit on the ground of limitation. Thereafter, he preferred an appeal before the appellate court. Appellate court with reference to dates and events recorded the finding that the suit was filed within the time limit. However finding has been recorded that there is no infirmity in the order of termination. Appeal was rejected. Hence the present appeal in challenging the orders.

4. Learned counsel for the appellant submitted that appellant was a regular holder of the post of Dark Room Attendant in the department of Health and Family Welfare. Remaining unauthorized absent amounts to mis-conduct for which respondents could have resorted to holding of disciplinary proceedings under the then Punjab Civil Services Rules, (Punishment and Appeal) Rules, 1970 now it is known as Haryana State Civil Services (Punishment and Appeal) Rules, 1987. The trial and appellate courts had failed to appreciate that appellant was a regular holder

of the post. Status of the appellant that he was permanent employee. Consequently, before passing any adverse order which would result in civil consequences inquiry is required to be held. Undisputedly respondents have not held inquiry. Consequently, trial and appellate court orders are liable to be set aside.

5. Per contra, learned counsel for the respondent while resisting the petitioner's contention submitted that having regard to the conduct of the appellant in not attending the duty regularly from 15.07.1984 till 17.10.1985 except on 15.01.1985 the date on which he has reported at transferred place of Ambala due to transfer from Narnaul to Ambala. When the appellant had abandoned the service question of holding disciplinary proceedings for his alleged mis-conduct of remaining unauthorized absent is not attracted. Therefore, rightly the Director has resorted to issue show cause notice as to why the appellant services cannot be terminated. Thereafter, proceeded to terminate the services of the appellant on 17.10.1985. Therefore, there is no infirmity whatsoever in respect of order of termination, trial and appellate court judgments dated 01.12.1994 and 24.08.1996..

6. Heard learned counsel for the parties.

7. Having regard to the conduct of the appellant that he remained unauthorized absent during the period from 15.07.1984 to 17.10.1985 except one day of reporting to duty on 15.01.1985 at Ambala on account of transfer from Narnaul to Ambala, reason for remaining unauthorized absent is that his wife was suffering from illness. One can understand for few days.

Can employee go on leave in order to get treatment to his wife for months together. Even assuming that if he intends to go on leave for months together he must make necessary leave application and he must have leave to his credit. In the present case appellant did not make any appropriate application for leave. So also no efforts have been made to apprise the superiors. In fact appellant failed to furnish change of address for the reasons that when he has reported at Ambala on transfer, he should have given the correspondence address to the concerned authority. Thus there is negligence on the part of appellant.

8. In view of these facts and circumstances and the fact that the appellant's conduct in the office is unbecoming of Government employee. However, interference could be made in the termination order dated 17.10.1985, since the respondents have committed glaring mistake in not invoking disciplinary appeal rules to hold charge of absence is proved, as petitioner was regular holder of the post in the respondent-department. In other words, regular employee if he commits any mis-conduct before taking any action like imposing penalty employer should have resorted to disciplinary proceedings. Having regard to the fact that not resorting for disciplinary proceedings appellant is entitled to certain benefits for the reasons that question of holding inquiry at this distance of time may not be correct. Moreover, appellant had he been in service he would have attained age of superannuation and retired from service on 31.10.2004. Therefore, it is not appropriate for this court to remand the matter to the disciplinary authority to hold inquiry. In order to give quietus to the litigation, appellant

is treated to have been retired compulsorily w.e.f. 17.10.1985 instead of termination. In view of the modification of termination to that of compulsory retirement w.e.f. 17.10.1985, the respondents are hereby directed to extend monetary benefits as if the appellant has retired compulsorily w.e.f 17.10.1985. Monetary benefits shall be calculated and disbursed to the appellant within a period of 6 months from today.

9. With above observation, appeal allowed in part.

09.03.2018

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No