

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGRH

Letters Patent Appeal No.1255 of 2019 (O&M)

Date of Decision: 30.08.2019

Kulwinder Singh

..Appellant

versus

State of Punjab and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE.**

Present : Mr. S.S.Salar, Advocate, for the appellant.

KRISHNA MURARI, CHIEF JUSTICE

This intra-court appeal under Clause X of the Letters Patent is directed against the judgment and order dated 11.01.2019 passed by the learned Single Judge dismissing the writ petition filed by the appellant challenging the order dated 10.05.2013 and accepting the resignation and order dated 16.04.2014 rejecting the appeal filed against the said order.

2. Facts in brief required to be noticed for adjudication of the controversy can be summarized as under:-

Appellant-petitioner working as a Vocational Master made an application dated 29.11.2012 for grant of Ex-India leave w.e.f. 01.01.2013 to 31.03.2013. As per the procedure a declaration was obtained from him in the form of an affidavit that if he did not report back on duty after the leave period it will be treated as his resignation. He was sanctioned leave and accordingly he went to Canada. He did not present himself for joining after the leave period was over and instead an application received by the Director

General, School Education, Punjab on 22.03.2013 was made by him alongwith a medical certificate for extension of his leave without pay w.e.f. 01.02.2013 to 31.03.2013 on the ground of illness. The appellant-petitioner reported back for duty on 01.04.2013. However, he was informed that since he did not report back on duty after expiry of the period of leave on 01.02.2013 in accordance with the undertaking given by him, he was treated to have resigned from service. An appeal was preferred which was dismissed by the Appellate Authority vide order dated 16.04.2014.

3. Learned Single Judge finds that the appellant-petitioner was in the habit of over staying and on earlier three occasions when he availed the Ex-India leave, he overstayed and did not report back on duty immediately after the leave period was over and his resignation has rightly been accepted as he was bound by his undertaking.

4. Learned counsel for the appellant submits that he was not afforded an opportunity of hearing before passing of the impugned order and since he had submitted his joining even before the order dated 10.05.2013 was passed, there appears to be no justification in treating him to have resigned from service.

5. The argument is totally misconceived. The appellant-petitioner was granted Ex-India leave subject to his undertaking that in case he does not report back on duty on expiry of the period of leave on 01.02.2013, it would be deemed that he has tendered his resignation and his services would come to an end. Admittedly, he did not report for duty rather made an application subsequently seeking extension of leave period which was never allowed.

6. The past conduct of the appellant-petitioner of overstaying after the expiry of Ex-India leave period on different occasions is also a circumstance to be taken into account particularly in view of the fact that he is a teacher and his unauthorized absence causes hindrance in the studies of the students. Apart from the above the appellant-petitioner was bound by his undertaking given before the authorities concerned and thus he is estopped on account of his undertaking and conduct.

7. In view of above facts and discussion, we see no good reason to take a view different from the one taken by the learned Single Judge in the matter. The appeal is thus devoid of merits and accordingly stands dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

30.08.2019
ravinder

Whether speaking/non-speaking: Speaking
Whether reportable : Yes/No.