

RSA-2907-2015

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-2907-2015

Date of Decision: 17th September, 2019

Amarjit Singh

...Appellant

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Akash Yadav, Advocate for
Mr. Abhinav Gupta, Advocate
for the appellant.

Mr. T.P.S. Chawla, DAG, Punjab.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree dated 04.04.2014 passed by the Civil Judge (Junior Division), Jalandhar, whereby, civil suit filed by the appellant – plaintiff, who while working as a Head Constable in the Punjab Police, proceeded on Ex-India Leave and continued to stay there, thereafter, departmental proceedings were held against him and his services were terminated vide order dated 23.12.2008 passed by the Commandant, 13th Battalion, PAP, Jalandhar with effect from the said date treating the period from 04.11.2004 to 23.12.2008 as non-duty period, for declaration to the effect that the said order was based on no evidence, cryptic, without jurisdiction, based upon conjectures, surmises and in violation of the Punjab Police Rules, has been dismissed, appeal against which preferred by him also stands dismissed vide judgment and decree

dated 19.12.2014 passed by the District Judge, Jalandhar.

2. It is the contention of the learned counsel for the appellant that he was initially granted two month's Ex-India Leave w.e.f. 05.09.2004 to 03.11.2004 vide order dated 30.08.2004. After going abroad, he sent communications for extension of leave from time to time but the said requests of the appellant for extension have not been accepted and rejected by the Commandant. The order so passed rejecting his claim was never conveyed to him and because of the non-receipt of the said order, appellant proceeded on the assumption that sanction has been granted for extension of his leave and therefore, he continued to stay abroad. On his return from Austria, when he reported for duty, then only he came to know that his services have already been terminated in June, 2009.

3. That apart, counsel asserts that the charge-sheet and the departmental proceedings which have been initiated against the appellant were never served upon him. His contention is that in the absence of such service on the appellant – plaintiff and thereafter, conclusion of the enquiry proceedings, report thereof, show cause notice and orders of punishment cannot sustain and deserve to be quashed. He, thus, contends that the impugned judgments and decree passed by the Courts below do not sustain and deserve to be set aside.

4. On the other hand, learned counsel for the State submits that the request for extension of his leave was duly considered and rejected by the Competent Authority. The said order was conveyed to the appellant – plaintiff at the address of Austria, which was provided by him. When he

RSA-2907-2015

had not reported for duty, departmental proceedings were initiated against him by serving charge-sheet upon him, which was not only sent to his local address but also at his address of Austria with a direction to the appellant – plaintiff to join his duty. The said letter was sent through registered post vide Ex.D-6. Because of non-appearance of the appellant – plaintiff, he was declared absent from duty vide Ex.D-7, which is dated 23.11.2014. This communication was also sent at his permanent address of village Rurka Kalan. The said letter was returned as refused to accept the same. He was placed under suspension by the Competent Authority and a departmental enquiry was held against him vide Ex.D-10. Thereafter, various notices Ex.D-11 to D-15, D-17 and D-18 were issued to him but he did not join the duty. Ultimately, an *ex parte* departmental enquiry was held and he was terminated from service vide order dated 23.12.2008 after following the procedure as prescribed under the Punjab Police Rules. Reference has also been made to the cross-examination of PW-1 Gural Singh, Special Power of Attorney and father of the appellant – plaintiff, through whom the present suit has been filed, where, it has been stated by him that the appellant – plaintiff had returned to India only once and that too, two years prior to the recording of his statement, which was in April, 2011. It is admitted by him that his son did not join the duty after expiry of Ex-India Leave. Admission has also been made with regard to refusal of the notices which were sent at the local address and receipt of show cause notice by Smt.Gian Kaur, wife of the appellant – plaintiff. Admission has also been made that show cause notice was sent to the appellant – plaintiff out of country but no reply to the

same was filed. He, on the basis of these facts, submits that there is no violation of any statutory rule, according to which the departmental enquiry held against the appellant – plaintiff is not sustainable. Absence from duty is a grievous act of misconduct and accordingly, the Competent Authority has proceeded to pass an order of dismissal of the appellant – plaintiff from service, which has been challenged by him and upheld by both the Courts below. He, therefore, prays for dismissal of the appeal.

5. I have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the records and the impugned judgments.

6. The facts which are admitted need not to be referred again especially in the light of the admission of PW-1 Gurpal Singh, father of the appellant – plaintiff, through whom the present suit has been filed, he being the Special Power of Attorney. The admission on his part with regard to the issuance of show cause notice, refusal thereof, issuance of registered letters at the address of Austria, which was given by the appellant – plaintiff and non-response after receipt of show cause notice by his wife, leaves no manner of doubt that the proceedings and the departmental enquiry held against the appellant – plaintiff were in accordance with the statutory rules.

7. It has been held in various judgments passed by this Court that in the police force, absence from duty without intimation and especially when, request for extension of leave has been declined, as is the present case, would amount to a grievous act of misconduct. In the light of these facts and the law as has been settled by this Court as well as by the Supreme

Court, as referred in the judgments passed by the Courts below, the order of dismissal passed against the appellant – plaintiff cannot said to be unsustainable or in violation of the statutory rules.

8. In the impugned judgments, concurrent findings have been returned by both the Courts below which, being in accordance with the pleadings and the evidence brought on record, do not call for any interference by this Court, as there is no misreading or non-consideration of the material available on record nor is there any perversity or illegality in the same.

9. In view of the above, finding no merit in the present appeal, the same stands dismissed.

17th September, 2019
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

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