

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

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Regular Second Appeal No.850 of 2018 (O&M)
Date of Decision: November 5th, 2019

Onkar Singh

...Appellant

Versus

The Punjab State and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. R.S. Bajaj, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.2099-C of 2018

Prayer in this application is for exemption from filing the true typed copies of judgment and decree dated 10.12.2014 passed by learned Civil Judge (Junior Division), Jalandhar, judgment and decree dated 17.08.2017 passed by learned ADJ, Jalandhar and grounds of appeal filed before learned ADJ, Jalandhar.

Application is allowed subject to just exceptions.

Exemption, as prayed for, is granted.

RSA No.850 of 2018

Challenge in this appeal is to the judgment and decree dated 10.12.2014 passed by the Civil Judge (Junior Division), Jalandhar, whereby the suit for declaration preferred by the appellant-plaintiff to the effect that the order dated 23.09.2011 passed by the Director General of Police, Punjab, Chandigarh, dismissing the appellant-plaintiff from service and the period from 24.12.2009 to the date of order, i.e. absence, which was ordered to be treated as without pay, is illegal and grant the appellant-plaintiff the consequential benefits with continuity of service on the post of Junior Assistant, has been dismissed,

appeal against which preferred by him has been dismissed by the Additional District Judge, Jalandhar, vide judgment and decree dated 17.08.2017.

2. It is the contention of learned counsel for the appellant that the appellant was working as a Junior Assistant in 80th Battalion, PAP, Jalandhar Cantt., when he as per the policy of the Government of Punjab, availed five years leave under the self-employment scheme with effect from 24.12.2004 to 24.12.2009. The said leave was granted by the competent authority. Prior to the expiry of the said period of leave, appellant sought extension of his leave with effect from 25.12.2009 to 25.02.2010 through a telegram. This extension of leave request was not decided and the appellant-plaintiff proceeded to avail of his leave on the assumption that there being no rejection on the said application, he has probably been granted the extension. The said application was ultimately rejected vide order dated 15.03.2010 by the Director General of Police, Punjab. He contends that the non-decision on the part of the respondents in deciding his application for leave cannot be taken adversely against him, especially when prior to the expiry of the period of leave, for which he had sought extension, he had not been intimated about the said rejection. The order, therefore, virtually is *non est* because the period for which he had sought extension has already expired. That apart, he asserts that even the departmental inquiry which had been ordered to be initiated against the appellant-plaintiff vide order dated 15.03.2010 by the Director General of Police and the consequential inquiry is in violation of the principle of natural justice as neither any notice has been served upon him nor has he been associated with the inquiry proceedings. The statutory

rules governing the service of the delinquent employee which having not been followed would amount to violation of the rules and, therefore, the proceedings which have been initiated and the consequential order of dismissal from service are unsustainable and deserve to be set aside. The Courts below have failed to appreciate these aspects and have, therefore, wrongly dismissed the suit preferred by the appellant-plaintiff. He, thus, prays that the present appeal be allowed and the judgments and decree passed by the Courts below set aside.

3. I have considered the submissions made by learned counsel for the appellant and with his assistance, have gone through the impugned judgments but do not find myself in agreement with the contentions as raised by the counsel for the appellant.

4. There is no dispute that initial leave for five years from 24.12.2004 till 24.12.2009 was duly sanctioned by the competent authority. He was, therefore, slated to join on 25.12.2009 but prior thereto, he sent a telegram for extension of leave by 60 days i.e. up to 25.02.2010. The contention of the counsel for the appellant that the non-communication of the rejection order within the time, for which the extension had been sought, would render the order which is passed subsequent thereto i.e. on 15.03.2010 unsustainable, cannot be accepted as merely because of submission of an application, there is nothing which has been mentioned in the rules which would give any indication that the assumption of acceptance thereof is attached thereto, rather it is the other way round i.e. unless the leave is sanctioned, an employee cannot proceed on leave. The order, therefore, of rejection of extension of leave cannot be faulted with on this count and the non-joining of the appellant-plaintiff on 25.12.2009 cannot be

accepted or cannot be said to be in consonance with the statutory rules. That apart, merely because an order which has been passed subsequent to the period of expiry of the leave, would not render the said order illegal if it is passed by the competent authority and that too, as per the statutory rules. Nothing has come on record which would indicate that the competent authority has wrongly rejected the application for extension of leave as it is not disputed that the said authority, which had passed the order, was competent to either grant extension of leave or to reject the same.

5. In the light of what has been held above that the appellant was required to report back for duty on 25.12.2009 on expiry of his leave for five years as the extension of leave was neither granted to him nor communicated, his absence from duty obviously amount to misconduct and, therefore, the order dated 15.03.2010 passed by the Director General of Police, initiating departmental inquiry against him for absence from duty cannot be faulted with. The evidence which has been brought on record would clearly indicate that on one of the occasions, notice which has been issued at his last known address, was duly served upon his wife and on another occasion, on his mother. Even a public notice was issued in the newspaper, therefore, it cannot be said that the appellant-plaintiff was not served in the departmental inquiry. The said service upon his wife and mother as also publication in the newspaper of the notice of the departmental inquiry calling upon him to join the same is as per the statutory rules and no fault, therefore, in due service upon the appellant-plaintiff can be found.

6. The judgments and decree, therefore, passed by the Courts below cannot be faulted with as they are based upon proper appreciation of

the pleadings, evidence on record and in consonance with the statutory rules.

7. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

8. No substantial question of law is involved in the present appeals. Therefore, finding no merit in the present appeal, the same stands dismissed.

November 5th, 2019
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes