

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

RSA 737 of 2004 (O&M)

Date of Decision: September 13, 2021

Sohan Pal

...Petitioner

Versus

Municipal Corporation Faridabad

... Respondent

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

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

Mr. M.K. Sood, Advocate
for the respondent.

FATEH DEEP SINGH, J. (Oral)

Appellant Sohan Pal in this regular second appeal is challenging the judgment and decree dated 30.09.2002 of the Court of learned Additional Civil Judge (Senior Division), Faridabad dismissing the suit and which order has merged and was upheld by the learned first Appellate Court of Additional District Judge vide impugned judgment and decree dated 03.06.2003. The plaintiff in his suit for declaration with consequential relief of mandatory injunction is seeking setting

aside of his order of termination from service with Municipal Corporation Faridabad where he at the relevant time was working as a **'Safai Karamchari'**.

Upon hearing Mr. R.S. Malik, Advocate for the appellant and Mr. M.K. Sood, Advocate for the respondent and upon perusal of records.

Admittedly, the plaintiff was appointed as **'Safai Karamchari'** vide appointment order dated 15.12.1977 and he during his service absented himself from 21.12.1996 to 28.02.1997 continuously uninterruptedly without intimation and sanction and as a consequence of which his services stood terminated, for which, he has come up in this civil suit in question challenging his termination order dated 28.12.98.

The defendant (now respondent) raised preliminary objections regarding locus standi, cause of action, concealment of facts and maintainability in the written statement. Respondents accept the fact of his appointment but claimed that he remained absent from duty from 01.01.1997 till 08.10.1997

without any intimation and during his explanation by the department he submitted a false certificate which showed his illness from 21.12.1996 to 28.02.1997 and therefore was contrary to his stand of feigning of illness, for which, a regular inquiry was held and the findings were given on 01.04.1998 to this effect and upon due adoption of process, his services stood terminated.

The trial Court framed the following issues:-

1. Whether the plaintiff is entitled to the declaration as prayed for? OPP.
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD.
3. Whether the plaintiff has no *locus standi* to file the present suit? OPD.
4. Whether the suit of the plaintiff is bad for mis-joinder and non joinder and necessary parties? OPD.
5. Relief.

In the instant case, the plaintiff examined himself as PW1 and the defendant examined DW1 Prem Parkash Astt. M.C.F. and DW2 Shri S.L. Gupta, SDO, M.C.F., NIT, Faridabad.

Plaintiff/appellant proved on record his appointment letter as Ex.P1, Medical Certificate issued by Ch. Hiralal Memorial Hospital as Ex.P2, application to S.C. Faridabad, Municipal Corporation dated 01.06.1997 as Ex.P3 and reply to demand notice dated 19.08.1998 as Ex.P4 whereas defendant/respondent proved charge-sheet dated 27.10.1997 as Ex.D1, reply to charge-sheet dated 07.11.1997 as Ex.D2, enquiry order dated 10.12.1997 as Ex.D3, enquiry report dated 01.04.1998 as Ex.D4, show cause notice dated 06.07.1998 as Ex.D5, order granting personal hearing dated 10.11.1998 as Ex.D6 and punishment order dated 28.12.1998 as Ex.D7.

It is subsequent thereto adverse findings dated 30.09.2002 were recorded by the learned Additional Civil Judge (Senior Division) Faridabad dismissing his suit and which were upheld by the first appellate Court vide judgment and decree

dated 03.06.2003 and that is how the appellant is before this Court.

The first and foremost question that has cropped up is that the plaintiff remained absent from 21.12.1996 till 28.02.1997 for a period of two months and seven days when medical certificate Ex.P2 shows illness from 21.12.96 to March 1997. The onus of issue No. 1 was placed upon the plaintiff who has not brought on record any substantial evidence to show his illness during the relevant period or having intimated his employer about his illness and calling for leave during that period. The trial Court had categorically held that the plaintiff has failed to place on record any document to show that he has intimated the department before proceeding on leave or any supporting evidence to that effect. The lone document of medical certificate issued by Chaudhary Hira Lal Memorial Hospital, Chhaju Nagar, Palwal which was issued on 28.02.1997 and which is contrary to the stand of the plaintiff who claims that he has moved application for joining his

services between 01.01.1997 to March 1997 but has failed to enumerate the date or place on record copy of the said application. The document of the plaintiff Ex.P-3 shows that on 01.06.1997 he submitted his joining report and unable to explain his absence from 01.03.1997 to 30.05.1997 and, therefore, clearly illustrates that he remained absent for continuously for 03 months without any intimation to his employer or seeking any approval for his leave.

Even otherwise it is a mere illegible photostat copy of which has not been proved as per law of Evidence and mere exhibition of a document does not dispenses with its proof. So the same has not been proved on record.

Mr. R.S. Malik, Advocate for the appellant has placed reliance on **Chhel Singh Vs. M.G.B. Gramin Bank Pali and others 2014(142) FLR 624, Rameshwar Dayal Vs. State of Haryana 1999(4) S.C.T. 79, State of Punjab and others Vs. Mohinder Singh 2005(12) SCC 182 and Constable Om Parkash Vs. State of Haryana and others 1995(3) S.C.T. 170**

to drive home the point that a single act of misconduct does not entail throwing out the petitioner from his service. The medical certificate as has been pointed out by the counsel for the respondent pertains to period 21.12.1996 to 28.02.1997 whereas admittedly the appellant/plaintiff remained absent w.e.f. 01.01.1997 rather contradicts the matter for the plaintiff/appellant and his total insolence shown into the matter by firstly not intimating the department/office for his absence or seeking leave or substantiating his illness by any substantial means undermines the case of the plaintiff/appellant. The plaintiff has been served with show cause notice with the department and, thereafter, an inquiry was held which after service of charge sheet Ex.D1 to which he has replied as Ex. D2 and enquiry order Ex. D3 and enquiry report Ex.D4 were dated 10.12.1997 and 01.04.1998 and subsequent show cause notice Ex. D5 issued on 06.07.1998 why proposed punishment be not awarded and vide Ex. D6 he was awarded opportunity of personal hearing and thereafter punishment order dated

28.12.1998 was passed dismissing him from service.

Mr. R.S. Malik, learned counsel for the appellant could not convince this Court of any illegality or perversity in the findings or how the principle of “audi alteram partem” was not followed which would go to the roots of the inquiry findings and affect the impugned order of dismissal/termination. Both the Courts below have duly considered the case of the parties and has highlighted the reasons for arriving at a justifiable conclusion which could not be dispelled by any means by the counsel for the appellant. The appellant had misconducted himself and is guilty of serious charges of wilful absence from duty for a long period of time which remained unsubstantiated. It is settled law that Court cannot evaluate such findings of enquiry as a Court of appeal and only broader principles of law needs to be looked into and there appears to be no such illegality or perversity in these findings.

There has been concurrent findings of the two Courts below and this Court does not feels inclined to show any

indulgence.

The appeal being without merits stands dismissed.

September 13, 2021
amit rana

(FATEH DEEP SINGH)
JUDGE

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No