

In the High Court of Punjab and Haryana, at Chandigarh**Regular Second Appeal No. 616 of 2019 (O&M)****Date of Decision: 11.12.2023**

Hari Singh

... Appellant(s)

Versus

General Manager, Punjab Roadways, Nawanshahr and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.Present: Mr. Balwinder Singh Sehra, Advocate
for the appellant(s).**Anil Kshetarpal, J.****CM-1412-C-2019**

1. For the reasons stated in the application, the same is allowed and delay of one day in filing the appeal is condoned.

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2. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.

3. In this regular second appeal, the correctness of the concurrent findings of facts, arrived at by both the Courts below, is assailed by the plaintiff.

4. In order to comprehend the issue involved in the present case,

the relevant facts, in brief, are required to be noticed. The plaintiff joined

the services as a Conductor in the Punjab Roadways on 04.02.1976. It is alleged that in the year 1996, the plaintiff's wife suddenly fell ill and he applied for the leave, which was sanctioned to him. After availing four years of sanctioned leave, he again applied for the leave which never got sanctioned. Ultimately, the department had dismissed him from the service vide order dated 03.08.2006 which, in appeal, was upheld on 03.01.2007. The matter was taken up by the employee with the Secretary of the concerned department, which also got dismissed on 21.01.2013.

5. The defendants, while contesting the suit, claimed that leave without pay was sanctioned to the appellant w.e.f. 14.12.1999 to 13.12.2000. However, thereafter, the appellant did not join. The telegrams sent to the appellant also got no response. Ultimately, the charge sheet was issued against him. The disciplinary inquiry was initiated by the department and on the receipt of the report, a show cause notice was issued. When the show cause notice was served on the appellant through Sh. Rajpal, Peon, the fact of his going abroad came to the notice of the competent authority. Ultimately, a public notice was issued and major penalty was imposed upon him. Thereafter, the plaintiff requested for permitting him to join or seek voluntary retirement.

6. Both the Courts below, on appreciation of the evidence, have concurrently come to a conclusion that sufficient opportunity was afforded to the appellant, however, he did not participate in the departmental inquiry. It has also been found that the department was left with no choice but to dismiss the appellant from service as he was found to have absented from duty continuously for sufficiently long time.

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7. The learned counsel representing the appellant contends that the officer, who passed the order of punishment as a disciplinary authority, also passed the appellate order in the year 2013. On a court question, the learned counsel representing the appellant admits that this issue was taken up before both the Courts below.

8. In the considered opinion of this Court, the appellant, at the stage of Regular Second Appeal, cannot be permitted to take a new point which was never taken up before both the Courts below as considering new point at this stage might lead to the change in the nature of the case. In any case, it is evident that the appellant remained absent from duty for sufficiently long time and left India without seeking a prior permission.

9. Keeping in view the aforesaid facts, no ground is made out to interfere with the concurrent findings of facts arrived at by both the Courts below. Hence, the present appeal is dismissed.

10. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

December 11, 2023**“DK”**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No