

2023:PHHC:102533

**1371 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-260-1993 (O&M)
Date of decision: 08.08.2023

Mohinder Kumar Mast

..Appellant

Versus

State of Punjab and another

.Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Akshay Bhan, Sr. Advocate with
Mr. Santosh Sharma and
Mr. Varun Sandhu, Advocates for the appellant

Mr. Sandeep Chopra, DAG, Punjab

ANIL KSHETARPAL, J (Oral)

1. The correctness of the concurrent findings of fact arrived at by the courts below is challenged by the plaintiff in this Regular Second Appeal. The plaintiff was removed from service on 01.12.1982, after serving him show cause notice, charge-sheet, inquiry report and the order of disciplinary authority. It has come on record that after availing the sanctioned leave from 10.03.1977 to 09.04.1977, he never reported for duty.

2. Both the courts have found that the appellant did submit an application on 25.04.1977 for sanctioning the leave from 01.05.1977 to 31.05.1977, however, the same was not sanctioned and the appellant did not return back. Both the courts have also found that the disciplinary proceedings were concluded in accordance with the procedure laid down.

3. Learned counsel representing the appellant submits that the order of removal from service is harsh, disproportionate to the

appellant's mis-conduct. He further submits that certain important documents were not supplied prejudicing the case of the appellant.

4. On a Court question, the learned counsel representing the appellant admits that the contention of the appellant with regard to the punishment being harsh was never raised before the courts below. Even otherwise, the scope of interference of the Court in the quantum of punishment is limited unless it is established that the punishment, so awarded, is shockingly disproportionate. In the present case, as noticed above, after availing the sanctioned leave for 20 days between 10.03.1977 to 09.04.1977, the appellant never reported back. His application for grant of sanction of leave beyond the leave for a period of one month of May, 1977, ipso facto would not justify his absence particularly, when it was never sanctioned. Hence, there is no substance in the first argument.

5. As regards the second argument, it may be noted that during the inquiry, the appellant did file an application for calling certain documents, however, thereafter he absented. The statements of witnesses were recorded ex-parte against him. Subsequently, the appellant appeared before the inquiry officer and made a prayer for recall of the witnesses, which was allowed and the witnesses were cross-examined by the appellant. At that stage, he neither pressed that application nor asked for any record even when the witnesses were cross-examined.

6. Keeping in view the aforesaid facts, it is now too late for the appellant to contend that he was denied reasonable opportunity. The appellant has failed to show any prejudice caused to him.
7. Hence, no ground to interfere with the concurrent findings of fact has been made out.
8. Dismissed.
9. All the pending miscellaneous applications, if any, are also disposed of.

08.08.2023

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE