

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

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2023:PHHC:123437

RSA-1615-1992

Date of decision: 20.09.2023

JAI BHAGWAN

..Appellant

Versus

STATE OF HARYANA

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.K. Malik, Sr. Advocate
with Mr. Sandeep Dhull, Advocate
for the appellant.

Ms. Vibha Tewari, AAG, Haryana.

ANIL KSHETARPAL, J(Oral)

The findings of the fact arrived at by the First Appellate Court while reversing the judgment and decree passed by the trial Court is assailed by the plaintiff in this second appeal. The First Appellate Court has found that the management received various reports of the absence of the appellant on previous occasions. On two occasions, he was warned. Despite that, he was absent for a period of six months in ignorance of the warning. After issuance of chargesheet, the appellant has admitted that he could not send the application for grant of leave. The Inquiry Officer has submitted a report that the charges against the appellant are proved. Ultimately, the disciplinary authority terminated his service.

This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

On 19.09.2023, after hearing the learned counsel representing the parties, the following order was passed:-

“The learned Senior counsel representing the appellant submits that since the period of absence was treated as extra ordinary leave therefore, the misconduct is deemed

to have been condoned. He relies upon the judgment passed in State of Punjab Vs. Rur Singh (died) through his LRs, 2002 (2) SCT 60 & Haryana State and others Vs. Rishal Singh, RSA-1065-2001, decided on 21.04.2015.

The attention of the learned Senior counsel representing the appellant has been drawn to the judgment of the Supreme Court in State of Madhya Pradesh Vs. Harihar Gopal, 1969 SLR (SC) 274 & State of Punjab and others Vs. Charanjit Singh, 2003 AIR (Supreme Court) 4317.

He prays for some time to study the same before further assisting the Court.

List on 20.09.2023, in the urgent list.”

The learned Senior counsel representing the appellant fairly submits that in view of the two different Supreme Court judgments noticed in the order dated 19.09.2023, it will not be possible for him to contend that the period of absence stood condoned merely because the disciplinary authority while passing the punishment order directed that the same be treated as a leave of the kind due. However, he submits that the appellant remained absent for a small duration of six months and therefore, it is not a grave misconduct, which should result in dismissal from service.

This Court has considered the submissions of the learned counsel representing the appellant.

It is evident from the judgment of the First Appellate Court that the appellant used to remain absent quite frequently. He was warned on two occasions previously. Still, the appellant did not improve his way of work. In these circumstances, this Court does not find it appropriate to grant any indulgence to the appellant.

Hence, dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

September 20th, 2023
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(ANIL KSHETARPAL)
JUDGE

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