

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

110

2023:PHHC:161102

**RSA-1426-1996 (O&M)
Date of decision: 15.12.2023**

STATE OF PUNJAB & ANR.

..Appellants

Versus

JIWAN LAL

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikas Arora, AAG, Punjab.

Mr. V.K. Kataria, Advocate
for the respondent.

ANIL KSHETARPAL, J(Oral)

1. On 28.11.2023, the following order was passed:-

“1. In this Regular Second Appeal, the correctness of the order passed by the First Appellate Court reversing the judgment of the trial court, while setting aside the order by which the appellant was dismissed from the service, has been assailed.

2. Learned counsel representing the appellants contends that the respondent remained absent from duty and he did not join despite the official letters dated 14.09.1983 and 27.09.1983. Subsequently, at his request, the respondent was transferred from Deep Singh Wala Hospital to the Veterinary Hospital, Bilaspur and vide order dated 05.01.1984 the respondent was relieved from the Deep Singh Wala Hospital to join at the Veterinary Hospital, Bilaspur. However, subsequently, at the request of the respondent's wife, the transfer order was cancelled but the respondent did not report for the duty either at the Veterinary Hospital, Bilaspur or Deep Singh Wala Hospital. On 06.12.1984, an effort was made to serve the respondent with a charge-sheet by a registered letter, however, it was received back unserved with the report that the address of the respondent was not correct. The General Postmaster, Faridkot, was directed to effect the service on the respondent by deputing a special Postman, who reported that the respondent has shifted to Guruharsahai, but his exact address was not known. Forced by the circumstances, a notice was published on 09.01.1985 in the daily newspaper namely Ajit (Punjabi) and on the basis of the inquiry report, the order dispensing with the respondent's service was passed. He submits that in these circumstances, the First Appellate

Court was not correct in setting aside the termination order, particularly when the respondent has failed to prove any prejudice caused to him. It may be noted here that on 01.07.1996, the execution of the judgment was stayed and the respondent has already crossed the age of superannuation.

Learned counsel representing the respondent prays for some time to assist the Court.

List on 06.12.2023, in the urgent list.”

2. The learned counsel representing the parties have been once again heard at length.

3. The learned counsel representing the appellants submits that the respondent (plaintiff) was found absent from the duty without sanction of leave with effect from 06.01.1984. Ultimately, notice was sent to the employee by registered post, however, the respondent never came back. A sincere attempt was also made to serve him through a public notice in the newspaper. However, the respondent did not join the inquiry. Ultimately, an ex parte inquiry report was submitted and the disciplinary authority passed the order terminating respondent's service on 08.03.1989. He also relies upon a Larger Bench judgment passed in **Managing Director, ECIL, Hyderabad Vs. B. Karunakar, 1993(4) SCC 727**, to contend that the concept of supply of inquiry report and seeking explanation from the employee came into effect from the date of the judgment passed in **Union of India Vs. Mohd. Ramzan Khan, 1991(1) SCT 111**. He submits that in this case, the order of punishment was passed on 08.03.1989, whereas, the judgment of the Supreme Court in **Mohd. Ramzan Khan's case (supra)** was announced on 20.11.1990.

4. On the other hand, the learned counsel representing the respondent submits that it was incumbent on the disciplinary authority to

provide inquiry report along with the show cause notice so as to enable the respondent to furnish his explanation.

5. This Court has considered the submissions of the learned counsel representing the parties.

6. On a perusal of the judgment passed by the First Appellate Court, it is evident that the Court has drawn the conclusion on the ground that the disciplinary inquiry report has not been supplied to the respondent and even if the address of the respondent was not available, still supply of copy of the report was mandatory.

7. On a careful reading of the judgment passed in **B. Karunakar's case (supra)**, it is evident that the judgment passed in **Mohd. Ramzan Khan's case (supra)** was made applicable prospectively. The aforesaid judgment was passed on 20.11.1990. Furthermore, it is evident that the department has made all possible attempts to serve the respondent. Initially, the notice was sent through a registered letter, subsequently, General Postmaster, Faridkot, was directed to depute a special postman, who reported that the respondent has shifted to Gurusahib, however, his exact address was not known. In these circumstances, the notice was published in the newspaper. Still, the respondent never appeared before the disciplinary authority.

8. Keeping in view the aforesaid facts, the judgment passed by the First Appellate Court is not sustainable. The principle of natural justice cannot be extended beyond the limit. Here is a case, where the respondent not only absented from his duty but also changed his address without sending any intimation to the office. All the efforts made by the department

to serve him with notice, miserably failed. The respondent never bothered to report back on his duty for a long period of five years i.e. between 06.01.1984 to 08.03.1989.

9. Hence, the judgment passed by the First Appellate Court is set aside.

10. The appeal stands allowed.

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

December 15th, 2023

(ANIL KSHETARPAL)
JUDGE

Ay

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