

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 3797 of 2019 (O&M)

Date of Decision: 04.09.2023

Jail Warder Balwinder Singh

... Appellant(s)

Versus

The State of Punjab and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Puneet Kumar Bansal, Advocate
for the appellant(s).

Mr. Ajit Singh Natt, Assistant Advocate General,
Punjab, for the respondents.

Anil Kshetarpal, J.

CM-10249-C-2019

1. For the reasons stated in the application, the same is allowed and delay of 1073 days in filing the appeal is condoned.

RSA-3797-2019

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. The correctness of the concurrent findings of facts, arrived at by both the Courts below, is assailed in this second appeal filed by the plaintiff.

4. The plaintiff's suit, which was instituted on 11.06.2009 for the grant of decree of declaration to the effect that the order dated 29.08.1996

dismissing him from service is illegal, null, void and not binding, has been

dismissed. In fact, initially, the appellant was found asleep in the intervening night of 5th/6th April, 1993. After the disciplinary inquiry, he was reinstated, while taking a lenient view, as his one increment with cumulative effect was stopped. However, thereafter, the appellant absented himself from the duty w.e.f. 11.02.1995. The statement of the charges was issued to the appellant, but no reply was filed. He did not even join the disciplinary inquiry. On the basis of the report, the Disciplinary Authority dismissed the appellant from service vide order dated 29.08.1996. After sleeping over the matter for a period of nearly 13 years, a suit was filed. Thus, both the Courts below have dismissed the suit on merits as well as on the ground that it is barred by the period of limitation.

5. The learned counsel representing the appellant contends that the order removing the appellant from service was never served upon the appellant.

6. This Court has considered the submissions. On a court question, the learned counsel representing the appellant admits that there is no record to prove that the appellant has ever made an attempt to report back on duty after 11.02.1995.

7. 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.

(Anil Kshetarpal)
Judge

September 04, 2023

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No