

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 5186 of 2019 (O&M)

Date of Decision: 01.09.2023

Pardeep Kumar

... Appellant(s)

Versus

The State of Haryana and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Lokesh Sharma, Advocate
for the appellant(s).

Anil Kshetarpal, J.

1. 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*.

2. The correctness of the concurrent findings of facts, arrived at by both the Courts below, is challenged in this second appeal. The appellant also prays for condoning the delay of 759 days in filing the appeal and 101 days in re-filing the appeal. The prayer of the appellant for condoning the delay shall be considered, if required.

3. In order to comprehend the controversy involved in this appeal, some facts, in brief, are required to be noticed. The appellant's suit for the grant of decree of declaration that the order, vide which he was dismissed from service on 18.06.2009, which, in appeal, was upheld by the Appellate Authority vide order dated 22.04.2011, is illegal, null and void. He was appointed as a Jail Warder on 01.10.2003. However, he was found absent from duty from 10.05.2006. Since then he did not resume back his duty, therefore, a memorandum of charge sheet was served upon him. Ultimately, the Inquiry Officer was appointed and on receipt of the report, the

Regular Second Appeal No. 5186 of 2019 (O&M)

Disciplinary Authority ordered his dismissal.

4. Both the Courts below have also found that the appellant was absent from duty continuously for a period of two years, eight months and 28 days. He was a member of the disciplined force.
5. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book.
6. The learned counsel representing the appellant contends that the respondents have discriminated with the appellant as various other employees are let off lightly and the appellant has been dismissed from service. He submits that the appellant’s application for the grant of leave was never considered. On being confronted, the learned counsel admits that both the points were never pressed before both the Courts below. In the regular second appeal, the appellant cannot be permitted to take up a new ground.
7. Moreover, the scope of interference in the concurrent findings of facts, arrived at by both the Courts below is limited. The appellant has failed to make out a case for interference. Consequently, the present appeal is dismissed on merits. Hence, no further order on the applications for condoning the delay of 759 days in filing the appeal and 101 days in re-filing the appeal is required to be passed.

(Anil Kshetarpal)
Judge

September 01, 2023
“DK”

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