

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 1694 of 2018 (O&M)

Date of Decision: 28.08.2023

Tejvir Singh Dua

... Appellant(s)

Versus

The State of Punjab and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Ms. Promila Nain, 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 assailed in this regular second appeal filed by the plaintiff.

3. The plaintiff, resigned from the post of the Assistant District Attorney. The resignation was accepted on 26.08.2006. Thereafter, he filed a suit on 23.09.2010 for the grant of declaration that he continues to be in service. It has come on the record that the appellant was recruited as a Assistant District Attorney in the year 1992 and remained posted at Patiala,

for a period of five years. However, in the year 1997, he was sent on

deputation with the Central Bureau of Investigation, where he remained posted till the year 2001. Thereafter, he was again posted at Patiala, where he worked upto the year 2003. Thereafter, he was sent on deputation to the office of the Advocate General, Punjab, Legal Cell, Punjab Bhawan, New Delhi. All the time, the appellant was insisting that he should be kept in New Delhi because his family is settled in Delhi. The appellant applied for three years' leave under the Self-employment Scheme, which was not accepted. Since then the appellant stopped coming to the office, therefore, a charge-sheet was sought to be served upon the appellant. However, the same could not be served. Ultimately, the appellant was served with a charge-sheet through a public notice. On 03.04.2006, the appellant sent a communication explaining his responsibilities towards his family and expressed that he cannot leave Delhi. Ultimately, in the penultimate para, he submitted as under:-

“I humbly submit that if it is not possible for the government to permit me to proceed on leave as per the request or/and even allow me personal hearing to explain my possession and produce the relevant material, the government may treat this communication as my resignation (under protest) with immediate effect.”

This was followed by yet another communication (Ex.PW.1/17). The penultimate para thereof reads as under:-

“Once again, I humbly request you to kindly accept my resignation and withdraw the above said show cause notice dated 28.03.2006 which has never been served upon me and

not only illegal but also lacks due procedure and process.”

4. The government, faced by the circumstances, accepted the appellant's resignation in the year 2008. In these facts, both the Courts below dismissed the plaintiff's suit.

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 appellant never voluntarily submitted his resignation. She submits that the appellant was discriminated as various other employees were granted the self-employment leave for a period of three years, however, the request of the appellant for the same was rejected.

7. This Court has considered the submissions. From the letters (Ex.PW.1/12 and Ex.PW/1/17) as noticed above, it is evident that the appellant never wanted to leave Delhi. He was an employee of the Punjab Government. He also stopped coming to the office and refused to attend his duties, although, his application for the grant of self-employment leave for a period of three years was never sanctioned. Moreover, it has come on the record that previously also, the appellant, after taking one or two casual leave, used to seek extension of the leave by sending the telegrams.

8. In these circumstances, the government has left with no other option, but to accept the appellant's resignation. The appellant is a law graduate. He has worked on the post of a Assistant District Attorney for a sufficient length of time. Hence, the resignation is not under any coercion

9. 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.

10. The miscellaneous application(s) pending, if any, shall stand disposed of.

August 28, 2023
“DK”

(Anil Kshetarpal)
Judge

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No