

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 30 of 2018 (O&M)

Date of Decision: 20.09.2023

Satinder Kaur

... Appellant(s)

Versus

State of Punjab and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Prateek Pandit, Advocate
for the appellant(s).

Mr. Ajit Singh Natt, Assistant Advocate General,
Punjab.

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 appellant before this Court is residing abroad for the last 24 years. She assails the correctness of the judgment and decree passed by the First Appellate Court. In fact, her suit for the grant of decree of declaration that her dismissal from service, vide order dated 07.11.2007 passed by the Disciplinary Authority, was partly decreed. However, the First Appellate Court has dismissed the suit in toto.

3. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed. The plaintiff was appointed as a Medical Officer in the year 1984. On 01.12.1999, she

absented herself from duty and migrated to some other country. She did not

return for quite some time. A charge sheet was prepared. However, the State of Punjab, for the reasons best known, dropped the charge sheet issued on 21.09.2000 while sanctioning her leave from 01.12.1999 to 14.11.2001 vide order dated 10.10.2000. This was a conditional order and one of the condition was that her request for extending the further leave shall not be entertained. However, she applied for leave w.e.f. 15.11.2001 to 14.11.2003 and then from 15.11.2003 to 14.11.2005. Faced with the aforesaid situation, a fresh charge sheet was served on her on 14.10.2005. On 27.12.2005, an Inquiry Officer was appointed who submitted his report on 20.04.2006. She was afforded an opportunity to file the representation which she filed through her attorney on 07.07.2006. Ultimately, the Disciplinary Authority dismissed the appellant from service vide order dated 07.11.2007.

4. Heard the learned counsel representing the appellant at length and with his able assistance, perused the paper-book.

5. The learned counsel representing the appellant submits that the appellant did submit a reply to the second show cause notice through her attorney which was not considered by the Punishing Authority, therefore, in view of the judgment passed by the five Judges Bench of the Supreme Court in *Managing Director, ECIL, Hyderabad v. B. Karunakar (1993) 4 SCC 727*, the order passed by the Punishing Authority is not sustainable. He further submits that the charge sheet was served on the appellant on 27.12.2005 and on the same day, an Inquiry Officer was appointed.

6. This Court has considered the submissions. While deciding a case, the Court is required to examine the conduct of the appellant. The appellant was a Medical Officer. She left the country in the year 1999

without leaving her postal address with her employer and without sanction of the leave. But for occasional visits, she has never returned to India during the period of 24 years. Moreover, on 10.10.2000, the State of Punjab sanctioned the leave by imposing a condition that the period of leave shall not be further extended. Still, she applied for the extension of his leave for two years from the year 2001 to 2003 and thereafter, she also applied for the extension for a period of another two years from the year 2003 to 2005. Moreover, it has been recorded by the First Appellate Court that the charge sheet was served upon the appellant on 14.10.2005. The learned counsel representing the appellant has been asked to furnish whatever explanation she wants to furnish for her absence during all this while. The learned counsel submits that the appellant has no justification.

7. The Court cannot apply the law as an abstract proposition without considering the facts of the case. Here is a case where the appellant is not interested in coming back to the country. In such circumstances, this Court does not find it appropriate to interfere.

8. Keeping in view the aforesaid facts, no ground is made out to interfere with the concurrent findings of facts arrived at by the First Appellate Court. Hence, the present appeal is dismissed.

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

(Anil Kshetarpal)
Judge

September 20, 2023

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No