

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 6392 of 2018 (O&M)

Date of Decision: 10.10.2023

Joginder Singh Malhi

... Appellant(s)

Versus

State of Punjab and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Manthan Pathania, Advocate
for Mr. Bikramjit Singh Bajwa, Advocate
for the appellant(s).

Mr. Vikas Arora, Assistant Advocate General,
Punjab.

Anil Kshetarpal, J.

CM-17968-C-2018

1. For the reasons stated in the application, the same is allowed and delay of 53 days in filing the appeal is condoned.

RSA-6392-2018

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, after getting his leave sanctioned for a period of

nearly one month and six days in the year 1992, left for the United States of America to attend his cousin's marriage. Thereafter, he never returned back. He applied for the further extension of the leave sanctioned to him, which was rejected. As per the condition No. 16 of the letter sanctioning the leave, the State was entitled to take disciplinary action against him of termination of his service if the appellant does not return after the sanctioned period of leave is over. Since, factually, the appellant did not return, hence, a charge sheet was sent to the appellant on the address given by him in the application. He did not file any reply thereto. Ultimately, a disciplinary inquiry was initiated. He was sought to be served with the notice of the charge sheet by publishing it in the newspapers, namely Indian Express, Nawan Zamana and Dainik Veer Partap (Hindi). Ultimately, the Disciplinary Authority ordered dismissal of the appellant from service on 10.07.1997. The appellant filed a suit on 30.07.2014 to assail the correctness of the order dated 10.07.1997. Both the Courts below, on appreciation of the evidence, have concurrently found that the appellant has correctly been dismissed from service.

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

6. The learned counsel representing the appellant submits that atleast the pensionary benefits be granted to the appellant because he served the department for a period of 16 years.

7. This Court has considered the submissions. The learned counsel representing the appellant has failed to draw the attention of this Court to any error in the judgments passed by both the Courts below. Once the

appellant was dismissed from service, he is not entitled to any pensionary benefits.

8. 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.

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

(Anil Kshetarpal)
Judge

October 10, 2023
“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No