

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 554 of 2020 (O&M)

Date of Decision: 11.08.2023

Jaswinder Kumar

... Appellant(s)

Versus

The State of Punjab and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. R.S.Bajaj, Advocate
for the appellant(s).

Mr. Sandeep Chopra, Deputy 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 plaintiff challenges the findings of fact arrived at by the First Appellate Court which resulted in reversing the judgment of the trial Court.

3. In order to comprehend the issue, some relevant facts, in brief, are required to be noticed. The plaintiff has filed a suit for grant of decree of declaration to the effect that the order dated 09.10.2007, passed by the Senior Superintendent of Police, Jalandhar, dismissing him from the service,

which was affirmed in appeal by the Deputy Inspector General of Police,

Jalandhar Range, Jalandhar, on 13.01.2014, is illegal, null and void. While working as a Constable, he applied for ex-India leave for a period of 109 days commencing from 13.01.2006 to 30.04.2006, which was sanctioned on the condition that if he would not return, he shall be treated to have abandoned his job. After availing the sanctioned leave, he applied for its extension on the medical grounds, which was rejected. The disciplinary authority initiated the proceedings against the appellant. The Enquiry Officer was appointed. The various notices, sent to the plaintiff, were received by his mother and brother. The Enquiry Officer found the charges levelled against the appellant are proved. A show cause notice sent by the Senior Superintendent of Police, Jalandhar (the disciplinary authority) was also received by the plaintiff's mother. Ultimately, the appellant was dismissed from his services on 09.10.2007. The appellant claims that he came to know of the dismissal order in the year 2013. Thereafter, he filed a suit on 14.11.2014. The First Appellate Court, on the preponderance of probabilities, has found that in fact, the appellant himself abandoned his job.

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 contends that the trial Court found that no personal notice was served by the disciplinary authority or the Enquiry Officer to the appellant, therefore, the departmental enquiry is bad in law.

6. This Court has considered the submissions of the learned counsel representing the appellant. It is not disputed by the learned counsel

that while granting an ex-India leave, it was specifically stipulated that if the

appellant would not return on the completion of the sanctioned leave, he will be deemed to have abandoned his job. Moreover, after a period of seven years, the appellant, for the first time, came back to India and filed the suit. It is not the case of the appellant that his mother and brother are inimical to his interests.

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

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

(Anil Kshetarpal)
Judge

August 11, 2023

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No