

In the High Court of Punjab and Haryana, at Chandigarh**Regular Second Appeal No. 14957 of 2018 (O&M)****Date of Decision: 09.08.2023**

Bhagwan Dass (Deceased) through his Legal Representative
... Appellant(s)

Versus

The State of PUnjab
... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Maneet Kumar Arya, 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 correctness of the concurrent findings of fact are challenged by the plaintiff in this second appeal.

3. This suit was filed by late Sh. Bhagwan Dass on behalf of his son late Sh. Ramesh Chander, who was dismissed from service on account of his absence by the Senior Superintendent of Police, Gurdaspur, vide order dated 19.08.1982. Late Sh. Ramesh Chander was recruited as a Constable in the year 1977, however, he was found willfully absent from duty resulting

in the disciplinary proceedings which culminated into the order of dismissal

from service in the year 1982. The aforesaid order was upheld in appeal by the Deputy Inspector General of Police as well as the mercy appeal filed against the order was also dismissed. Thereafter, as noticed, the present suit was filed.

4. It is the case of the plaintiff that late Sh.Ramesh Chander was mentally unsound, therefore, the disciplinary proceedings initiated against him were void. In order to prove that fact, the plaintiff examined Dr.Romesh Kumar from the Mental Hospital at Amritsar. He proved that late Sh.Ramesh Chander remained admitted in the hospital between 22.10.1978 to 28.10.1978 i.e. a period of eight days. Except the aforesaid evidence, the plaintiff has failed to produce any other convincing evidence to prove that late Sh.Ramesh Chander suffered from any mental illness which did not permit him to report for duty. On the basis of the aforesaid findings of fact, both the Courts below dismissed the suit.

5. The learned counsel representing the appellant contends that this case has been remanded on two different occasions. He submits that the deposition of Dr.Romesh Kumar proves that late Sh.Ramesh Chander was mentally unsound.

6. This Court has considered the submissions. In the open court, the learned counsel representing the appellant has read over the statement of Dr.Romesh Kumar. It is evident that the total period of hospitalization of late Sh.Ramesh Kumar was eight days only. The order of punishment was passed in the year 1982 as he was found absent from the duty during the following period:-

“i) Then from 07.11.1977 to 19.03.1978, total 133 days

which was as leave without pay.

- ii) Then from 24.09.1979 to 1.12.1979, total 71 days, remained absent without permission.*
- iii) Then from dated 21.02.1980 to 29.07.1980, **total 178** days, absent without permission.*
- iv) After the passing of afternoon on 22.11.1981 to 1.12.1981 and then for the next two consecutive dates i.e till 3.12.1981, reported back on 3.01.1982.*
- v) The Ex. Constable was granted 15 days sanctioned leave without pay from 03.12.1981 to 17.12.1981 and was again sanctioned 15 days leave without pay from 18.12.1981 to 01.01.82, but reported back on 08.01.1982.*
- vi) Then on 13.02.1982 the appellant was transferred to P.S Shri Hargobindpur but marked his presence on 10.03.82 at 10-12 am. In this way absence of 1 month, 3 days, 3 hours and 37 mins.”*

7. Keeping in view the aforesaid facts, no ground is made out to interfere with the concurrent findings of fact arrived at by both the Courts below. Hence, the present appeal is dismissed.

(Anil Kshetarpal)
Judge

August 09, 2023
“DK”

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