

**RSA-1608-1993 (O&M)****-1-****IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH****(133)****RSA-1608-1993 (O&M)****Date of decision:- 15.05.2024****State of Punjab and another****... Appellants****Versus****Joginder Singh Badeshi (since deceased) through his LRs****...Respondents****CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present:- Ms. Amrita Garg, AAG, Punjab
for the appellants.

Mr. Puran Singh Hundal, Senior Advocate with
Mr. Gurparmeet Singh, Advocate
for the respondent.

**********SUVIR SEHGAL, J. (ORAL)**

1. Defendants are in second appeal before this Court challenging the concurrent finding recorded by both the Courts below.
2. Pledged case of the plaintiff-respondent is that he was working as an Inspector Audit and was placed under suspension on 31.03.1979. By order dated 05.02.1980, he was removed from service and his departmental appeal was summarily rejected on 21.01.1980. He filed a writ petition before this Court, which was accepted vide order dated 19.08.1981 and the matter was remanded to the appellate authority for deciding the appeal afresh by passing a reasoned order. A fresh order dated 11.03.1982 was passed by the appellate authority, rejecting the appeal, which on a writ petition filed by him, was set aside and the matter was again sent back for

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passing a fresh order within three months. It was observed by the High Court that a personal hearing be afforded to him. Appeal was re-examined by the Financial Commissioner Development and was disposed of vide order dated 29.02.1988, whereby the appellate authority came to the conclusion that the punishment of removal from service is harsh and instead imposed punishment of stoppage of one grade increment without cumulative effect. It was further ordered that the intervening period when the plaintiff was not on duty be treated as leave of the kind due. Plaintiff filed a suit for declaration challenging this order to the extent the intervening period has been treated as leave of the kind due and he has been denied the benefit of service and emoluments.

3. Upon notice, suit was contested by the defendants by filing a written statement, wherein various objections were taken. The factual averments were admitted by the defendants. It was submitted that the plaintiff is not entitled to the benefits of service from 13.03.1979 to 11.04.1988 when he remained away from duty. Plaintiff filed a replication re-asserting the averments of the plaint. Issues were struck by the Trial Court and by judgment dated 04.02.1992, suit was decreed. Defendants remained unsuccessful in the first appeal, which was rejected by the learned Additional District Judge, Amritsar by judgment dated 31.05.1993, resulting in the institution of the present appeal.

4. I have heard counsel for the parties and considered their respective submissions, besides examining the record with their able assistance.

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5. While accepting the plea of the plaintiff-respondent, the Courts below have relied upon Rule 7.3 (4) and 7.3 (5) of the Punjab Civil Rules, Vol.-1, Part-1, which are reproduced hereunder:-

“(4) In cases other than those covered by sub-rule (2) including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the authority exercising powers of appeal, revision or review solely on the ground of non-compliance with the requirements of clause (2) of article 311 of the Constitution and no further inquiry is proposed to be held, the Government employee shall, subject to the provisions of sub-rules (6) and (7), be paid such amount (not being the whole) of pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Government employee of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period as may be specified in the notice:

***Provided** that any payment under this sub-rule to a Government employee other than a Government employee who is governed by the provisions of the payment of Wages Act, 1936 (Act 4 of 1936) shall be restricted to a period of*



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three years immediately preceding the date on which order for re-instatement of such Government employee are passed by the authority exercising the powers of appeal, revision or review, or immediately preceding the date of retirement on superannuation of such Government employee, as the case may be.

(5) *In a case falling under sub-rule (4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose:*

Provided *that if the Government employee so desires such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall be converted into leave of any kind due and admissible to the Government employee.”*

6. A perusal of the above reproduced Rule 7.3(4) shows that where an order of dismissal, removal or compulsory retirement from service is set aside by the appellate or revisional authority solely on the ground of non-adherence to Article 311 (2) and no further enquiry is proposed to be held, the employee concerned has to be granted pay and allowances to which he would have otherwise been entitled to. Rule 7.3 (5) provides that the period

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of absence from duty, including the period of suspension, is to be treated as period spent on duty unless otherwise ordered by the competent authority. Proviso, thereto, provides that if the government employees, so desires, the period of absence from duty shall be converted into leave of any kind due and admissible to the employee.

7. The facts of the present case are, however, entirely different. Plaintiff-respondent was granted leave from 20.01.1979 to 28.01.1979, but his application for leave without pay from 29.01.1979 to 30.04.1979 was rejected and he was treated as absent from duty. He was placed under suspension and charge-sheeted for absence from duty and disobedience of orders of superior authority. A regular enquiry was conducted, plaintiff was found guilty of the charges and after considering the enquiry report, he was removed from service vide order dated 05.02.1980. The facts show that the question of breach of Article 311 (2) of the Constitution was not involved and order of dismissal of the plaintiff-respondent was passed on the basis of the report of an enquiry officer. The dismissal order was set aside by the appellate authority on 28.03.1988 as it was found to be harsh. While passing the order, the appellate authority considered the fact that plaintiff had remained out from service for more than nine years and in this background, it was ordered that the period from 11.03.1979 to 11.04.1988 shall be treated as leave of the kind due. It is, therefore, evident from the Rule 7.3 (4) and (5), *ibid*, did not come into play. Both the Courts below have erred in placing the reliance on the said provision while decreeing the suit. As the findings recorded by the Courts below are based on erroneous



appreciation of the service rules, they deserve to be set aside.

8. The judgment in Madan Gopal Gupta Versus The State of Punjab and others 1980 (3) SLR 361 is not applicable to the facts of the present case. Madan Gopal Gupta proceeded on leave without obtaining prior sanction. He was suspended, a charge-sheet was served on him, but was later re-instated with warning. No departmental enquiry was held to enquire into the allegations against him.

9. For the afore-going reason, appeal is allowed. Judgments and decrees passed by the Courts below are set aside and the suit filed by the plaintiff-respondent is dismissed throughout with no order as to costs.

10. Pending application, if any, stands disposed of.

(SUVIR SEHGAL)
JUDGE

15.05.2024
Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No