

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.2000 of 1992 (O&M)

Reserved On: 09.01.2024

Date of Order:31.01.2024

State of Haryana and others

.Appellants

Versus

Vijay Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms.Vibha Tewari, AAG, Haryana
Mr. Jaspal Singh Pannu, AAG, Haryana
for the appellants.

Mr. D.S.Patwalia, Sr. Advocate, with
Mr. Gaurav Rana, Advocate
for the respondent.

ANIL KSHETARPAL, J

1. In this regular second appeal, the correctness of the judgment passed by the first appellate court which in turn has reversed the judgment and decree passed by the trial court is assailed by the defendants (State of Haryana).

2. The respondent was dismissed from service on account of absence for a period of 82 days and the aforesaid order was affirmed by the trial court, however, the first appellate court has reversed the same and directed respondent's reinstatement with all consequential benefits. While admitting the appeal, no interim order was granted in favour of the defendant-State, however, the respondent although sent a representation for joining on 07.12.1992, however, never came forward to join or filed any execution petition. By now, he would have crossed the age of superannuation as he was recruited in the year 1982.

3. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed

4. After having been appointed as a Constable on 29.01.1981, he proceeded on a casual leave for a period of 7 days upto 15.01.1985. Thereafter, he applied for an extension of leave which was never sanctioned. Taking note of his continuous absence without permission the disciplinary proceedings were initiated and the statement of charge-sheet was issued and the Enquiry Officer was nominated. In the disciplinary inquiry, the State of Haryana examined Sh. Mange Ram, OASI, Sh. Ram Kumar, MCH and Sh. Phool Kanwar, OASI. The respondent was granted an opportunity to cross examine the witnesses, however, he refused. During the course of disciplinary proceedings, the defendant claimed that he was under treatment from Safdarjung Hospital. He produced medical certificate reflecting that he got treatment from Dr. Parmod Kumar, Safdarjung Hospital, New Delhi from 04.01.1985 to 06.04.1985. The Enquiry Officer by deputing an official got the aforesaid certificate checked. It was reported by the hospital that the aforesaid certificate seems to be fictitious. Thereafter, the respondent said to examine Dr. Chaudhary Sube Singh, from Safdarjung Hospital. Repeated opportunities were given, however, the respondent failed to produce Dr. Chaudhary Sube Singh. The Enquiry Officer also from an official checked this fact and it came to the notice that in Safdarjung Hospital no doctor with the name of Dr. Chaudhary Sube Singh is working. Hence, the charges were found to be correct and the report was submitted. Thereafter, a show cause notice was issued to the respondent which was duly replied. It was stated in the reply that all documents with regard to disciplinary inquiry are not traceable as they were lost on Hansi Bus Stand and requested for supply of

fresh copy which was duly supplied. It was stated in the reply that he has been getting treatment from Dr. Parmod Kumar and he submitted a list of three witnesses, namely, Chaudhary Sube Singh, Laboratory Technical, Sh. Ramesh Kumar and Dr. Parmod Kumar, however, their statements were not recorded. The disciplinary authority after taking into account the various events which have taken place came to the conclusion that the charge against the respondent has been proved and he was absent from duty without any sufficient cause. Hence, he was dismissed from service. The plaintiff filed a civil suit which was dismissed. However, the first appellate court has reversed the judgment and decree passed by the trial court, by recording the following reasons:-

- (1) The respondent was not associated with the inquiry.
- (2) The inquiry file has not been produced.
- (3) The proper opportunity has not been granted to the respondent.

5. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book along with the requisitioned record.

6. It may be noted here that the scope of interference in the disciplinary inquiry which is followed by an order of punishment for alleged misconduct against a public servant is limited and the court is not expected to interfere unless the procedure as prescribed under the rule has not been followed or the inquiry was not held by the competent authority or the finding and conclusion is based on no evidence. Reliance in this regard can be placed on a recent judgment of the three Judge Bench of the Supreme

Court in **Deputy General Manager (Appellate Authority) vs. Ajai Kumar**

Srivastava, (2021) 2 SCC 612.

7. This court has carefully examined the requisitioned trial court record. It is evident that the inquiry report is Ex.P4. In the aforesaid report, it has been specifically recorded that repeated opportunities were given to the respondent to produce Dr. Parmod Kumar or Dr. Chaudhary Sube Singh. However, the respondent failed to produce them. The Inquiry Officer in order to verify the facts got the veracity of medial certificate examined from Safdarjung Hospital. It was reported that the medical certificate is fictitious. Subsequently, the respondent changed his stance. He claimed that he was treated by a Dr. Chaudhary Sube Singh, however, he failed to produce the evidence in regards to the same. The Inquiry Officer himself went to Safdarjung Hospital and requested Sh. Vijay Singh to get the statement of Dr. Chaudhary Sube Singh or identify where is his clinic, however, the respondent failed. Still the respondent was granted five days adjournment to produce the evidence, however, the respondent failed. Thus, it is evident that the conclusion of the first appellate court that the respondent was not associated is not correct. In fact, the statements of all the three witnesses are also part of the trial court record. It is specifically recorded that the respondent despite opportunity to cross-examine the witnesses refused to avail the same. In these circumstances, it was not appropriate for the first appellate court to set aside the punishment order on the ground that the inquiry file has not been produced. The inquiry file contained the charge-sheet, the reply submitted by the respondent, the statements of the witnesses and the report. The statement of charges is Ex.P4, whereas show cause notice is Ex.P2. The statement of allegation is Ex.P3. The inquiry report is Ex.P4. The final order is Ex.P5. The order in the appeal filed by the

respondent is Ex.P6. Even the revision petition filed by the respondent before Inspector General of Police is Ex.P8 and the order passed by the Director General of Police, is Ex.P9. Thus, the all material documents have already been produced, hence, non production of inquiry file is not necessary in the facts and circumstances of the present case. Moreover, the respondent has failed to show any prejudice.

8. Furthermore, it is evident that the respondent has been taking factually incorrect stand at more than one occasion. In the Court, he examined Ayurvedic Medical Practitioner, who proved that the respondent was under his treatment for three to four days.

9. Keeping in view the aforesaid facts and discussion, it is evident that the reasons recorded by the first appellate Court while reversing the judgment passed by the trial court are erroneous and therefore, set aside. The judgment of the trial court is restored. Resultantly, the plaintiff's suit stands dismissed accordingly.

10. All the pending miscellaneous applications, if any, are also disposed of.

31st January, 2024
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	:YES/NO
Whether reportable	:YES/NO