

CWP-19065 of 1996

2024:PHHC:165664



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-19065 of 1996

Reserved on: 19.11.2024

Pronounced on: 09.12.2024

The Punjab State Cooperative Agricultural Development Bank Ltd.

.....Petitioner

Versus

The Additional Registrar (General), Cooperative Societies, Punjab and
another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. H.S. Deol, Advocate,
for the petitioner.

Mr. Surya Kumar, AAG, Punjab.

Mr. Harmeet Singh, Advocate,
for respondent No.2.

NAMIT KUMAR, J. (ORAL)

1. The instant petition has been filed by petitioner – Punjab State Cooperative Agricultural Development Bank Limited, Chandigarh (hereinafter referred to as ‘the Bank’) impugning the order dated 07.08.1996 (Annexure P-9), passed by the Revisional Authority, whereby it has been directed to treat respondent No.2 on duty with all consequential benefits w.e.f. 01.07.1987.

2. The brief facts of the case, as have been pleaded in the petition, are that respondent No.2-S.K. Bhanot was appointed as Land Evaluation Officer vide letter dated 21.03.1969, which has now been redesignated as Field Officer. The service conditions of the employees of the Bank are governed by the Punjab State Cooperative Agricultural



Development Banks Service (Common Cadre) Rules, 1978. Thereafter, the Bank has been renamed as 'The Punjab State Cooperative Agricultural Development Bank Limited'. It has further been stated that respondent No.2 had remained on leave due to his illness. Thereafter, he submitted a leave application dated 05.07.1982 for leave from 26.07.1982 to 31.12.1982 on the ground that he wants to go out of India and get himself medically checked up in order to avail best treatment. This leave was sanctioned by the Bank. Thereafter, vide his application dated 06.01.1983, he applied for extension of leave from 01.01.1983 to 30.06.1983, by stating that he is not in a position to attend the office. The said leave was refused by the Bank vide letter dated 12.01.1983. He again wrote a letter dated 15.01.1983 that he is not in a position to attend the office and keeping in view his request, the Bank had sanctioned him leave upto 30.06.1983, vide letter dated 05.02.1983, and it was specifically mentioned therein that no further leave will be sanctioned and he should attend his duty on 01.07.1983 and it was also made clear that in future he should not proceed on leave till the leave is sanctioned, otherwise disciplinary action will be taken against him. Respondent No.2 did not attend the duty on 01.07.1983 and again applied for extension of leave on account of unavoidable circumstances, vide his leave application dated 01.07.1983. The same was refused vide letter dated 07.07.1983. However, he again made a request vide letter dated 10.07.1983 that his leave may be considered sympathetically as his circumstances do not permit him to attend the duty. Keeping in view his request, the Bank again sanctioned him



leave upto 31.12.1983 vide letter dated 10.09.1983. He again wrote a letter dated 01.01.1984, requesting for extension of leave, however, no reason was mentioned in the leave application. Consequently, the Bank directed him to attend the duties. Respondent No.2 again submitted that he had to attend his ailing mother who is under treatment at Patiala, therefore, requested for leave. Keeping in view his request, the Bank sanctioned leave upto 30.06.1984, vide letter dated 31.03.1984. Thereafter, he was sanctioned extraordinary leave till 30.06.1984 and thereafter no leave application was received in the Bank from respondent No.2. Therefore, respondent No.2 was wilfully absent from duty and consequently, he was declared so under Rule 8.16 of the 'Punjab Civil Services Rules Volume I Part I' vide letter dated 30.11.1984. However, respondent No.2 again submitted leave application dated 27.12.1984, which was received by the Bank on 28.12.1984 for extension of leave upto 31.06.1985. However, the Bank rejected the same vide letter dated 02.02.1985 (Annexure P-4), on the ground that he had already been declared absent from duty w.e.f. 01.07.1984

3. Thereafter, respondent No.2 was issued a chargesheet dated 06.04.1988 (Annexure P-5) to which he submitted reply dated 21.05.1988 (Annexure P-6). The reply filed by respondent No.2 was not found to be satisfactory and consequently, Sh. Iqbal Singh, Vigilance Officer, was appointed as Inquiry Officer to hold the inquiry. The Inquiry Officer submitted his report (Annexure P-7) in which respondent No.2 was found guilty of wilful absence from duty w.e.f.



01.07.1984. On the basis of the said inquiry report, punishing authority vide order dated 22.01.1990 imposed a punishment of forfeiting the benefit of his previous service and he was allowed to join his duty from the date of fresh joining report. He was directed to submit his fresh joining report w.e.f. 22.01.1990. Against the order dated 22.01.1990, respondent No.2 filed an appeal before the Administrative Committee (Exercising the powers of Appellate Authority). The said appeal was considered by the Administrative Committee in its meeting held on 08.10.1992 and it was decided to restore the service forfeited by the punishing authority and for treating the period of absence as leave of the kind due and it was further decided that four annual increments of respondent No.2 be stopped with cumulative effect w.e.f. 22.01.1990. Aggrieved against the appellate order dated 08.10.1992, respondent No.2 filed revision under Section 27(3) read with Section 26(1-E) and Section 69 of the Punjab Cooperative Societies Act, 1961 and Rules 11 and 19 of the Common Cadre Rules, 1978 before the Registrar, Cooperative Societies, Punjab. The said revision petition was considered by the Additional Registrar (Admn.) Cooperative Societies, Punjab, Chandigarh, and the same was disposed of vide order dated 03.03.1994 (Annexure R-2/1) by passing following order: -

“After hearing the learned counsels for both the parties and perusing the record produced before me, it has come to my notice that the petitioner after availing long leave, again joined his duties on 01.07.1987. This fact has also been admitted by the respondent-bank in their written statement. But the Appellate Authority while deciding the appeal of the petitioner, has not clarified the period from



1.7.1987 to 22.1.1990 whether during this period the petitioner Shri S.K. Bhanot remained on duty or on leave or absent from duty.

To clarify the above-mentioned period i.e. from 1.7.1987 to 22.1.1990 whether the petitioner is to be treated on duty or on leave or absent from duty the Revision petition is remanded back to the Board of Directors Administrator, the Punjab State Cooperative Agricultural Development Bank Ltd; Chandigarh. After passing clear order of this period, the case be sent back to this office for deciding the revision petition on merits.

Announced.

Dated- 3.3.1994.

(C.S.Srivastava)

I.A.S.

*Additional Registrar (Admn.)
Cooperative Societies, Punjab,
Chandigarh”*

4. Thereafter, the revision petition has been accepted by the Revisional Authority vide order dated 07.08.1996 (Annexure P-9) with direction to treat respondent No.2 on duty with all consequential benefits w.e.f. 01.07.1987. The order dated 07.08.1996 reads as under:

“.....The issue involved in the petition are:-

- 1) What is the period of absence as per the decision of the appellate authority?*
- 2) Whether the joining report dated 1.7.1987 of the petitioner is final?*
- 3) Whether the punishment of stoppage of four annual increments of the petitioner with cumulative effect since 22.1.90 is proper?*

Issue No.1

The order of Administrative Committee did not make specific mention of the absence period which is to be treated as leave of the kind due. Respondent counsel



argued that this period is made clear in Bank, Order endst. No.SOV/10661-E/SADB/ dated 5.1.93.

Order dated 5.1.93 is not by the competent authority i.e. punishing and Appellate authority in the present case. These order are with regard to the fixation of petition pay etc. Petitioner was charge-sheeted on 6.4.1988, the absence period is specified as from 1.7.84 to 30.6.87. Even for the sake of argument it was not amended to 1.7.84 to 6.4.88, while issuing the charge-sheet. Petitioner submitted his joining report on 1.7.87 and the same was accepted by the Bank. This fact is not denied and was admitted by the respondent in their reply para iii (of merit) dated 20.7.93.

Therefore period of absence which is to be regularised in the leave of kind due to petitioner consequent to the appellate order will be from 1.7.84 to 30.6.87.

Issue No.2

Petitioner submitted his joining report on 1.7.87. It was accepted by the Bank and the petitioner remained on duty subsequently. He was not put under suspension after 1.7.87 to 22.1.90. These facts have been accepted by the respondent in their reply dated 20.7.93 under Para III & VI (on merits). The only logic given by the respondents is that petitioner resubmitted his joining report on 25.1.90 in compliance to the direction of punishment order dated 22.2.90.

Under the circumstance, I concur with the decision of Hon'ble Punjab & Haryana High Court CWP No.3793 of 1988 & fully agree that the joining report of the petitioner dated 1.7.87 is final and his 2nd joining (25.1.90) in response to punishment order does not in any way materially effect his position which he was made to submit under these circumstances.



Issue No.3

Punishing authority had forfeited the benefit of past service of the petitioner and Appellate authority restored past service. The period of absence is to be converted into the leave of kind due to petitioner, but four annual increment with cumulative effect was stopped. Petitioner counsel argued that since the period of absence has been regularised by the appellate authority. Therefore, the charge of wilful absence no more survives and supported the version by a decision of the Punjab & Haryana High Court RSA No.1268/1986 decided on 15.1.88.

I fully agree with the views expressed by Hon'ble Punjab & Haryana High Court in RSA 1268/1986. Petitioner was charge-sheeted for the particular period and punished for the same. Appellate authority regularised the absence period which means the very basis of the charge goes. Under the circumstance he cannot be punished with the stoppage of four annual increment with cumulative effect from whatever date as there exist no charge against the petitioner absence period being already regularised.

Under the circumstances of the facts discussed above, I accept the Revision Petition with the direction that the petitioner be treated on duty with all consequential service benefits from 1.7.87.

The decision of the above case was kept reserved on 15.7.96 and has been dictated on 7.8.96. The parties be informed accordingly.

Dated 7.8.96

*Additional Registrar (General),
Cooperative Societies, Punjab,
Chandigarh."*

5. Learned counsel for the petitioner has argued that respondent No.2 remained wilfully and unauthorisedly absent from



duty on various occasions earlier also and despite of acceptance of his various leave applications, he remained wilfully absent from duty from 01.07.1984 to 30.06.1987 for which he was awarded the punishment of forfeiture of his previous service and he was directed to submit fresh joining report and the said order was modified by the Appellate Authority and it was ordered that absence period be treated as leave of the kind due and his four annual increments with cumulative effect be stopped w.e.f. 22.01.1990 and the said order of the Appellate Authority has wrongly been set aside by the Revisional Authority only on the ground that once the absence period has been treated as leave of the kind due, therefore, no punishment can be awarded.

6. Learned counsel for respondent No.2 has submitted that once the period of absence has been condoned by the Appellate Authority, vide order dated 22.01.1990, by treating the said period as leave of the kind due and the same implies that the period of absence was regularised hence there can be no punishment whatsoever and, therefore, the order passed by the Revisional Authority is perfectly legal and valid as the charge levelled in the chargesheet of absence does not survive.

7. In nutshell, the wilful and unauthorised absence of respondent No.2 is w.e.f. 01.07.1984 to 30.06.1987. As on, 01.07.1987, respondent No.2 submitted his joining report, which reflects that the absence period is of three years. Revisional Authority vide order dated 07.08.1996 has set aside the punishment on the ground that since the absence of respondent No.2 has been regularised as leave



of the kind due, therefore, the punishment of stoppage of four annual increments with cumulative effect cannot stand. As a matter of fact, respondent No.2 has been punished for remaining absent from duty wilfully and unauthorisedly w.e.f. 01.07.1984 to 30.06.1987 for a period of three years. The said absence has not been condoned by the Appellate Authority and it has only been considered as leave of the kind due just to treat the absence of the petitioner. Therefore, the finding recorded by the Revisional Authority to the effect that the absence period has been regularised by the Appellate Authority and on that basis the 'charge goes' is not the right interpretation of the order of the Appellate Authority, therefore, the same is totally wrong and cannot be sustained in the eyes of law and there is nothing wrong in imposing the punishment of stoppage of four annual increments with cumulative effect upon respondent No.2.

8. The said view is supported by the law laid down by the Hon'ble Supreme Court in ***State of Punjab v. Dr. P.L. Singla, 2008(3) SCT 742***, wherein it has been held as under: -

“7. But the courts below have decreed the respondent's suit not because they recorded any finding to the contrary, but for a reason wholly unconnected with the disciplinary proceedings and imposition of penalty. The three courts have held that as a result of the subsequent order of the Governor dated 25.1.2001 according extraordinary leave for the period of absence (1.6.1992 to 17.10.1997), the misconduct was wiped out. They have proceeded on the basis that when the employer accords extra-ordinary leave in respect of the period of absence, for which the punishment was imposed, the employer is deemed to have



condoned the unauthorized absence. The courts below therefore, held that the unauthorized absence of respondent between 1.6.1992 and 17.10.1997 could no longer be considered as unauthorized absence, and when the misconduct was erased, the punishment therefor also stood erased. It is the correctness of this finding that arises for our consideration.

8. Unauthorized absence (or overstaying leave), is an act of indiscipline. Whenever there is an unauthorised absence by an employee, two courses are open to the employer. The first is to condone the unauthorized absence by accepting the explanation and sanctioning leave for the period of the unauthorized absence in which event the misconduct stood condoned. The second is to treat the unauthorized absence as a misconduct, hold an enquiry and impose a punishment for the misconduct.

9. An employee who remains unauthorisedly absent for some period (or who overstays the period of leave), on reporting back to duty, may apply for condonation of the absence by offering an explanation for such unauthorized absence and seek grant of leave for that period. If the employer is satisfied that there was sufficient cause or justification for the unauthorized absence (or the overstay after expiry of leave), the employer may condone the act of indiscipline and sanction leave post facto. If leave is so sanctioned and the unauthorized absence is condoned, it will not be open to the employer to thereafter initiate disciplinary proceedings in regard to the said misconduct unless it had, while sanctioning leave, reserved the right to take disciplinary action in regard to the act of indiscipline. We may note here that a request for condoning the absence may be favourably considered where the unauthorized absence is of a few days or a few months and the reason for absence is stated to be the sudden, serious



illness or unexpected bereavement in the family. But long unauthorized absences are not usually condoned. In fact in Security services where discipline is of utmost importance, even a few of days overstay is viewed very seriously. Be that as it may.

10. Where the employee who is unauthorizedly absent does not report back to duty and offer any satisfactory explanation, or where the explanation offered by the employee is not satisfactory, the employer will take recourse to disciplinary action in regard to the unauthorised absence. Such disciplinary proceedings may lead to imposition of punishment ranging from a major penalty like dismissal or removal from service to a minor penalty like withholding of increments without cumulative effect. The extent of penalty will depend upon the nature of service, the position held by the employee, the period of absence and the cause/explanation for the absence. Where the punishment is either dismissal or removal, it may not be necessary to pass any consequential orders relating to the period of unauthorized absence (unless the rules require otherwise). Where the punishment awarded for the unauthorized absence, does not result in severance of employment and the employee continues in service, it will be necessary to pass some consequential order as to how the period of absence should be accounted for and dealt with in the service record. If the unauthorized absence remains unaccounted, it will result in break in service, thereby affecting the seniority, pension, pay etc., of the employee. Any consequential order directing how the period of absence should be accounted, is an accounting and administrative procedure, which does not affect or supersede the order imposing punishment.



11. In this case, the punishment was imposed by order dated 16.9.1999/11.10.1999. That order was not cancelled, revoked or withdrawn. The subsequent order dated 25.1.2001 merely accorded extraordinary leave in regard to the period of absence, but did not condone the unauthorized absence nor wipe out the punishment already imposed. The said order was only consequential to the imposition of punishment. Its effect was to maintain continuity of service of the respondent, but deny salary for the period of absence and not to count the period of absence as qualifying service for the purposes of pension. Its effect is certainly not to exonerate the respondent from the charge of unauthorised absence nor to wipe out the punishment. If the intention was to revoke the punishment, the order dated 25.1.2001 would have clearly stated so. But it did not.

12. The assumption by the courts below that when an order is passed according extra-ordinary leave for the period of absence, it will have the effect of effacing or erasing the punishment already imposed, is therefore incorrect and is a serious error of law. When the trial court and the appellate court had committed this serious error, the High Court ought to have formulated an appropriate question of law and allowed the second appeal. Instead, it chose to dismiss the second appeal putting its seal of approval on a wrong interpretation of law leading to serious repercussions in regard to discipline and administration. The judgment of the High Court confirming the orders of the courts below, therefore calls for interference.

13. We accordingly allow this appeal, set aside the judgments and decrees of the courts below and dismiss the suit of the respondent. Parties to bear their respective costs.”



9. To the same effect is the judgment of the Hon’ble Supreme Court in *State of Punjab and others v. Charanjit Singh, 2003(8) SCC 458* and this Court in *Gurmit Singh v. Union of India and others 2023 NCPHHC 144068*.

10. The matter can be considered from another angle also. Admittedly, respondent No.2 remained unauthorisedly absent for three years w.e.f. 01.07.1984 to 30.06.1987. The acceptance of claim of respondent No.2 would amount to giving premium to his unauthorised absence. Therefore, punishment of stoppage of four annual increments with cumulative effect cannot be held to be invalid.

11. In view of the above, present petition is allowed. Order dated 07.08.1996 (Annexure P-9) passed by the Revisional Authority is set aside and that of the Appellate Authority dated 08.10.1992 (Annexure P-8) is restored.

09.12.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether Reportable

:

Yes/No