

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.1556 of 1998 (O&M)
Date of decision: 19.04.2024

State of Haryana
.....Appellant
Versus
Phool Singh
.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Ravi Dutt Sharma, DAG, Haryana
for the appellant.
None for the respondent.

NAMIT KUMAR J. (Oral)

1. The instant regular second appeal has been preferred by the State of Haryana impugning the judgment and decree dated 26.02.1998, passed by the learned Additional District Judge, Karnal, whereby the judgment and decree dated 21.12.1996, passed by the learned Court of Civil Judge (Jr. Division), Karnal, has been reversed and the suit filed by the plaintiff/respondent has been decreed.
2. Briefly stated, the facts of the case are that the plaintiff filed a suit for declaration to the effect that the order dated 15.03.1990 passed by the General Manager, Haryana Roadways, Karnal, vide which one increment of the plaintiff was stopped with cumulative effect and absence period from 18.05.1986 to 31.05.1986, was treated as leave without pay, is illegal against the principles of natural justice, void ab initio, arbitrary and not binding on the rights of the plaintiff. It was

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averred in the suit that the charge-sheet under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987, was served upon the plaintiff by the General Manager, Haryana Roadways, Karnal vide memo dated 07.06.1986, on the allegations that on 18.5.1986 he was on duty with Bus No.1805 from 10.40. A.M. on Karnal-Sitamai route but he did not perform the duty due to which one, Sh. Babu Ram, Driver No.325 of Bus No.1241 was sent in his place. It is further canvassed that the plaintiff did not present himself even after receiving the telegram dated 21.5.1986 and leave application from 18.5.1986 to 25.5.1986, was submitted without prior sanction and further he proceeded on leave from 26.5.1986, onwards without submitting any leave application or prior intimation. It is further canvassed that the plaintiff submitted his reply to the charge-sheet on 28.6.1986. The reply was not considered satisfactory and the Traffic Manager, Haryana Roadways, Karnal was appointed as Enquiry officer. The Enquiry Officer established the charges against the plaintiff. The Punishing Authority on the basis of findings of Enquiry Officer, served a show cause notice of proposed punishment dated 8.1.1990 on the plaintiff in which it was proposed to stop one annual increment with cumulative effect and for treating the absence period from 18.5.1986 to 31.5.1986 as leave without pay, the punishing authority imposed penalty as such vide his order dated 14.3.1990, without going into the facts of the case on merits. It is further canvassed that order dated 14.3.1990 passed by the General Manager, Haryana Roadways, Karnal by which one increment of the plaintiff was stopped with cumulative effect and

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the absence period from 18.5.1986 to 31.5.1986 treated as leave without pay.

3. The said order was challenged by the plaintiff by filing the suit. The suit filed by the plaintiff was dismissed by the Court of learned Civil Judge (Jr. Division), Karnal, vide judgment and decree dated 21.12.1996.

4. Aggrieved against the said judgment and decree dated 21.12.1996, the plaintiff/respondent preferred an appeal before the learned Additional District Judge, Karnal, which has been allowed by recording the following findings:-

“8. So far as the first contention of the Learned counsel for the appellant is concerned, I do not find any force in the same. There was no charge against the plaintiff/appellant that the medical certificate was not sent by him. Charge was that he remained absent without getting the leave sanctioned and the report of the enquiry officer was also to the same effect. Mere submitting medical certificate and sending application could not ipso-facto amounted to sanction of leave. Therefore, there was no illegality in the report of the Enquiry officer. Moreover, the Civil Court has not to sit as a court of appeal and appraise the evidence led by the parties before the Enquiry Officer and analyse the findings of the Enquiry officer. The Civil Court is only to see whether there was any irregularity or illegality in the procedure adopted by the department before imposing punishment upon the employee. Therefore, this court needs not to go into the details of the report of the enquiry officer which was admittedly made in accordance with the rules after affording hearing opportunity to the appellant/plaintiff.

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The Hon'ble High Court in the afore-cited authority State of Punjab Versus Chanan Singh (Supra) it was held that treating the period of absence as leave without pay amounts to condonation and regularizing the absence and the charge of absence does not survives. In the cited case one constable was dismissed from service for remaining absent from duty. Dismissal order stipulated that period of absence shall count leave without pay. In the instant case the copy of the impugned order dated 14.3.1990 EX.D-5 shows that the Punishing Authority sanctioned the period of absence of the plaintiff/appellant from 18.5.1986 to 31.5.1986 as leave without pay and stopped one annual increment with cumulative effect. In view of the law laid in the aforesaid authority once the period of absence was regularized by the Punishing Authority by sanctioning the leave without pay, the absence of the appellant/plaintiff stood condoned, and as such the charge of absence no more survives. Consequently, the impugned order regarding stoppage of one increment of the plaintiff/appellant with cumulative effect is not sustainable under law.

9. In view of the foregoing discussion, the appeal is partly accepted and the impugned order dated 14.3.1990 passed by the General Manager, Haryana Roadways, Karnal, regarding stoppage of one increment of the appellant/plaintiff with cumulative effect is declared as illegal. However the impugned order treating the period of absence of the plaintiff/appellant from 18.5.1986 to 31.5.1986 as leave without pay is perfectly correct and legal. With this modification in the judgment and decree of the learned trial court, the appeal is partly allowed, leaving the parties to bear their own costs. Decree sheet be

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prepared accordingly. File be consigned after due compliance.

*Announced
26.2.1998*

*Sd/-
Additional District Judge,
Karnal.”*

5. The instant appeal was admitted on 29.06.1998 and the impugned judgment was stayed. Thereafter, the appeal came up for hearing before this Court on 08.02.2024, however, none has put in appearance on behalf of the respondent despite service. Even today, there is no representation on behalf of the respondent.

6. Learned counsel for the appellant submits that the findings recorded by the learned Lower Appellate Court while accepting the appeal filed by the plaintiff and decreeing the suit is totally erroneous and perverse. He further submits that the plaintiff was only awarded one punishment of stoppage of one increment with cumulative effect and the absence period from 18.05.1986 to 31.05.1986, has been regularized as leave without pay for the purpose of completion of service record of the the plaintiff/respondent. The same does not amount to second punishment or condonation of mis-conduct of absence from 18.05.1996 to 31.05.1996. He further contends that the plaintiff/respondent had never challenged the findings recorded in the enquiry report whereby the charge of absence was proved.

7. I have heard learned counsel for the appellant and perused the record.

8. Admittedly, the plaintiff/respondent was proceeded by issuance of charge-sheet for the mis-conduct committed by him and

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after following the due process of law, stoppage of one increment was inflicted upon the plaintiff/respondent and the absence period from 18.05.1996 to 31.05.1996, was treated as leave without pay. Once proper procedure has been followed by the Department while inflicting the punishment of stoppage of one increment with cumulative effect, the same cannot be interfered by this Court. Further the absence period from 18.05.1986 to 31.05.1986, has been regularized for the purpose of completion of service record of the plaintiff/respondent and that does not amount to second punishment.

9. Consequently, the instant appeal is allowed and the judgment and decree dated 26.02.1998, passed by the learned Lower Appellate Court is set-aside and the suit of the plaintiff/respondent is dismissed. Decree-sheet be drawn accordingly.

19.04.2024
yakub

(NAMIT KUMAR)
JUDGE

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