



**CM-4848-C-2024 in/and
RSA-949-2004** **1**

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

(101) **CM-4848-C-2024 in/and
RSA-949-2004
Date of Decision : May 22, 2024**

State of Punjab and another **.. Appellants**

Versus

Jasbir Singh and another **.. Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rohit Ahuja, Deputy Advocate General, Punjab.
Mr. Saurav Bhatia, Advocate, for the applicant/respondent.

HARSIMRAN SINGH SETHI J. (ORAL)

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Present application has been filed for hearing of the main appeal at an early actual date as the respondent-plaintiff is suffering prejudice as the judgment of the lower Appellate Court which is in his favour, has been stayed by this Court.

Notice of the application to the counsel opposite.

Mr. Rohit Ahuja, learned Deputy Advocate General, Punjab, who is present in the Court, accepts notice on behalf of non-applicant/appellants. He raises no objection for the grant of prayer as raised in the present application.

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Keeping in view the averments made in the application, which are duly supported by an affidavit, the application is allowed. On the joint request of learned counsel for the parties, the main appeal is taken up for hearing today itself.

RSA-949-2004

1. In the present regular second appeal, the challenge is to the judgment and decree of the lower Appellate Court dated 02.12.2003 by which, the judgment and decree of the trial Court dated 08.01.2001 has been set aside and the suit filed by the respondent-plaintiff has been allowed.

2. In the civil suit, the respondent-plaintiff had challenged the order dated 06.11.1990 by which, after holding an enquiry into the allegations of unauthorized absence, he was dismissed from service as well as order passed in appeal and revision dated 09.04.1993 and 12.07.1995 respectively, were also impugned.

3. Keeping in view the evidence and facts which have come on record, the suit filed by the respondent-plaintiff was dismissed by the trial Court vide judgment and decree dated 08.01.2001. Feeling aggrieved against the said decision, the respondent-plaintiff filed an appeal before the lower Appellate Court, which appeal came to be decided vide judgment and decree dated 02.12.2003. The said appeal filed by the respondent-plaintiff was allowed and the impugned orders are set aside by declaring the same as illegal, null and void. Hence, the present regular second appeal.

4. Learned counsel for the appellants-State argues that the only reason given to set aside the judgment and decree of the trial Court as well



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as to the impugned order challenged in the suit is that no opportunity to defend was given to the respondent-plaintiff in the disciplinary proceedings which were held qua the allegation of unauthorized absence and therefore, once the charge-sheet was not served upon the respondent-plaintiff, any disciplinary proceedings undertaken in pursuance to the said charge-sheet cannot be held to be valid and consequently, the orders passed in the disciplinary proceedings and in the proceedings availed by the respondent-plaintiff in the form of appeal and revision have also been set aside, which is incorrect as the State sent a charge-sheet to the last available address given by the respondent-plaintiff before he un-authorizedly absented himself and as the said charge-sheet was received back with the postal remarks "left without address", the publication was given in the newspaper in Daily Ajit as well as in the Tribune so as to complete the formality of the service of the charge-sheet hence, under these circumstances, it cannot be held that no opportunity to defend has been given to the respondent-plaintiff.

5. Learned counsel for the appellants submits that the letter sent to the respondent-plaintiff, copy of which have been exhibited as D-5 and D-6, have been duly received by the respondent-plaintiff informing him about non-sanctioning of leave but still, he remained absent and only charge which has been proved in the disciplinary proceedings is of unauthorized absence hence, in the facts and circumstances of the present case, the grievance being raised of non affording due opportunity to defend, cannot be agitated and the same has been wrongly accepted by the lower Appellate



Court without appreciating the correct facts and evidence which has already come on record and hence, the judgment and decree of the lower Appellate Court dated 02.12.2003 is liable to be set aside.

6. Learned counsel for the respondent-plaintiff, on the other hand, argues that no doubt the last given address was of Pune where the charge-sheet has been sent but the respondent-plaintiff had left the said address. He concedes that no further address was given to the Department so as to communicate with him but submits that it was the duty of the State to serve him and to allow him the opportunity to defend himself qua the allegation of unauthorized absence and in the absence of any such opportunity given, the lower Appellate Court has rightly come to the conclusion that the rules of natural justice have been violated as the due opportunity to defend has not been extended to the respondent-plaintiff hence, the judgment and decree of the lower Appellate Court is liable to be upheld.

7. I have heard learned counsel for the parties and have gone through the record with their able assistance.

8. The facts which have been noticed hereinbefore are not disputed. The only reason given by the lower Appellate Court to set aside the impugned orders of dismissal as well as order passed in appeal and revision, is that the charge-sheet issued to the respondent-plaintiff was not served upon him which vitiates the disciplinary proceedings. It may be noticed that violation of rules of natural justice depends upon the facts and circumstances of each and every case. There is no straitjacket formula to contend that non serving of the charge-sheet itself violates the rules of



natural justice without appreciating the other facts which have also come on record. In the present case, the respondent-plaintiff while proceeding on leave, had given a particular address for his contact, thereafter, the respondent-plaintiff absented himself and did not join back despite receiving two letters from the Department informing him of not granting him the leave and also to direct him to join the service. As per the evidence as well as the conceded fact that the said letters were received by the respondent-plaintiff at the last address given. The charge-sheet was also sent to the said address but the same was received back with the remarks “left without address”. Under these circumstances, the employer was left with no other remedy but to issue a notice in the newspaper which was also done hence, it cannot be said that no efforts were made by the Department to join the respondent-plaintiff for disciplinary proceedings but it is only the respondent-plaintiff, who did not join the same. It cannot be said that the disciplinary proceedings were undertaken by the Department without following due process of law or not serving the charge-sheet upon the respondent-plaintiff.

9. Further, once the respondent-plaintiff conceded the factum that the appointment of enquiry officer was to the knowledge of the respondent-plaintiff, it becomes the duty of the respondent-plaintiff to come forward to join the proceedings rather than to wait for the same and thereafter challenge the same on grant of violation of principles of natural justice. In fact, the respondent-plaintiff by not joining the proceedings, was creating evidence so as to overcome the ultimate order to be passed against him qua



his unauthorized absence, which fact has been totally ignored by the lower Appellate Court while allowing the suit filed by the respondent-plaintiff by setting aside a well reasoned judgment of the trial Court.

10. Not only this, the rules of natural justice are to be observed so that qua the allegations alleged, the delinquent employee could place his/her stance against the allegations made or after any valid explanation. In the present case, even in the testimony, the respondent-plaintiff conceded that despite receiving the documents Ex. D-5 and D-6 informing him that his leave has not been sanctioned, he did not join. He conceded the fact that he was unauthorizedly absent. Once, the said fact has been conceded, even before the Court, the Court has to appreciate whether, in case an opportunity would have been given to the delinquent, had the result of the disciplinary proceedings been any different than the one already arrived at by the enquiry officer. In the absence of any explanation from the side of respondent-plaintiff qua the allegations made against him which could effect the enquiry proceedings in any case, strict application of the rules of natural justice cannot be sought as a technicality in order to set aside the orders.

11. In the present case, it is a conceded fact that the respondent-plaintiff absented himself for more than two years and that too without any valid justification hence, the reason given by the respondent-plaintiff that the rules of natural justice have been violated is oblivious to the material fact that it remains a conceded position that the respondent-plaintiff remained unauthorizedly absent and that there would have been no material



change in the outcome of the disciplinary proceedings even if strict enforcement of principle of natural justice were done. The lower Appellate Court has materially failed to appreciate this aspect on account of which the decision of the lower Appellate Court is to be recorded as perverse to the facts and evidence which have come on record and hence, the same cannot be sustained.

12. Learned counsel for the respondent-plaintiff submits that the respondent-plaintiff had given a request for extension of his leave and therefore, it cannot be said that the respondent-plaintiff was unauthorizedly absent.

13. It may be noticed that receipt of Ex.D-5 and D-6 is not denied wherein, the respondent-plaintiff had already been informed that his leave has not been sanctioned and therefore, he should join. That letter clearly shows that the respondent-plaintiff was required to join the duties as he was unauthorizedly absent. It is a settled principle of law that mere submission of an application to seek the leave does not entitle an employee the leave unless and until the same has been sanctioned by the competent authority. It is a conceded fact that no leave has been sanctioned in favour of the respondent-plaintiff and the respondent-plaintiff remained unauthorizedly absent hence, the said argument being raised in support of the judgment of the lower Appellate Court, cannot be accepted.

14. Learned counsel for the appellants submits that even when the enquiry report was served to the respondent-plaintiff along with show cause notice, the charge-sheet was not supplied to him due to which, he could not



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file an effective reply to the finding of the enquiry officer.

15. It may be noticed that in enquiry report itself the allegations which have been alleged in the charge-sheet finds mentioned. There is no need of attaching the charge-sheet once the allegation in the charge-sheet have been discussed in detailed and are proved in the enquiry report and in such a case, the charge-sheet need not to be necessarily attached with the show cause notice. Therefore, the contention that the charge-sheet should have been given along with the show cause notice by which, the enquiry report was served, cannot come to the rescue of the respondent-plaintiff so as to challenge the ultimate impugned order of dismissal dated 06.11.1990.

16. No other argument was raised.

17. Keeping in view the above, the judgment and decree of the lower Appellate Court dated 02.12.2003 under the facts and circumstance of the present case, is perverse to the evidence which has already come on record and cannot be sustained and is accordingly set aside. The appeal is allowed. The judgment and decree of the trial Court dated 08.01.2001 is restored and the suit filed by the respondent-plaintiff is dismissed.

May 22, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes