

(2010) 03 P&H CK 0107
In the Punjab And Haryana At Chandigarh

Jalandhar Improvement Trust

APPELLANT

Vs

Shri Harjinder Singh and Others

RESPONDENT

Date of Decision : 04-03-2010

Acts Referred:

Citation : (2010) 158 PLR 750

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ranjit Singh, J.—Respondent- Harjinder Singh was appointed as Surveyor at Jalandhar Improvement Trust, Jalandhar on 15.09.1971. He was confirmed on 02.06.1975. He proceeded on five days leave on 04.02.1980. He got his leave extended till 10.03.1980. Even thereafter he prayed for extension of leave from 10.03.1980 to 09.05.1980, which was done. He, however, still sought further extension of leave, which was declined. When he came to the office, he was informed that he stood removed from service vide order dated 14.10.1980. He, accordingly, approached the Court with the grievance that no charge sheet was issued to him. He thus challenged the order of his removal being illegal and void. His plea was that he had proceeded on sanctioned leave and the order passed against him being penal in nature, could not have been passed without holding the inquiry or following the proper procedure as per law.

2. In the written statement filed by the appellant-Improvement trust, it was submitted that the respondent-employee had abandoned the job and accordingly there was no requirement of holding any inquiry and the appellant was at liberty to pass the order in terms of provisions of Rule 17 of the Jalandhar Improvement Trust Rules (hereinafter referred to as "Rules"). These rules which provides that the provisions of Rules 12 to 15 both inclusive shall not apply when the accused is absconding. The suit was tried on the following issues:

1. Whether the suit is not justiciable? OPD.

2. Whether notice under the Punjab Town Improvement Act was served upon the defendant? OPP.

3. Whether the impugned order dated 14.10.80 is illegal, void etc. if so, its effect. OPP.

4. Relief.

3. Issue No. 1 was decided in favour of the respondent-plaintiff and so too issue No. 2. Trial Court also held that the impugned order was not legal and was against the service rules. Accordingly, the suit filed by the respondent-plaintiff was dismissed. Respondent-plaintiff accordingly filed an appeal against the same and the First Appellate Court has reversed the finding of the trial Court. The submission made on behalf of the appellant-Improvement trust to invoke the provisions of Rule 17 of the rules was not accepted by the First Appellate Court on the ground that this was not the case of abandonment of service by respondent-plaintiff. Improvement-trust, accordingly, filed the present Regular Second Appeal before the Court.

4. The Appeal was admitted and the operation of the judgment passed by the First Appellate Court was stayed on 06.06.1986. Subsequently, the application was filed by respondent-plaintiff for vacation of stay in which notice was issued to the counsel representing the appellant-Trust on 29.08.1986. When no reply was filed to this application despite long adjournment, the stay granted by the Court was vacated on 15.10.1986. The effect of the same would be that the respondent-plaintiff became entitled to rejoin the service.

5. No substantial question of law was framed in this case at the time of admission of the Regular Second Appeal. However, the counsel appearing for the appellant has placed on record the following substantial question of law today, which is taken on record:

Whether the termination of the plaintiff falls under Rule 17 of the Jalandhar Improvement Rules and the order was passed as per terms and conditions of appointment letter?

6. It is seen that main submission made is on the strength of Rule 17 of the rules. The counsel would contend that the impugned order was passed as per the terms and conditions of appointment and since the respondent-plaintiff had abandoned the job, there is no necessity to hold an inquiry as Rules 12 to 15, both inclusive would not call for holding of an inquiry because as per Rule 17, these rules are not to apply in the case, where the person is absconding. The First Appellate Court found that it cannot be taken as a case of absconding.

7. In my view, this finding by the First Appellate Court is justified. It is not a case where the respondent-plaintiff had just absented without any intimation, in fact the respondent-plaintiff had proceeded on duly sanctioned leave, which was extended from time to time. Even the leave had been sanctioned up to 09.05.1980 and still he had sought extension of his leave by one year. The

appellant-Improvement trust was well within its right not to grant this leave and may have not granted it so but still it could not be taken to be a case, where the respondent-plaintiff could be deemed to have abandoned the job or that he was absconding.

8. It is submitted that efforts were made to serve the respondent-plaintiff. To urge that it was deemed abandonment can also not be accepted because the respondent-plaintiff ultimately came to the office as per the record when he was served an order dated 14.10.1980. Even if the respondent-plaintiff was treated to be absent w.e.f. 10.05.1980, he could have been dealt with only in accordance with law. Even it was intended to take any action for awarding the major penalty, the same could be done only after holding the inquiry, which concededly was not done. The submission that the appellant was not able to serve the respondent-plaintiff would not be of any avail because in that event the appellants were at liberty to hold an ex-parte inquiry. Concededly, no inquiry in this case was held and even no effort was made in this regard.

9. The impugned order of dismissal in my view cannot be justified. The view taken by the First Appellate Court on the basis of number of judgments referred to is justified. The substantial question of the law as formulated by the appellant has in my view been rightly answered and would not call for any interference.

10. The Regular Second Appeal is accordingly dismissed.