
(2011) 01 P&H CK 0412

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2856 of 2009

State of Punjab and Others

APPELLANT

Vs

Darshan Singh

RESPONDENT

Date of Decision : 21-01-2011

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2011) 162 PLR 440

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

L.N. Mittal, J.—Defendants-State of Punjab and others have filed the instant second appeal after Respondent-Plaintiff having been non-suited by the trial Court, remained successful in the lower appellate court.

2. Darshan Singh Respondent-Plaintiff was appointed as Home Guard. The Plaintiff alleged that his service conditions are governed by Article 309 of the Constitution of India and the relevant Civil Services Rules of the State of Punjab. The Plaintiff alleged that he proceeded on leave on medical ground from 10.05.2000 to 09.02.2001. However, Plaintiff was discharged from Government service. On his request for reinstatement, he was reinstated vide order dated 04.09.2001. Accordingly, Plaintiff rejoined his duties vide DDR No. 7 dated 11.02.2002. However, pursuant to letter dated 25.02.2002 of Defendant No. 3, Defendant No. 4 again relieved the Plaintiff from his duties. The Plaintiff has challenged the same, alleging that no show cause notice was issued to him before relieving him. Various other grounds were also pleaded. The Plaintiff also sought mandatory injunction directing the Defendants to rein duct the Plaintiff as Home Guard.

3. Defendants broadly controverted the plaint allegations and inter alia pleaded that the Plaintiff was appointed as volunteer in Punjab Home Guard and is not

governed by Article 309 of the Constitution of India or by Civil Service Rules. He is governed by the East Punjab Volunteers Corps Act, 1947 (in short the Act). It was alleged that Plaintiff had proceeded on leave from 05.05.2000 to 09.05.2000 and thereafter remained absent from duty from 10.05.2000 to 09.02.2001. According to the Act and Government instructions, Home Guard remaining absent for six days continuously cannot be recalled to duty. Plaintiff was not discharged but was called off from duty. The Plaintiff obtained order of recall to duty by misrepresentation and, therefore, the said order was revoked vide order dated 25.02.2002 and the Plaintiff was called off from duty. Grounds pleaded by the Plaintiff, challenging the impugned order were controverted. Various other pleas were also raised.

4. Learned Civil Judge (Senior Division), Sangrur vide judgment and decree dated 05-11-2007 dismissed the Plaintiff's suit. However, first appeal preferred by the Plaintiff has been allowed by learned Additional District Judge, Sangrur vide judgment and decree dated 24.02.2009 and thereby suit filed by the Plaintiff has been decreed, directing his reinstatement without back wages. Feeling aggrieved, Defendant has filed the instant second appeal.

5. I have heard learned Counsel for the parties and perused the case file.

6. Learned Counsel for the Appellants vehemently contended that the Plaintiff was enrolled as Home Guard which is honorary service and the Plaintiff did not hold any civil post and, therefore, Article 309 of the Constitution of India and Civil Service Rules are not applicable to the Plaintiff. It was also contended that the Plaintiff remained absent from duty since 10.05.2000 till 09.02.2001 and, therefore he was called off from duty. Reference was made to Government instructions laying down that Home Guard remaining absent for six days would be called off the duty. It was also contended that no show cause notice was required to be served on the Plaintiff before calling him off from the duty. Reliance in support of this contention has been placed on unreported judgment dated 11.09.2006 passed by Division Bench of this Court in CWP No. 5142 of 2005 titled Ramesh Chander and Ors. v. State of Punjab and Ors..

7. On the other hand, learned Counsel for the Plaintiff-Respondent contended that order dated 25.02.2002 (Exhibit D-5) was signed by some Junior Staff Officer and not by Additional Director General of Police. It was also contended that mere over stay from leave is not sufficient to terminate an employee. Reliance for this proposition has been placed on three judgments of Hon''ble Supreme Court in the case of Union of India and others Vs. Giriraj Sharma, ; State of Punjab and Ors. v. Bakhshish Singh, 3 1997 (4) SLR 590 and Rajendra v. State of Maharashtra and Ors. 4 2008 (4) RSJ 65 and judgment of Division Bench judgment of this Court in Raj Kumar and Anr. v. State of Punjab and Ors. It was also contended that five Home Guards were relieved vide order dated 28.02.2002 but out of them, two have been called back to duty and Plaintiff is similarly situated.

8. I have carefully considered rival contentions. Judgments cited by the learned Counsel for the Respondent-Plaintiff are not applicable to the instant case, because the said judgments pertain to civil servants and not to Home Guards. Home Guards are not civil servants and, therefore, neither Article 309 of the Constitution of India is applicable to them nor Civil Service Rules are applicable to them. On the contrary, Division Bench of this Court in the case of Ramesh Chander (Supra) has categorically held that show cause notice is required to be issued before terminating the services of Home Guards. In that case, Petitioners were terminated as Home Guards on account of indiscipline created by them at the Railway Station, but nevertheless the termination was upheld although even no show cause notice was given to them before terminating them. In the instant case, the Plaintiff admittedly did not attend his duty from 10.05.2000 to 09.02.2001 i.e. for nine months. Consequently, order whereby he was called off from duty cannot be said to be bad in any manner.

9. The contention that the order dated 25.02.2002 has been signed by Junior Staff Officer does not help the Plaintiff because the authority or officer passing the order himself is not required to sign the communication. On the contrary, communication is always sent by office. It may be added that even the order Exhibit D-4 dated 04.09.2001 has been signed by Junior Staff Officer, regarding taking back the Plaintiff to duty. Same Junior Staff Officer has signed order dated 25.02.2002 Exhibit D-5. Consequently, approach of the lower appellate court in holding the order Exhibit D-5 bad on this ground, is patently erroneous, illegal and unsustainable. Similarly, approach of the lower appellate court that impugned order is bad because it was passed without issuing show cause notice, cannot be accepted in view of judgment in the case of Ramesh Chander (Supra). Claim of parity by counsel for Plaintiff Respondent on the ground that two other Home Guards have been called back to duty cannot be accepted in the absence of any pleadings or evidence on record.

10. For the reasons aforesaid, following substantial question of law arises for determination in the instant second appeal:

11. Whether approach of the lower appellate court based on the grounds on which the impugned order has been set aside, is erroneous, illegal and unsustainable in law?

12. For the reasons already recorded hereinabove, the aforesaid substantial question of law is answered in favour of the Appellants.

13. As a necessary consequence of the aforesaid discussion, the instant second appeal is allowed and judgment and decree of the lower appellate court are set aside and suit filed by the Plaintiff-Respondent stands dismissed.