
(1990) 12 P&H CK 0080

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2066 of 1978

Telu Ram

APPELLANT

Vs

Haryana Agricultural University

RESPONDENT

Date of Decision : 19-12-1990

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 36, 39
Haryana Agricultural University Act, 1961 — Section 29, 31

Citation : (1992) 1 ILR (P&H) 30

Hon'ble Judges : G.R. Majithia, J

Bench : Single Bench

Advocate : Rup Chand, for the Appellant; Nemo, for the Respondent

Judgement

G.R. Majithia, J.—The unsuccessful Plaintiff has come up in second appeal against the judgment and decree of the first Appellate Court affirming on appeal those of the trial judge whereby his suit for declaration to the effect that he be deemed to be in service of the Respondent holding the post of a clerk in the cadre and it (the post) be not declared vacant with effect from 8th December, 1973, was dismissed.

2. The facts:

The Plaintiff/Appellant was appointed as a clerk in the Haryana Agricultural University on June 19, 1967; he successfully completed his probationary period on August 18, 1969, he was promoted as an accountant on November 16, 1971 in the department of Chemistry and Bio-Chemistry; he was reverted to his original post of clerk on June 19, 1973 and was transferred to the department of Plant Breeding which he joined on September 22, 1973; he proceeded on leave without pay with effect from October 11, 1973 to December 7, 1973; during this period, he fell ill and applied for leave on medical grounds from December 8, 1973 for a month, he was informed,—vide letter dated March 29, 1974 by the head of the Plant Breeding Department that his leave case would be decided after the receipt of the last pay certificate. He went to join his duty on August 6,

1974 but was not allowed to join on the ground that his post was declared vacant. His services were terminated with retrospective effect from January 2, 1974. The Plaintiff contends that the order of termination by declaring his post vacant was passed without affording him an opportunity of hearing and it violated the principles of natural justice.

3. The Respondent/Defendant denied the allegations made in the plaint and inter alia pleaded that the Plaintiff did not apply for leave before the expiry of leave period. The post held by him was declared vacant with effect from December 8, 1973 because he failed to join his duties after the expiry of the leave period. His application for extension of leave dated September 11, 1974 was rejected on merits.

4. On the pleadings of the parties, the following issues were framed:

(1) Whether the suit is not maintainable in the present form? OPD.

(2) Whether the order of H.A.U. dated 2nd January, 1974 declaring the post of the Plaintiff as vacant is illegal, without jurisdiction, arbitrary and against principles of natural justice? OPP

(3) Whether the suit is not within the period of limitation? OPD

(4) Whether the suit has been properly valued for the purposes of court fee and jurisdiction? OPP

(5) Relief.

5. Issue No. 1 was decided in favour of the Plaintiff and it was held that the suit was maintainable; issue No. 2 was answered against the Plaintiff and it was held that the post held by the Plaintiff was validly declared vacant issue No. 3 and issue No. 4 were decided against the Plaintiff and in view of finding on issue No. 2, the suit was dismissed.

6. On appeal, the first Appellate Court on appraisal of the evidence came to the conclusion that the Plaintiff proceeded on leave without pay with effect from October 11, 1973 to December 7, 1973. After the expiry of the leave, he did not apply for the extension of his leave. On September 11, 1974, the Appellant informed the Registrar of the University that his cousin had died and for that he could not resume his duty. The Plaintiff did not approach the Defendant prior to March 19, 1974 for extension of his leave. The first appellate Court denied the relief to the Plaintiff only on the ground that he overstayed his leave and kept silent for more than 1 years before he requested the university to extend his leave and permit him to join his duty. The approach of the appellate Court is unwarranted. Respondent No. 1 is "the State" within the meaning of Article 12 of the Constitution. The definition of the expression "the State" in Article 12 is, however, for the purpose of parts III and IV of the Constitution. The contents of these two parts clearly show that the expression "the State" in Article 12 as also in Article 36 is not confined to its ordinary and Constitutional sense as extended

by the inclusive portion of Article 12 but is used in the concept of the State in relation to the Fundamental Rights guaranteed by Part III of the Constitution. The action of Respondent No. 1 ought not to be violative of Article 14 and directive principles contained in Articles 39(a) and 41 of the Constitution. In the present case, the University has framed statutes u/s 29(q) of the Haryana Agricultural University Act, 1961 read with Section 31(q) of HAU Act, 1970 regarding number, qualifications, emoluments and other conditions of service of officers and other employees of the University not being teachers and the preparation and maintenance of record of their service and activities. Clause 20(9) of the Statutes deals with the employee who overstays his leave and it reads thus:

20(9) If the employee overstays his leave he shall forfeit all his salary during the time of his remaining so absent; and if he overstays his leave for more than one week his office shall be liable to be declared vacant and also liable to pay salary of one month in lieu of notice period.

It postulates that if an employee overstays his leave he forfeits all his salary during the time he remains absent and if he overstays his leave for more than one week his office is liable to be declared vacant. When the order is passed under Sub-clause (9) of Clause 20 of the Statute, the resultant effect is that the services of the employee stand dispensed with. The order involves civil consequences. In *State of Orissa v. Dr. (Miss) Binapani Dei and Ors.* (1967) 2 S.L.R. 625, the apex Court while dealing with enquiry made as regard the correct age of a government servant observed thus:

We think that such an enquiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that the order is administrative in character, but even an administrative order which involves civil consequences as already stated, must be made consistently with the rules of natural justice after informing the first Respondent of the case of the State.

Relying upon *Binapani's* case supra and *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, a Single Bench of this Court in *Roop Singh v. The Vice Chancellor, Punjab Agricultural University and Ors.* 1975 (2) S.L.R. 308, while interpreting this very rule held that before passing an order under Sub-clause (9) of Clause 20 of the Statute, the employee has to be afforded an opportunity of hearing and principles of natural justice must be followed. It was held thus:

When an order is passed under Sub-clause (9) of Clause 20, then evidently the result is that the services of the employee concerned stand dispensed with. There can be no gainsaying that such an order involves far reaching civil consequences. That being so, in view of the two aforesaid decisions of their Lordships of the Supreme Court, the only possible conclusion that can be arrived at is, that before passing an order under Sub-clause (9) of Clause (20), the employee has to be afforded an opportunity of hearing and the principles of natural justice must be followed. Thus viewed from any angle, I have no

hesitation in holding that an order under Sub-clause (9) of Clause 20 of the Statute, involves civil consequences and that the same has to be passed consistently with the rules of natural justice. Admittedly the impugned order was passed without affording an opportunity of hearing to the Petitioner and, consequently, the same is liable to be quashed.

The appellate Judge has sought to distinguish this ruling on wholly unwarranted grounds. The ratio of this judgment is fully attracted to the instant case. Before any action is taken under Sub-clause (9) of Clause 20 of the States, the employee who has overstayed his leave and whose post has to be declared vacant must be served with a show cause notice to explain why the post held by him be not declared vacant since he has overstayed his leave for more than one week after the expiry of his sanctioned leave. The Plaintiff did not apply for extension of his leave before the expiry of his leave period. He also did not move the authorities within a reasonable time to extend his leave by condoning his absence for remaining absent without leave. His conduct does not entitle the university to act in an arbitrary manner and in violation of the principles of natural justice and fair play. The University was bound to serve him with a show cause notice and afford an opportunity of hearing declaring his post vacant. In *The Gwalior District Cooperative Central Bank Ltd. Gwalior v. Ramesh Chandra Mongol and Ors.* 1984 (3) S.L.R. 315, the apex Court observed that the consensus of opinions of various High Courts is that an employee who overstays his leave is not guilty of "misconduct". The action of the University in declaring the post vacant cannot be upheld since it was passed in breach of the principles of natural justice and is thus rendered void. The only other question which requires consideration is whether the Plaintiff should be re-instated in service with full back wages and allowances. The conduct of the Plaintiff for not approaching the authorities for more than 1½ years after the expiry of his leave cannot be appreciated. It may not amount to "misconduct" but the same must be deprecated. The employee is expected to act in the best interest of his employer of course not jeopardizing his own position and interest. Keeping in view the totality of the circumstances of the case, it will meet the ends of justice if the Plaintiff is taken back in service from the date his post was declared vacant. He will be entitled to fifty percent of back wages and allowances only from that date till his re-instatement and in this respect I am supported by *Ramesh Chandra Mangal's* case supra.

7. For the reasons aforesaid, the appeal succeeds the judgment and decrees of the Courts below are set aside; the suit of the Plaintiff is decreed as indicated above. However, the parties are left to bear their own costs.