

**SUPREME COURT OF INDIA**

State of Punjab

Vs.

Dr. P L Singla

C.A.No.4969 of 2008

(R. V. Raveendran and Lokeshwar Singh Panta JJ.)

31.07.2008

**ORDER**

**R. V. Raveendran J.**

1. Leave granted. Heard the parties.

2. The respondent is a doctor in the service of the appellant - State of Punjab. On 1.8.1991, the respondent was transferred to Makandam. The respondent joined duty on 17.8.1991, but unauthorisedly absented himself from 1.6.1992. As he was absent for nearly five years, the Health and Family Welfare Department issued a charge-sheet dated 28.5.1997 to the respondent. The two charges were: (a) absenting from duty deliberately from 1.6.1992; and (b) disobeying the orders of official superiors. An enquiry was held into the said charges. The Enquiry Officer submitted his report. In regard to first charge, the Enquiry Officer found that the respondent had, in fact, absented himself unauthorisedly from 1.6.1992 to 17.10.1997. But he accepted two explanations given by respondent and concluded that the absence was under compelling circumstances. The first explanation was that those were days of terrorism in Punjab. The second was that the respondent had sent by post an application seeking leave from 1.6.1992 to 30.12.1992 and did not receive any refusal, and, therefore presumed that the leave had been granted. The Enquiry Officer also held that the second charge was not proved.

3. The Disciplinary Authority did not agree with the enquiry report, for reasons recorded in a dissent note. The said note stated that unauthorized absence from 1.6.1992 to 17.10.1997 was clearly indiscipline; that only after the chargesheet was issued, the respondent had offered to join back duty (and in fact joined duty only on 18.10.1997) and not earlier. The dissent note therefore proposed to hold the respondent guilty of the two charges. A show cause notice dated 1.4.1999 was issued to the respondent enclosing a copy of the enquiry report and the dissent note. The respondent sent a reply dated 10.5.1999. The Governor of Punjab by order dated 16.9.1999 (communicated on 11.10.1999) did not accept the findings in the Enquiry Report. For the reasons stated in the dissent note, he held the respondent guilty and imposed a punishment of withholding of five increments with cumulative effect.

4. By a subsequent order dated 25.1.2001, issued in continuation of the order imposing punishment, the Governor of Punjab accorded extra-ordinary leave to the respondent for the period 1.6.1992 to 17.10.1997. Two consequences followed as a consequence thereof under the Punjab Civil Service Rules. A government servant is not entitled to any salary during the period of extra-ordinary leave (vide Rule 8.122 of Vol 1) and the period of extraordinary leave is not counted as service qualifying for pension (vide Rule 4.7 of Vol. II).

5. The respondent filed a suit on 24.1.2002 in the court of the Civi Judge, Junior Division, Bhatinda for a declaration that the order dated 10.9.1999/11.10.1999 imposing punishment was null and void and for consequential reliefs. The trial court by judgment dated 14.9.2004, decreed the suit and declared that the order imposing punishment was void and that the respondent was entitled to all consequential benefits with interest at 12% PA from the date of suit. The appeal filed by the State was dismissed by the first appellate court on 16.3.2005. The second appeal filed by the State was also dismissed on 20.1.2006. The said judgment of the High Court affirming the decisions of the trial court and first appellate court is challenged in this appeal by special leave.

6. The fact that the respondent had absented himself unauthorizedly from 1.6.1992 to 17.10.1997 was neither denied nor disputed by the respondent. The question was whether there were satisfactory reasons for his absence and failure to seek leave. The explanation was that he did not join duty as it was a period of terrorism in the State. The further explanation was that he had sent a leave application by post seeking leave for a period of seven months, that is from 1.6.1992 to 30.12.1992 and as he did not receive any reply rejecting his request, he assumed that the leave had been sanctioned. Both the explanations were vague and unsatisfactory. The unauthorized absence for a long period of more than five years remained unexplained. Even in regard to the period 1.6.1992 to 30.12.1992 for which he claimed to have sent a leave application, there was nothing to show that such a leave application was sent or that it was received by the department. No proof was produced for having sent such an application. Grant of leave is not something that can be inferred or presumed. At all events, even according to respondent, there was no application for leave for the period 31.12.1992 till 17.10.1997. There is also no explanation as to why he remained absent unauthorizedly for more than five years. Hence the charge of long unauthorized absence was clearly proved. The half hearted finding of the Enquiry Officer that there were compelling circumstances for the absence was clearly without any basis. The dissent note in regard to the charge of absence was, therefore, justified. The punishment imposed was not disproportionate to the gravity of the misconduct.

7. But the courts below have decreed the respondent's suit not because they recorded any finding to the contrary, but for a reason wholly unconnected with the disciplinary proceedings and imposition of penalty. The three courts have held that as a result of the subsequent order of the Governor dated 25.1.2001 according extraordinary leave for the period of absence (1.6.1992 to 17.10.1997), the misconduct was wiped out. They have proceeded on the basis that when the employer accords extra-ordinary leave in respect of the period of absence, for which the punishment was imposed, the employer is deemed to have

condoned the unauthorized absence. The courts below therefore, held that the unauthorized absence of respondent between 1.6.1992 and 17.10.1997 could no longer be considered as unauthorized absence, and when the misconduct was erased, the punishment therefor also stood erased. It is the correctness of this finding that arises for our consideration.

8. Unauthorized absence (or overstaying leave), is an act of indiscipline. Whenever there is an unauthorised absence by an employee, two courses are open to the employer. The first is to condone the unauthorized absence by accepting the explanation and sanctioning leave for the period of the unauthorized absence in which event the misconduct stood condoned. The second is to treat the unauthorized absence as misconduct, hold an enquiry and impose a punishment for the misconduct.

9. An employee who remains unauthorisedly absent for some period (or who overstays the period of leave), on reporting back to duty, may apply for condonation of the absence by offering an explanation for such unauthorized absence and seek grant of leave for that period. If the employer is satisfied that there was sufficient cause or justification for the unauthorized absence (or the overstay after expiry of leave), the employer may condone the act of indiscipline and sanction leave post facto. If leave is so sanctioned and the unauthorized absence is condoned, it will not be open to the employer to thereafter initiate disciplinary proceedings in regard to the said misconduct unless it had, while sanctioning leave reserved the right to take disciplinary action in regard to the act of indiscipline. We may note here that a request for condoning the absence may be favourably considered where the unauthorized absence is of a few days or a few months and the reason for absence is stated to be the sudden, serious illness or unexpected bereavement in the family. But long unauthorized absences are not usually condoned. In fact in Security services where discipline is of utmost importance, even a few of days overstay is viewed very seriously. Be that as it may.

10. Where the employee who is unauthorizedly absent does not report back to duty and offer any satisfactory explanation, or where the explanation offered by the employee is not satisfactory, the employer will take recourse to disciplinary action in regard to the unauthorised absence. Such disciplinary proceedings may lead to imposition of punishment ranging from a major penalty like dismissal or removal from service to a minor penalty like withholding of increments without cumulative effect. The extent of penalty will depend upon the nature of service, the position held by the employee, the period of absence and the cause/explanation for the absence. Where the punishment is either dismissal or removal, it may not be necessary to pass any consequential orders relating to the period of unauthorized absence (unless the rules require otherwise). Where the punishment awarded for the unauthorized absence, does not result in severance of employment and the employee continues in service, it will be necessary to pass some consequential order as to how the period of absence should be accounted for and dealt with in the service record. If the unauthorized absence remains unaccounted, it will result in break in service, thereby affecting the seniority, pension, pay etc., of the employee. Any consequential order directing how the period of absence should be accounted, is an accounting and administrative procedure, which does not affect or supersede the order imposing punishment.

11. In this case, the punishment was imposed by order dated 16.9.1999/11.10.1999. That order was not cancelled, revoked or withdrawn. The subsequent order dated 25.1.2001 merely accorded extraordinary leave in regard to the period of absence, but did not condone the unauthorized absence nor wipe out the punishment already imposed. The said order was only consequential to the imposition of punishment. Its effect was to maintain continuity of service of the respondent, but deny salary for the period of absence and not to count the period of absence as qualifying service for the purposes of pension. Its effect is certainly not to exonerate the respondent from the charge of unauthorised absence nor to wipe out the punishment. If the intention was to revoke the punishment, the order dated 25.1.2001 would have clearly stated so. But it did not.

12. The assumption by the courts below that when an order is passed according extraordinary leave for the period of absence, it will have the effect of effacing or erasing the punishment already imposed, is therefore incorrect and is a serious error of law. When the trial court and the appellate court had committed this serious error, the High Court ought to have formulated an appropriate question of law and allowed the second appeal. Instead, it chose to dismiss the second appeal putting its seal of approval on a wrong interpretation of law leading to serious repercussions in regard to discipline and administration. The judgment of the High Court confirming the orders of the courts below, therefore calls for interference.

13. We accordingly allow this appeal, set aside the judgments and decrees of the courts below and dismiss the suit of the respondent. Parties to bear their respective costs.