

# SUPREME COURT OF INDIA

State of Punjab

Vs.

Lalita

C.A.No.6144 of 2009

(R.M. Lodha and Tarun Chatterjee JJ.)

09.09.2009

## JUDGEMENT

**R.M. Lodha, J.**

1. Leave granted.

2. The State of Punjab and its functionaries have preferred this appeal by special leave being aggrieved by the order dated November 30, 2007 passed by the High Court of Punjab and Haryana whereby it allowed the writ petition filed by the present respondent and set aside the order dated February 07, 2007 passed by the appellate authority and imposed cost of Rs. 25,000/- upon the present appellants.

3. Smt. Lalita - respondent was engaged as a Telephone Operator for 89 days in the office of Head Officer, Excise and Taxation Department on March 07, 1996. On May 22, 2003, she applied for medical leave for a period of one month i.e. upto June 21, 2003. The said application for medical leave was granted without pay. She did not join her duties on expiry of leave but continued to apply for further leave including the maternity leave from September 16, 2003 to March 16, 2004. Having remained absent for almost nine months, initially, she was given a show cause notice dated March 16, 2004 and later on she was served with a charge sheet on June 04, 2004 under Rule 8 of Punjab Civil Services (Punishment and Appeal) Rules, 1970 (for short "Rules, 1970") for imposition of major penalty. An inquiry officer was appointed to inquire into the misconduct of delinquent viz; unauthorized absence; negligence of duty and highly irresponsible and careless behaviour.

“The respondent denied the allegations made in the charge sheet.

The inquiry officer after recording the evidence and on the basis of the material submitted before him concluded that the delinquent remained on willful absence unauthorisedly. The enquiry report was furnished to the respondent and a second show cause notice issued on December 23, 2004 by the disciplinary authority as to why she be not removed from service. The respondent submitted a reply to the show

cause notice on December 31, 2004. After taking into consideration her reply, on February 03, 2005, an order came to be passed by Excise and Taxation Commissioner, Punjab removing the respondent from service.”

5. The respondent challenged the order of removal in the writ petition before the Punjab and Haryana High Court. The High Court declined to entertain the writ petition and dismissed the same on February 25, 2005 observing that the respondent may pursue departmental remedy of appeal.

6. On March 09, 2005, the respondent filed a departmental appeal. It appears that the departmental appeal could not be disposed of for about a year or so and aggrieved thereby the respondent preferred a petition before the High Court of Punjab and Haryana, wherein on May 30, 2006, the High Court directed the appellate authority to take a final decision on the appeal preferred by the present respondent within two months from the date of receipt of certified copy of the order.

7. On February 07, 2007, the appeal preferred by the present respondent came to be dismissed.

8. The respondent challenged the order dated February 07, 2007 by filing another writ petition which has been allowed by the impugned order. Hence, this appeal by special leave.

9. Having heard the learned counsel for the parties and upon careful consideration of the matter, in our judgment, the impugned order cannot be sustained and matter has to go back to the High Court for fresh consideration. In the first place, the High Court did not examine the correctness of the order dated February 07, 2007 on its merit at all and yet held that the impugned order was passed by the appellate authority without any application of mind. It may be that the order passed by the appellate authority on February 07, 2007 is not happily worded but to conclude, based on the use of the word "worthy" in the order, that the order was not passed by the appellate authority does not appear to us to be proper.

“In the absence of any material having been placed by the respondent before the High Court that the order dated February 07, 2007 was not passed by the appellate authority and that it was passed by some subordinate officer in his office, we are afraid, the conclusion of the High Court cannot be sustained.”

10. Secondly, the High Court fell into grave error in not considering at all whether the order of removal suffered from any legal infirmity. Even if we assume that the order of appellate authority is not proper as observed by the High Court, it ought to have considered the legality of the order of removal. Since the matter needs to be remanded to the High Court, we refrain from dealing with the matter further.

11. The appeal is, accordingly, allowed to the aforesaid extent. The order dated November 30, 2007 passed by the High Court is set aside and writ petition (CWP NO.7855/2007) is restored to the file of the High Court for fresh decision in accordance with law.

We request the High Court to hear and decide the writ petition as expeditiously as may be possible. No order as to costs.