

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.545 OF 2001@@  
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State of Punjab & Anr. .. Appellants

Vs.

Kuldip Singh Bains .. Respondent

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A suit was filed by the respondent for declaration that his dismissal from service is null and void and for consequential benefits.

After the pleadings were raised and evidence led in, the trial Court recorded the following findings: that the respondent was granted Ex-India leave from 26.8.1991 to 29.11.1991 and he applied for extension of leave on the ground of ill health whereby he was asked to produce medical certificate counter -signed by the Medical Board/Councillor at Indian Embassy in U.S.A. as required under the relevant Rules but he did not do so; that he could not produce the medical certificate nor could he get the same counter signed inasmuch as the travel expenses were not paid to him by the appellant; that there was no Rule or obligation on the appellant to make such payment and it was for the respondent to get ..2/-

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the medical certificate signed from the concerned officer in the Indian Embassy as required under the Rules; that proceedings were initiated for disciplinary action against him for wilful absence from duty and in spite of several communications in this regard, the respondent failed to appear before the Enquiry Officer; that proceedings took place ex-parte and on the enquiry authority making a report to the disciplinary authority an order dismissing the respondent was passed. On that basis the trial Court dismissed the suit.

On appeal the Appellate Court by strange reasoning without saying anything one way or the other on the findings recorded by the trial Court merely found that no personal hearing was given to the respondent by the disciplinary authority and therefore set aside the order of dismissal. This view stood affirmed on an appeal to the High Court in the second appeal filed by the appellant before the High Court. Hence this appeal.

It is clear from the narration of the facts made above that the trial Court's findings could not be assailed and the findings recorded by the Appellate court to the effect of not hearing the respondent or delegating the power to hear him to Joint Secretary would not be relevant particularly in view of the fact that the

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respondent had remained ex-parte. We fail to understand as to how the respondent could be given an opportunity of being heard when he chose to remain absent. In these circumstances, the view of the First Appellate Court and High Court are based on imaginary ground rather than realities of the matter. Hence, we set aside the order made by the Appellate Court as affirmed by the High Court and restore that of the trial Court. The appeal is allowed accordingly.

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[ S. RAJENDRA BABU ]@@  
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[ P. VENKATARAMA REDDI ]@@  
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New Delhi,@@  
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February 12, 2002.

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ITEM NO.113 COURT NO.5 SECTION-IV

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO.545/2001

State of Punjab & Anr. .. Appellants

Vs.

Kuldip Singh Bains .. Respondents  
(With office report)

DATE : 12.2.2002 : This/These matter (s) was/were called on for hearing today.

CORAM :  
HON'BLE MR. JUSTICE S. RAJENDRA BABU  
HON'BLE MR. JUSTICE P. VENKATARAMA REDDY

For Appellant (s) : Mr. A.S. Sohal, Adv.  
Mr. Rajeev Kumar Sharma, Adv.

For Respondent (s) : Mr. A.P. Mohanty, Adv. (NP)

UPON hearing counsel the Court made the following  
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Mr. A.S. Sohal, learned counsel started his arguments at 3 p.m. and concluded at 3.15 p.m.

The appeal is allowed in terms of the signed order.

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(Meenu Sethi)  
Court Master

(Om Prakash )  
Court Master

Signed order is placed on the file