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STATE OF PUNJAB AND ORS.

v.

JIT SINGH

JULY 22, 1996

B

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Punjab Public Works Department Code : Rules 1.129(7) and 1.132.

C *Service Law—Termination—Punjab Public Works Department—Road and Building Department—Work charge employee—Leave—Overstay without sanction of leave—Termination—Suit challenging termination order—Contention that employee being a civil servant his termination without enquiry was invalid held untenable—Held employee was not a Government servant—Unless his services were regularised he remained a work charge employee—His termination being in accordance with procedure laid down in Rules was*
D *valid—Suit filed by employee held not maintainable.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9883 of 1996.

E From the Judgment and Order dated 9.3.94 of the Punjab & Haryana High Court in R.S.A. No. 114 of 1993.

Manoj Swarup for the Appellants.

B.K. Satija for the Respondents.

F

The following Order of the Court was delivered :

Leave granted. We have heard the counsel on both sides.

G This appeal by special leave arises from the order of the High Court Punjab & Haryana made on March 9, 1994 in R.S.A. No. 114/93. The respondent, a work charged employee, had gone on leave from April 10, 1986. His service was terminated due to his overstay without due sanction of leave. A letter dated September 3, 1986 was communicated to him wherein it was stated that 10 days' time from August 25, 1986 was given to him to report for duty failing which his services "may be considered to have
H been terminated from the date of his absence and he may be informed

accordingly through a registered letter". In furtherance thereof, the letter of termination was addressed to the respondent. He filed the suit questioning the said letter.

Two contentions have been raised by the respondent, viz., that he was a civil servant and that he was entitled to an enquiry before termination of his service and since it was not done, the order was invalid. He also stated that he had gone on leave with permission of the authorities and that, therefore, it cannot be said that he absented without authority of absence. We find that both the contentions are untenable.

The Punjab Public Works Department Code would indicate that the Code would apply to the Work-charged Establishment of the Public Works Department, Roads and Building Department. The respondent was working in Irrigation Department. Rule 1. 132 indicates that a work-charged employee is not entitled to any pension, leave, travelling allowance etc. He is liable to be terminated under the Code by giving 10 days' notice as required in clause (7) of Rule 1.129 of the Code. Under these circumstances, it is clear that the respondent is not a Government servant. Unless his services are regularised in accordance with law, his services remain to be of a work-charged employee. He was terminated in accordance with the above procedure prescribed thereunder.

It would be seen that from May 1986 to August 19, 1986 the respondent remained absent from duty without any proper sanction of the Competent authority or grant of leave. The courts have proceeded on the premise that he was absent on leave for a short period of 10 days. In fact, it is not so. The circumstances indicate that the courts below have not applied their minds in correct perspective, to the legal and factual aspects.

The appeal is accordingly allowed. The suit of the respondent stands dismissed, but, in the circumstances, without costs.

T.N.A.

Appeal allowed.