2026:PHHC:191812

125 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

RSA-2161-2016 (O&M)

Ram Pal ....Appellant..

vs.

State of Haryana and others ....Respondents.

1	*The date when the judgment was reserved*	*23.07.2026*
2	*The date when the judgment is pronounced*	*16.10.2026*
3	*The date when the judgment is uploaded on the website*	*16.10.2026*
4	*Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced*	*Full*
5	*The delay, if any, of the pronouncement of full judgment, and reasons thereof.*	*Not applicable*

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Sunil Kumar Bhardwaj, Advocate,
for the appellant.

Mr. Raj Partap Singh Brar, AAG, Haryana.

*****

HARKESH MANUJA J. (Oral)

1. By way of present appeal, challenge has been laid to the judgments and decrees dated 27.08.2012 and 07.10.2015 passed by the Courts below whereby a suit for declaration to the effect that the appellant-plaintiff was entitled for the amount of Rs.1,40,000/- on account of 50% withheld salary of suspension period i.e. 30.08.1995 to 30.07.1998 along with interest @ 18% per annum with consequential relief of mandatory injunction directing the respondents-defendants to pay the withheld amount

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with 18% interest from the due date of final payment, was dismissed.

2. Briefly stated, the appellant-plaintiff was serving in the Animal Husbandry & Dairy Department, Haryana and was posted as Bull Attendant at Govt. Model Exotic Animal Farm, Bhiwani in the year 1995. Thereafter, a dispute arose between the appellant and one Krishan Kumar, in respect of which FIR No.229 dated 30.08.1995 was registered against him and others at Police Station Sadar, Bhiwani. The appellant was held guilty by the learned Chief Judicial Magistrate, Bhiwani vide order dated 06.05.2002. In appeal, vide decision dated 16.11.2002, the learned Sessions Judge, Bhiwani converted the fine imposed by the learned Trial Court into compensation and released the appellant on probation, while observing that "release on probation will not effect the service career of Rampal-accused-convict". During the pendency of the said FIR, the opposite party approached the SP, Bhiwani, who informed respondent-defendant No.2 about the said fact. Thereafter, defendant No.2 placed the plaintiff under suspension without considering the facts of the case. It was alleged by the plaintiff that he was neither charge-sheeted nor afforded any opportunity to explain his position, which was illegal.

2.1 It was further alleged that the appointing authority of the plaintiff was the Deputy Director, Bhiwani, whereas the suspension order was passed by defendant No.2, which was also illegal. Thereafter, respondent-defendant No.2 passed order dated 22.08.2003, whereby the period of suspension was converted into "leave of kind due", contrary to the directions of the learned Sessions Court. Since there was no leave standing to his credit, the plaintiff alleged that defendant No.2 illegally sought to forfeit 50% of his pay for the suspension period. Despite his request for release of full wages in terms of the Court's direction and service of a legal

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notice, the defendants neither released the withheld amount nor replied to the notice. Consequently, the plaintiff filed the suit for declaration and mandatory injunction seeking release of Rs.1,40,000/- towards 50% of the withheld salary for the suspension period from 30.08.1995 to 30.07.1998, along with interest @ 18% per annum.

3. Upon being served with notice, defendant No.4 filed written statement on behalf of all the defendants, raising preliminary objections that the suit was false, frivolous, not maintainable, barred by limitation, improperly valued, and that the plaintiff was estopped from filing the same, had no cause of action and had not approached the Court with clean hands. On merits, it was contended that pursuant to letter No.12855 dated 07.11.1995, the plaintiff was suspended w.e.f. 30.08.1995 vide order No.55921-23/E-4 dated 27.11.1995 on account of his involvement in FIR dated 30.08.1995. He was relieved on 15.12.1995 (F.N.) with directions to join at his headquarters during suspension, i.e. Morni (Ambala), and his suspension was extended for another two years w.e.f. 27.11.1996 vide letter No.6557/E-4 dated 19.02.1998. He was thereafter convicted and sentenced under Sections 148, 323 and 325 IPC read with Section 149 IPC vide order dated 06.05.2002 and order of sentence dated 08.05.2002. His appeal along with that of the co-accused was dismissed vide judgment dated 16.11.2002, whereby he was released on probation with the observation that such release would not affect his service career.

3.1 It was further submitted that under Appendix 24 C.S.R. Vol. II Part I, the appointing authority, any authority to which it is subordinate, the punishing authority or any authority empowered by the Governor could place a Government employee under suspension where a criminal case against him was under investigation, inquiry or trial. It was submitted that

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Rules 7.3(2) and 7.5 of C.S.R. Vol. I Part I provide for adjustment of the allowances of a suspended employee according to the circumstances of the case, with the full amount being payable only where the suspended officer/official is acquitted of the charge framed against him. Since the plaintiff was not acquitted and his conviction was upheld by the learned Sessions Judge, he was not entitled to full salary for the suspension period. The defendants maintained that the plaintiff's service career had not been adversely affected, as suspension did not amount to punishment, and, accordingly, the period from 30.08.1995 to 30.07.1998 was ordered to be treated as leave of the kind due vide order dated 22.08.2003 passed by the Director, Animal Husbandry.

3.2 It was further stated that vide order dated 02.01.2009, the plaintiff was sanctioned 30 days' earned leave, 60 days' half-pay leave and 886 days' leave without pay. His pay was thereafter re-fixed after allowing annual increments and the consequential arrears were paid on 31.03.2009. According to the defendants, the plaintiff was entitled only to 50% salary for the relevant period, whereas full pay had been paid to him from 30.08.1995 to 31.10.1995, which was recoverable as excess payment. The defendants reiterated the competence of defendant No.2 to suspend the plaintiff, denied any violation of the order dated 16.11.2002 or any entitlement of the plaintiff to the amount claimed, and maintained their right to recover the excess payment. The remaining averments were denied and dismissal of the suit was prayed for.

4. Plaintiff filed replication controverting the averments made in the written statement while reiterating those raised in the plaint.

> *" 1. Whether the plaintiff is entitled to the relief of declaration and injunction as prayed for by him on the ground so mentioned in the plaint? OPP*

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2. Whether plaintiff has no locus standi and cause of action to file the present petition?OPD

3. Whether the suit is not maintainable in the present form? OPD.

4. Relief."

5. After appreciating the oral and documentary evidence led by the parties, the suit came to be dismissed by the learned Additional Civil Judge (Senior Division), Bhiwani *(hereinafter referred to as the "Trial Court"),* vide judgment and decree dated 27.08.2012.

6. Being aggrieved, the appellant-plaintiff preferred the first appeal, however, the same came to be dismissed vide judgment and decree dated 07.10.2015 passed by the ld. Additional District Judge, Bhiwani *(hereinafter referred to as "First Appellate Court")*. Hence, the present regular second appeal.

CONTENTION(S):

ON BEHALF OF THE APPELLANT(S)-PLAINTIFF(S):-.

7. Impugning the aforementioned judgments and decrees, learned counsel for the appellant submitted that the appellant-plaintiff joined as Bull Attendant (Class IV employee) in Animal Husbandry & Dairy Department, Haryana in the year 1995 and FIR No.299 dated 30.08.1995, was registered against him, in which, he was held guilty and was convicted vide order dated 06.05.2002 passed by the ld. Chief Judicial Magistrate, Bhiwani. Learned counsel further submitted that on an appeal filed against the conviction, the ld. Sessions Court, Bhiwani released the appellant-plaintiff on probation with an observation that conviction shall not operate as an embargo on his service (Ex.P-3). On 22.08.2003, the appellant-plaintiff was reinstated but his period of suspension w.e.f. 30.08.1995 to 30.07.1998 was treated as

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"leave of the kind due" and vide order dated 02.01.2009 (Ex.P-5), he was sanctioned 30 days' earned leave, 60 days' half pay leave and 886 days' without pay. Learned counsel thus contended that the treatment of the suspension period as leave, despite the specific protection granted by the Sessions Court regarding his service career, effectively imposed an adverse consequence on the appellant on account of the conviction

7.1 It is further contended that the learned First Appellate Court erred in treating the case as one involving misconduct merely because the appellant had been convicted, while ignoring the effect of Section 12 of the Probation of Offenders Act. In support, he relied on the judgments of ***Balkar Singh Nagra v. State of Punjab, 2013 (2) Law Herald 1795*** and ***Tejwinder Singh v. State of Punjab, 2009 (5) RCR (Criminal) 526***. In view of the aforesaid, he submitted that Section 12 removes the statutory disqualification flowing from conviction and thus conviction was not to be made basis of the dismissal of service. Learned counsel thus, submits that the judgments and decrees passed by the Courts below were liable to be dismissed and the suit preferred at the instance of appellant-plaintiff was to be decreed.

ON BEHALF OF THE RESPONDENT(S)-DEFENDANT(S):

8. Per contra, learned counsel appearing on behalf of respondents-defendants submits that applying the principle of "no work no pay", the appellant was rightly declined the complete wages during his suspension period from 30.08.1995 to 30.07.1998. In support, learned counsel places reliance upon judgment of Madhya Pradesh High Court titled ***"Satyanarayan Sharma vs. Director General Central Reserve Police Force and others"*** reported as ***2025 (2) M.P.L.J. 159*** and judgment of Delhi High Court titled ***"Mohd. Anwar vs. Namia Millia University & anr."***, reported

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as ***2006(26) S.C.T. 371*.** Learned counsel thus submits that the judgments and decrees passed by the Courts below being based on proper appreciation of material facts call for no interference and as such, present appeal was liable to be dismissed.

DISCUSSION AND REASONING:

9. I have heard learned counsel for the parties and gone through the paper book. I find substance in the submissions made on behalf of the appellant.

10. The short controversy that needs to be dealt in the present case is that whether the period of suspension could, in the absence of any departmental finding of misconduct or leave being available to his credit, be converted into "leave of the kind due" so as to deprive him of 50% of his pay of suspension period, particularly when the Sessions Court, while releasing him on probation, had specifically directed that such release would not affect his service career.

11. Before adverting to the facts of the present case, this Court deems it apposite to refer to the law discussed in ***RSA no. 627 of 1997*** titled as ***The Punjab State and another v. Shri Ram Asra*** wherein this Court, while dealing with a similar factual situation observed as under:

> *"Per contra Mr. R.S.Bajaj, Advocate, appearing for the respondent maintained with great vigour that as ruled by this Court in **Man Singh Versus State of Haryana 2010(1) Service Cases Today 604**, "the punishing authority in a case of conviction of an employee in criminal charge has to consider whether it is desirable to keep him in service after his conviction or not and his dismissal from service is not automatic." But here in this case, the punishing authority without considering this fact had passed the impugned order and it is because of this reason it has been held to be illegal, null and void by both the courts below. This contention merits acceptance for the discussion to follow hereunder:-*
>
> *Mere conviction of a Government employee in a criminal case does not ipso facto entail penalty, but it is his conduct which*

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led to such conviction is required to be taken into consideration for imposing penalty. The impugned order No.71 dated 16.4.1986 Ex.P-2 reads as under:-

> *"In consonance with Chief Engineer Punjab, PWD B&R Br. Memo No.4796 dated 11.9.85 and Chief Secretary Punjab Chandigarh letter No. 5657-2G SJ-77/26911 dated 23.6.77 read with Supreme Court of India judgment AIR 1975 SC 2216, the period of suspension from 23.7.82 to 24.1.84 of Sh. Ram Asra Beldar s/o Sh. Gokhru is treated as leave of the kind due. Moreover, Sh. Ram Asra Beldar is hereby censured."*

Palpably, this order is cryptic about the fact that the judgment rendered by the court of learned Additional Chief Judicial Magistrate, vide which the plaintiff-respondent has been convicted was gone through by the competent authority and after due and independent application of mind to the conduct of plaintiff-respondent had reached the conclusion that his conduct which had led to his conviction was such as warranted the imposition of penalty and what it should be*……*

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In ***Union of India Vs. V.K. Bhaskar (1997) 11 Supreme Court Cases 383*** *it was noticed that "it should always be determined after reading the order whether it is passed only on the basis of conviction of an employee or after considering the nature of conduct." In* ***Rajinder Singh Vs. Board of School Education Haryana and another 1996(4) Recent Service Judgments 417*** *it has been held that "in cases involving moral turpitude, the employer may be justified in taking the view that the employee has lost his right to remain in service but may choose to impose a comparatively lesser punishment." This has to depend on the objective application of mind by the employer to the facts of the given case. In Rajinder Singh's case (supra), the conviction simpliciter was made the basis of dismissal of the employee from service. There was nothing in the record in that case to indicate that the respondents had considered the conduct of the petitioner therein which led to his conviction. The rule laid down in these authorities is to the effect that there can be no automatic dismissal from service merely on conviction and it is imperative upon the competent authority to apply its mind to the judgment of the criminal court as also the other material to reach a definite conclusion that it would not be desirable to retain an employee in service on account of his conviction.* ***In the instant case, the period of suspension of the plaintiff-respondent from 23.7.1982 to 24.1.1984 has been treated as leave of the kind due besides his having been***

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> ***censured despite the fact that he was released on probation of good conduct and without taking into consideration his conduct. The punishing authority was under legal obligation to consider all these aspects, while passing the impugned order. The punishing authority giving a go bye to the factual scenario has passed the impugned order, which thus cannot be sustained. Consequently, the findings returned by both the courts below cannot be faulted with in any manner.***
>
> ***(Emphasis supplied)***

12. The aforesaid judgment makes it clear that mere conviction of a Government employee does not, by itself, justify an adverse consequence in service. The competent authority is required to consider the conduct which led to the conviction and apply its mind to the judgment of the Criminal Court and the facts of the case before deciding the consequence in service. The same principle assumes significance in the present case, particularly because the learned Sessions Judge, while releasing the appellant-plaintiff on probation, specifically recorded that such release would not affect his service career. The said judgment also noticed that the accused-convicts including the appellant-plaintiff were not previous convicts, were poor persons and bread earners of their families and that there was no material to show that they were incorrigible or incapable of reform. The relevant paragraph no.s 8, 9 and 10 of the judgment of the Sessions Court are reproduced hereunder for reference:

> "***8.*** *It has been argued by learned counsel for the accused-appellants that the accused persons deserve the concession of probation, because they are not previous convicts, poor persons and are bread earners of the family. The Hon'ble High Court of Punjab and Haryana in case* ***Rajesh Kumar veraus State of Haryana 2001(4)RCR(Criminal) 795*** *has held that the accused if convicted under Section 325 of I.P.C., he can be given the benefit of probation****.*** *The Hon'ble Supreme Court of India in case* ***Hansa Vs. State of Punjab 1977 Supreme Court Cases(Criminal)550,*** *allowed the benefit/probation to a convict under Section 325 I.P.C. and held the release of the accused on probation justified. The Hon'ble High Court of Punjab and Haryana in case* ***Banwari Lal vs. State of Punjab 1981 CLR 136****, allowed the benefit to the accused-convict and laid*

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down the guidelines for releasing an accused- convict on probation. The Hon'ble High Court laid down that the object of punishment is not only retributive but also reformative and so, the court deciding to with-hold benefit of section 360 Cr.P.C. to an offender is bound to record its special reasons. If the court finds that the convicts are incorrigible and cannot be reformed then and, only then the benefit of section 360 Cr.P.C. cannot be with- held. The Hon'ble High Court further observed that the benefit of probation should not be with-held unless it is found that the convicts cannot be reformed. ***There is no such evidence on record from where it can be considered and held that accused-convicts are incorrigible and cannot be reformed. The object of law is reformative and not retributive. The accused-convicts who are not previous convicts, poor persons and are bread earners of their families coupled with the fact that they also suffered physical and mental agony for a long period of seven years of the pendency of the case, are therefore, entitled to the benefit of probation.*** *Hence, a chance must be given to the accused to reform and rehabilitate. The Hon'ble Supreme Court of India in case* ***Bishnu Deo Shaw vs. State of West Bengal, 1979 CAR of India 385(SC)****, has held that special reasons mentioned in section 361 Cr.P.C. mean to compel the court to hold that it is impossible to reform and rehabilitate the offenders with regard to their age, character, antecedents and circumstances of the case.* ***The facts and circumstances of our case indicate that there was some minor dispute regarding the flow of water and due to that the accused persons inflicted injuries upon the person of Krishan- complainant and in that scuffle, two accused persons also received minor injuries. Therefore, it cannot be held that it is impossible to reform and rehabilitate the offenders with regard to their age, character, antecedents and circumstances of the case. By taking the facts and circumstances of the case as well as the law laid down in the aforesaid rulings, I am of the considered opinion that justice would be met if the accused-convicts are released on probation of good conduct by giving them a chance of reforming and rehabilitation.***

9. Under Section 4 of the Probation of offenders Act, 1958, if a person is found guilty of having committed an offence not punishable with death or imprisonment for life, he can be released on probation of good conduct.

10. In view of the above, accused-convicts namely Mohinder Kumar, Rampal, Surender alias Sunder, Rohtash and Ashok Kumar are ordered to be released on probation under Section 4 of the Probation of Offenders Act, 1958, read with Section 360 Cr.P.C.,on their entering into bonds in the sum of Rs.10,000/- (Rupees ten thousand only), with one surety in the like amount each, for a period of one year and to keep peace and be of good behaviour in the meantime and to appear and receive the sentence as and when called upon by the Court to do so, during the period of one year. Keeping in

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> *view the injuries suffered by the complainant, each accused is further burdened to pay a sum of Rs. 1000/- by way of compensation to Krishan-complainant-injured. The total amount of compensation of Rs.5000/- be deposited in the court within a period of one month. The amount of fine already paid by the accused persons would be adjusted towards the amount of compensation allowed to the injured-complainant today. In other words, each accused would pay balance amount of Rs.800/-, because a sum of Rs. 200/- as fine was earlier paid before the court below. Amount of fine is converted to compensation.* ***However, it is made clear that release on probation will not effect the service career of Ram Pal-accused- convict."***
>
> ***(Emphasis supplied)***

12.1 A perusal of the aforesaid judgment shows that the appellant-plaintiff was not a previous convict and that the learned Sessions Court, after noticing the circumstances in which the occurrence had taken place, considered him entitled to the benefit of probation. More importantly, while releasing him on probation, the learned Sessions Court specifically observed that "release on probation will not effect the service career of Ram Pal-accused-convict". There is no finding in the said judgment that the conduct of the appellant-plaintiff was such as warranted any adverse consequence in his service. Thus, the said judgment was a relevant circumstance which the competent authority was required to consider while deciding the manner in which the period of suspension was to be dealt with.

13. In this background, the order dated 22.08.2003, whereby the period of suspension was treated as "leave of the kind due", requires consideration. Though the said order noticed that the employee had been released on probation, it proceeded to treat the period from the date of suspension till reinstatement as leave of the kind due, without recording any independent consideration of the findings of the Sessions Court regarding the appellant-plaintiff's conduct or the effect of the order granting probation. The order also does not disclose any reasons as to why such treatment of the suspen-

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sion period was considered warranted. Thus, the competent authority failed to independently apply its mind to the relevant circumstances, as was required in terms of the principle noticed in ***Ram Asra's case (supra).***

14 The matter may also be examined in the light of Rule 7.3 of the PCS Rules, (Vol. I, Part I) (Chapter-VII) (Haryana State). The said Rule requires the competent authority, upon reinstatement, to make a specific order regarding the pay and allowances payable for the period of absence and also as to whether such period is to be treated as a period spent on duty. Sub-rule (3) provides for payment of such proportion of pay and allowances as may be prescribed by the competent authority, whereas sub-rule (5) deals with the manner in which such period is to be treated. Pertinently, the proviso to sub-rule (5) specifically contemplates conversion of the period of absence into leave of any kind due and admissible to the Government employee, but only if the Government employee so desires. The significance of the said proviso assumes particular importance in the facts of the present case. The said rule is reproduced hereunder:

> *7.3 (1) When a Government employee, who has been dismissed, removed, compulsory retired, or suspended, is reinstated, or would have been reinstated but for his retirement on superannuation the authority competent to order the reinstatement shall consider and make a specific order:-*
>
> *(a) regarding the pay and allowances to be paid to the Government employee for the period of his absence from duty, occasioned by suspension and/or dismissal, removal or compulsory retirement ending with his reinstatement on or the date of his retirement on superannuation as the case may be, and*
>
> *(b) whether or not the said period shall be treated as a period spent on duty.*
>
> *(2) Where the authority mentioned in sub-rule (1) is of opinion that the Government employee has been fully exonerated or, in the case of suspension, that it was wholly unjustified, the Government employee shall be given the full pay and allowances to which he would have been entitled, had he not been dismissed, removed, compulsorily retired or suspended, as the case may be.*
>
> *(3) In other cases, the Government employee shall be given*

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> *such proportion of such pay and allowances as such competent authority may prescribe:*
> *Provided that the payment of allowances under sub-rule (2) or sub-rule (3) shall be subject to all other conditions under which such allowances are admissible.*
> *Provided further that such proportion of such pay and allowances shall not be less than the subsistence and other allowances admissible under rule 7.2.*
> *(4) In a case falling under sub-rule (2) the period of absence from duty shall be treated as a period spent on duty for all purposes.*
> ***(5) In a case falling under sub-rule (3) the period of absence from duty shall not be treated as a period spent on duty unless such competent authority specifically directs that it shall be so treated for any specified purpose:***
> ***Provided that if the Government employee so desires, such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the Government employee.***

14.1 This Court is conscious of the fact that the proviso to Rule 7.3(5) refers to the "period of absence" and does not expressly provide that every period of suspension can be converted into leave only with the consent of the employee. However, where the competent authority chooses to treat the period of suspension as leave of the kind due, the requirements of the said proviso and the principles laid down in ***CWP-18098-2003*** titled as ***Baldev Singh v. State of Haryana*** become relevant. In the said case, while considering the same provision, this Court specifically observed that where the conversion of suspension period to leave of due kind is to be made, the employee is required to be put to notice before a decision is taken in that regard. The relevant observations are as under:

> "*12. Rule 7.3(1) gives the discretion to the competent Authority to deal with the period of suspension as per sub-clauses (a) and (b). Thereafter, depending upon the facts and circumstances of the case, the competent Authority shall take a decision as has been provided under the subsequent sub-Rules. The case of the petitioner shall be covered under Rule 7.3 (3). This sub-Rule (3) has been further clarified and would fall in sub-Rule (5) where it is provided as to how that period has to be dealt with. In exercise of such power, the Competent Authority has decided to treat the period of suspension of the petitioner as leave of the kind due. Thus, the judgments on which reliance has been placed by the counsel for the petitioner would not be applicable to the claim of the petitioner.*

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> ***13. <u>However, there is a proviso attached to sub-rule (5), according to which, if a Government employee so desires, the Competent Authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the Government employee. This would invariably require a notice to be given to an employee before a decision is taken by the competent Authority on the question of how the period of absence from duty is to be treated. Respondents have not issued such a notice to the petitioner before passing the impugned order dated 28.10.2003 and, therefore, the same cannot sustain as the principles of natural justice have not been complied with especially when such a mandate is provided under this Rule itself. On this ground, the impugned order deserves to be set aside.</u>"***
>
> ***(Emphasis supplied)***

14.2 Thus, ***Baldev Singh's case (supra)*** lends support to the requirement of examining whether the employee had been afforded an opportunity before his suspension was converted into leave of the kind due. The facts of the said case are admittedly different, as the employee therein had been acquitted. However, the principle regarding the manner in which the power under Rule 7.3(5) is to be exercised remains relevant. In the present case, there is nothing on record to show that the appellant-plaintiff himself sought conversion of the suspension period into leave of the kind due or that he was put to notice before such a course was adopted. Further, the appellant specifically pleaded that no leave was available to his credit. In such circumstances, where the authority proposes to make such conversion, the employee ought, at the least, to be informed of the reasons for such proposed treatment and afforded a reasonable opportunity to represent against the same. This would also accord with the basic requirement of fairness and the principles of natural justice**.** Thus, the conversion of the entire period into

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"leave of the kind due" required due consideration by the competent authority.

15. The aforesaid conclusion, on a purposive and harmonious reading of the proviso to Rule 7.3(5), is also consistent with the broader principle that procedural provisions ought not to be construed in a manner which defeats substantial justice. In this context, reference may appropriately be made to ***Wharton's Legal Maxims, with Observations and Cases, Maxim XIV, Boni judicis est ampliare jurisdictionem (Chan. Prac. 329), which means that a good judge is required to enlarge, where the law permits, the remedies available so as to secure complete justice and not allow substantial justice to be defeated by technicalities***. Relevant observations from Wharton's are reproduced herunder:

> *"The word "jurisdictionem" should be, according to Lord Mansfield, " justitiam," and the meaning of the maxim in such case is, that to be* ***a good judge is to amplify in his office the remedies the law gives, so as, in the most perfect manner, to do the most complete justice, not letting substantial justice be frittered away by nice and unmeaning technicalities, or himself to lay hold of such technicalities as a means of avoiding giving a decision according to very right, in broad and substantial justice.*** *And this he has the power and opportunity to do in all those cases which, by the common law, the practice of his court, and by legislative enactment, are left to his discretion—meaning by discretion the exercise of a sound judgment upon the facts, or, as it is stated by Lord Mansfield to be : sound discretion guided by law, governed by rule, not humour ; not arbitrary, vague, and fanciful, but legal and regular ; according to the maxim, "Discretio est discerne per legem quid sit justum." But the maxim does not mean that a good judge will exceed the limits of his jurisdiction, or that he will do anything other than that which by the law and practice of his court he is authorised to do.*
>
> *……With this maxim should be considered the following : '- Bonus judex secundum sequum et bonum judicat, et asquitatem stricto juri praefert "—****A good judge judges according to equity and right, and prefers equity to strict law*** *; and which equity so considered is the construction which judges put upon*

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> *the letter of the law in the decision of cases within the mischief, yet not within the letter, that there may be no failure of justioe, inasmuch as it is impossible that the Legislature should foresee and set down in express terms every evil to bo provided against."*

16. Further, reliance placed by the learned counsel for the respondents upon ***Satyanarayan Sharma's case (supra)*** and ***Mohd. Anwar's case(supra)*** on the principle of "No Work No Pay" is also misplaced. In ***Satyanarayan Sharma (supra)***, the employee had been dismissed from service and was subsequently reinstated after being granted the benefit of probation, and his claim for back wages for the period during which he had not worked was declined on the principle of "No Work No Pay". However, in the present case, the appellant was not dismissed but remained under suspension, and after his reinstatement, 50% of the salary for the suspension period was withheld by treating the said period as "leave of the kind due". The appellant's claim is for recovery of Rs.1,40,000/-, representing the withheld 50% salary of suspension period, thus, the said case is distinguishable on facts. Furthermore, this Court has also considered the view expressed by the Hon'ble Delhi High Court in ***Mohd. Anwar's case (supra)***. There can be no quarrel with the proposition that the view taken therein is a possible view on the issue under consideration. However, having independently examined the matter and in view of the aforesaid discussion, this Court is, with utmost respect, unable to subscribe to the said view. The aforesaid judgment, though entitled to due consideration and respect, is not binding upon this Court, and therefore, this Court finds no impediment in taking a different view on the issue.

17. Equally, the judgments relied upon by learned counsel for the appellant, namely, ***Balkar Singh Nagra (supra)*** and ***Tejwinder Singh(supra),*** have to be understood in their proper perspective. The said

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judgments deal with the effect of release on probation where conviction itself forms the basis of removal or dismissal from service. The present case is materially different. The appellant-plaintiff was neither dismissed nor removed from service on account of his conviction; rather, he was reinstated in service. However, the specific observation of the learned Sessions Court that release on probation would not affect the service career of the appellant-plaintiff was certainly a relevant circumstance which the competent authority was required to consider while passing the order dated 22.08.2003.

18. At this stage, it may also be noticed that a perusal of the cross-examination of the PW-2 shows that the appellant-plaintiff was neither charge-sheeted nor served with any show-cause notice, nor was any departmental enquiry conducted against him. However, the appellant has not challenged the order of suspension itself in the present proceedings. The learned Trial Court, therefore, rightly observed that, once the suspension itself has not been assailed, the Court cannot travel beyond the relief sought and examine the legality of the order of suspension. This Court, while dealing with the present matter in appellate jurisdiction and not in exercise of writ jurisdiction, likewise cannot enlarge the scope so as to examine the validity or legality of the order of suspension itself.

19. Accordingly, the judgments and decrees dated 27.08.2012 passed by the learned Trial Court, Bhiwani, and 07.10.2015 passed by the learned First Appellate Court, Bhiwani are set aside. The present appeal is allowed. The appellant-plaintiff shall be entitled to the withheld 50% salary for the period of suspension from 30.08.1995 to 30.07.1998, along with interest at the rate of 9% per annum from the date the amount became due till its actual payment. The respondents shall release the aforesaid amount within a period of three months from the date of receipt of a certified copy of

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this judgment. In case the payment is not made within the aforesaid period, the outstanding amount shall carry interest at the rate of 12% per annum from the expiry of the said period till realization.

20. Appeal stands allowed accordingly. Decree sheet be prepared.

21. Pending miscellaneous application(s) if any shall stand disposed of.

16.10.2026 **(HARKESH MANUJA)**
sonika **JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/ No

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