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

RSA-4942 of 1999 (O&M)

Reserved on: 23.05.2024

Pronounced on: 30.05.2024

Pawan Kumar

.....Appellant

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. Vikas Bali, Advocate,
for the appellant.

Mr. R.D. Sharma, DAG, Haryana.

NAMIT KUMAR, J.

1. Appellant-plaintiff having failed before both the Courts below, has filed the instant Regular Second Appeal, impugning the judgment and decree dated 30.05.1998, passed by the Court of learned Civil Judge (Junior Division), Bhiwani, whereby suit for declaration filed by the appellant-plaintiff was dismissed as well as the judgment and decree dated 12.03.1999, passed by the Court of learned District Judge, Bhiwani, whereby appeal preferred by the appellant-plaintiff met the same fate.

2. Parties to the *lis* are being referred to as per their status before the trial Court. Briefly stated, the facts of the case are that the plaintiff filed a suit for declaration to the effect that he is entitled to



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for the period from 13.09.1984 to 12.06.1996 when the defendants had withheld the payment of salary to the plaintiff. It was pleaded that plaintiff was appointed as field worker (Class-IV) on 19.04.1978 in the office of Chief Medical Officer (now designated as Civil Surgeon), General Hospital, Bhiwani. His services were terminated vide order dated 13.09.1984 and the said termination was challenged by the plaintiff in civil suit for declaration before the Civil Court at Bhiwani and the same was dismissed vide judgment and decree dated 22.10.1986, passed by the Court of learned Sub Judge Ist Class, Bhiwani. Civil appeal against the said judgment and decree dated 22.10.1986 was also dismissed by the Court of learned District Judge vide judgment and decree dated 22.08.1987. Regular Second Appeal preferred by the plaintiff bearing RSA No.3756 of 1987 was also dismissed by this Court vide judgment dated 31.10.1994. Thereafter, the plaintiff filed Special Leave Petition before the Hon'ble Supreme Court, which was allowed and the judgments and decrees passed by the Courts below were set aside and the suit of the plaintiff was decreed vide order dated 07.05.1996. Consequently, the plaintiff was taken back in service and backwages amounting to Rs.2,14,273/- were paid to the plaintiff on 12.06.1996. Thereafter, second suit was filed by the plaintiff, claiming 18% interest on the said amount. The said suit was dismissed by the trial Court vide judgment and decree dated 30.05.1998 by recording the following finding: -

“11. As far as the factual position of the present case is concerned, there is no dispute, and both the parties have



admitted that the services of the plaintiff were terminated on 13.9.1984 and plaintiff filed a civil suit against the termination order and that suit was dismissed and appeal against the judgment and decree was also dismissed by the First Appellate Court and the regular second appeal of the of the plaintiff was also dismissed by the Hon'ble Punjab & Haryana High Court and the Special Leave Petition of plaintiff was allowed by the Hon'ble Supreme Court of India vide order dated 7.5.1996. The only dispute is that weather the plaintiff is entitled for interest at the rate of 18% on the amount of Rs 2,14,273/- for the period w.e.f. 13.9.1984 to 12.6.1996. Annexure DW2 is the true copy of plaint of the civil suit titled Pawan Kumar verses State of Haryana by which the plaintiff has challenged the termination order dated 13.9.1984. Para no.10 of the plaint is relevant for the purpose of deciding the present suit. Para no.10 is reproduced below:-

10-"It is, therefore, prayed that the suit of the plaintiff for declaration to the effect that plaintiff is and continues to be in the service of the defendants as Field Worker and that the order bearing No.U M B-84/ 351 dated 13th September, 1984 terminating the services of the plaintiff w.e.f.13.9.1984 is wrong, against law, against the principal of natural justice, good conscience, equity and not binding on the rights of the plaintiff and further that the plaintiff is entitled to all benefits of service including salary which have not been paid to him after passing of the order, be decreed with cost in favour of the plaintiff and against the defendants. Any other relief to which the plaintiff may be found entitled during the trial of the suit may also be granted to him."



12. From the perusal of this para no.10, it reveals that plaintiff has not demanded the interest on the benefits of the services in the civil suit. This suit was dismissed. I have also perused the judgment of the Hon'ble Supreme Court of India dated 7.5.96. The operating parts of the judgment is reproduced below:

"As a result of the above discussion, we allow this appeal, set aside the judgment and decree of the High court as also that of the two courts below and decree the suit of the appellant as prayed for, with costs. "By the order dated 7.5.96, the Hon'ble Supreme court of India is set aside the judgment and decree of the High court as also of the two courts below and decree the suit of the plaintiff as prayed for. As I have already mentioned above the prayed clause of the original suit, wherein the plaintiff has not demanded the relief of interest. Plaintiff is not entitled for any interest because it was not the prayer of the plaintiff for the relief of the interest below the Hon'ble Supreme Court of India. This court cannot enlarge the scope of judgment of the Hon'ble Supreme Court of India. Moreover the arguments of the learned G.P. for the state that the suit of the plaintiff is also barred by order 2 rule 2 CPC is convincing. Order 2 Rule of Civil Procedure Code is re-produced below:-

"2. Suit to include whole claim (1). Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any court.



(2) Relinquishment of part of claim-where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several relief-A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such relief but if he omits, except with the relief, he shall not afterwards sue for any relief so omitted.

Explanation-For the purpose of this rule are obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute one cause of action."

From the perusal of the order 2 rule 2 CPC, it reveals that every suit shall include the whole of the claim which the plaintiff is entitled to make the respect of the cause of action but where the plaintiff omits to sue in respect of, or any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. At the time of filing of the civil suit by which the plaintiff has challenged the termination order dated 13.9.1984, plaintiff could claim the relief of interest also but plaintiff had omitted to claim the relief of interest and therefore, now, plaintiff is estopped from filing the present suit in respect of the, claims of interest in view of the order 2 rule 2 C.P.C., therefore, I hold that the order 2 rule 2 C.P.C. The case law referred by the learned counsel for the plaintiff titled S.K.Sayal verses state of Punjab (supra) is not



applicable on the facts and circumstances of the present case.

13. In view of my above observations, I hold that plaintiff is not entitled for any relief of interest and therefore, this issue is decided in favour of the defendants and against the plaintiff.”

x x x x

“15. Issue No 3

As per my findings on issue No 1 the plaintiff is is not entitled for any relief and the suit of the plaintiff is also barred by the principle of order 2 rule 2 CPC and therefore, I hold that plaintiff has no locus standi or cause of action to file the present suit and therefore, this issue is decided in favour of the defendants and against the plaintiff.

16. Issue No.4 (Relief)

As per my findings on various issues the plaintiff has failed to prove his case and therefore, the present suit stands dismissed. However, both the parties are left to bear their own costs. Decree sheet be prepared accordingly and file be consigned to record room after due compliance.

Announced.

Civil Judge (Junior Division)

Dated: 30.5.1998

Bhiwani.30.5.98.”

3. Appeal preferred by the plaintiff was also dismissed by the lower Appellate Court vide judgment and decree dated 12.03.1999 by recording following finding: -

“9. I have given my thoughtful consideration to the aforesaid points of arguments raised on behalf of the plaintiff-appellant, in as-much-as, a perusal of the copy of plaint Ex.D1 on the basis of which he had challenged his termination order dated 13.9.1984 shows that in that his



suit for declaration plaintiff-appellant had not claimed any interest on his back wages. Further, it is also apparent from the copy of judgment dated 7.5.1996 of the Hon'ble Supreme Court that he was not granted any interest on his back wages. However, it is an admitted fact that whatever prayer was made by the plaintiff-appellant in his plaint that was accepted by the Hon'ble Supreme Court. It is further admitted fact that the order of the Hon'ble Supreme Court has been fully implemented in letter and spirit by the defendants-respondents. In there given facts and circumstances learned trial Court certainly could not make any addition and omission in the order of Hon'ble Supreme Court on the basis of which plaintiff-appellant again sought the relief of interest on his back wages. As per the provisions of order 2 and rule 2 plaintiff-appellant should have brought whole of his claim in his first suit which was ultimately, decreed by the Hon'ble Supreme Court and thus, now he is barred from seeking some additional relief of interest by filing another second suit. I have also gone through the facts of the above cited rulings relied upon by learned counsel for the plaintiff-appellant and find that the facts contained therein are quite at variance from the facts of the case in hand. Therefore, no benefit can be derived by the plaintiff from the observations made by Their Lordships in these above cited rulings.”

4. Hence, the instant Regular Second Appeal.
5. Learned counsel for the appellant contended that the judgments/decrees passed by the Courts below are liable to be set aside as no issue of *res judicata* was framed and the finding recorded on the said issue cannot be sustained. He further contended that cause of



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action to claim the interest has accrued to the appellant when salary amounting to Rs.2,14,273/- for the period from 13.09.1984 to 12.06.1996 was released to the appellant-plaintiff. Therefore, the judgments passed by the Courts below on account of *res judicata* cannot be sustained. Learned counsel has placed reliance upon the judgment of the Hon'ble Supreme Court in ***The State of Andhra Pradesh and another v. Smt. Dinavahi Lakshmi Kameswari, 2021(1) S.C.T. 684***, judgments of this Court in ***Dalip Singh v. Mehar Singh, 1998(3) PLR 261; S.K. Sayal, Assistant Advocate General, Punjab v. State of Punjab, 1991(3) S.C.T. 169; A.S. Randhawa v. State of Punjab, 1997(3) S.C.T. 468*** and ***J.S. Cheema v. State of Haryana and others, 2014(1) S.C.T. 782***.

6. *Per contra*, learned State counsel submitted that in the first suit, which was preferred by the appellant-plaintiff impugning the order of termination dated 13.09.1984, no interest was claimed and only the termination order was challenged and the Hon'ble Supreme Court having not granted interest while setting aside the judgments passed by the Courts below, therefore, the appellant-plaintiff cannot be allowed to agitate the claim of interest in a subsequent suit which is barred under the provisions of Order 2 Rule 2 CPC. He further submitted that issues No.2 and 3 were specifically framed which were to the effect that “*whether the suit is not maintainable in the present form? OPD*” and “*whether the plaintiff has no locus standi or cause of action to file the present suit? OPD*”.



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7. I have heard learned counsel for the parties and perused the record.

8. The present appeal was admitted on 04.09.2000.

9. The appellant-plaintiff had filed the first suit for declaration on 13.05.1985, impugning the termination order dated 13.09.1984. In the said suit, following relief was claimed: -

“10. It is, therefore, prayed that the suit of the plaintiff for declaration to the effect that the plaintiff is and continues to be in the service of the defendants as Field Worker and that the order bearing No.U M B-84/351 dated 13th September, 1984 terminating the services of the plaintiff w.e.f. 13.09.1984 is wrong, against law, against the principles of natural justice, good conscience, equity and not binding on the rights of the plaintiff and further that the plaintiff is entitled to all benefits of service including salary which have not been paid to him after passing of the order, be decreed with costs in favour of the plaintiff and against the defendants. Any other relief to which the plaintiff may be found entitled during the trial of the suit may also be granted to him.”

10. The said suit was dismissed by the trial Court; first appeal and the regular second appeal preferred by the appellant-plaintiff were also dismissed. The Special Leave Petition preferred by the appellant-plaintiff was allowed and the suit was decreed as prayed for. Relevant portion from the said judgment is as under: -

“The appellant, Pawan Kumar on 19-4-78 was appointed in a class IV post as a Field Worker, on ad hoc basis, in the office of the Chief Medical Officer, General Hospital, Bhiwani, Haryana. In his terms of appointment it



was made clear that the ad hoc appointment offered was till such time his character and antecedents were verified as satisfactory, when he would be considered for regular appointment. He was required to give a declaration in writing that he had not, on any previous occasion, been dismissed from service and had not been convicted by any court of law. This declaration, the appellant presumably furnished.

While in service, the appellant on 4-6-1980 came to be convicted in a summary trial for offence under section 294 IPC by the Court of Shri P.L. Khanduja, Chief Judicial Magistrate, Bhiwani on his entering upon a plea of guilt, for which he was ordered to pay a fine of Rs.20/-, which fine he paid there and then, whereafter it was deposited in the treasury by the Chief Judicial Magistrate the same day. appellant's appointment however, in the meantime kept renewed from time to time.

When steps were afoot to regularise his services, papers were moved to the office of the Superintendent of Police to verify about the character and antecedents of the appellant. The office of the Superintendent of Police reported back the factum of conviction of the appellant under section 294 IPC, but otherwise verified that the appellant was of good character. Thereafter the opinion of the District Attorney, Bhiwani was sought. He opined that the offence punishable under section 294 IPC was not serious offence which could involve moral turpitude and the sentence of fine of Rs.20/- imposed on the appellant was not likely to embarrass him in the discharge of his duties and therefore there was no legal bar for his retention in service. A reference was also made to the Legal Remembrancer, Government of Haryana, soliciting his opinion. This officer opined that it would not be



desirable to appoint the appellant in government service since he had been convicted under section 294 IPC, involving an offence of moral turpitude, as otherwise the very purpose of verification of character/antecedents would be frustrated. On the collection of such material, decision was taken and the services of the appellant were terminated vide order dated 30-9-1984, as no longer required.

Challenging this order the appellant went in suit for declaration before the Civil Court, describing the order terminating his services as against law, equity, good conscience, and violative of principles of natural justice, claiming that he continued to be in service entitled to all benefits of service including salary etc. The State and the Chief Medical Officer resisted the suit. The only contentious issue which corung up from the pleadings of the parties was:

"Whether the order dated 30-9-1984 about the termination of service of the plaintiff is wrong, illegal and liable to be set aside as alleged?"

X X X X

"As a result of the above discussion, we allow this appeal, set aside the judgment and decree of the High Court as also that of the two courts below and decree the suit of the appellant as prayed for, with costs.

*.....J.
(Madan Mohan Punchhi)*

*New Delhi,
May 7, 1996*

*.....J.
(K.S. Paripoornan)"*

11. A perusal of the order of the Hon'ble Supreme Court would show that judgments passed by the Courts below were set aside and the suit filed by the appellant-plaintiff was decreed. Neither the



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interest was claimed in the first suit nor the same was granted by the Hon'ble Supreme Court. Consequently, the second suit filed by the appellant-plaintiff was hit by the provisions of Order 2 Rule 2 CPC and the judgments passed by the Courts below do not require interference by this Court.

12. The judgment cited by the learned counsel for the appellant in the case of **Smt. Dinavahi's** case (supra) is not applicable to the facts of the present case as in the said case. A writ petition under Article 226 of the Constitution was filed before the High Court by a former District and Sessions Judge with the grievance that salaries and pensions which are due as a matter of right to the employees/ex-employees, were not being paid and direction was sought in the petition to the State Government to pay the outstanding salaries and pensions, which remained due. The stand of the State of Andhra Pradesh was that in the backdrop of outbreak of Covid-19 and the financial crisis, the State of Andhra Pradesh issued GOMs No.26 on 31.03.2020 and GOMs No.37 on 26.04.2020, stipulating the deferment of salaries and pensions. The High Court by its judgment dated 11.08.2020 directed the payment of deferred salaries for the months of March-April, 2020 together with interest @ 12% per annum and payment of deferred pension for the month of March, 2020 with similar rate of interest. Aggrieved against the said judgment, State of Andhra Pradesh filed Special Leave Petition and the Hon'ble Supreme Court reduced the rate of interest from 12% to 6%.



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13. The judgments in the cases of ***Dalip Singh*** and ***J.S. Cheema*** (supra) are not applicable to the facts of the present case.

14. Further, the judgment in the case of ***S.K. Sayal*** (supra) is not applicable to the facts of the present case as in the said case the only dispute was that whether the plaintiff/appellant should have been allowed interest on the amount due to him @ 15% per annum and not @ 6% per annum as was done by the first appellate Court.

15. The judgment in the case of ***A.S. Randhawa*** (supra) is also not applicable to the facts of the present case as in the said judgment the issue was as to whether the writ petition was maintainable for claiming interest only on the alleged delayed payment of arrears of pension and provident fund. Therefore, no benefit of the judgments cited by learned counsel for the appellant can be given to him.

16. Concurrent findings have been recorded by both the Courts below and learned counsel for the appellant has failed to show that the same are perverse or illegal or based on misreading, non-reading or mis-appreciation of the material evidence on record. No other point has been argued.

17. No question of law, muchless substantial question of law arises for consideration in the present appeal.

18. In view of the above, present appeal is dismissed.

19. Pending application(s), if any, stand disposed of accordingly.

(NAMIT KUMAR)

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30.05.2024
R.S.

JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No