

**RSA-2747-2003 (O&M)**

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

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**RSA-2747-2003 (O&M)
Date of Decision : 02.05.2025**

Shiv Kumar Sharma

....Appellant

VERSUS

Milk Union, Gurdaspur and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Rahul Aggarwal, Advocate for the appellant.

Mr. Bikramjit Singh Patwalia, Advocate and
Mr. Abhishek Masih, Advocate for respondent Nos. 1 to 3.

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SUDEEPTI SHARMA, J (Oral).

The present appeal is preferred against the judgment and decree dated 21.01.2003 passed by the learned Additional District Judge, Gurdaspur, whereby the appeal filed by the respondent against the judgment and decree dated 12.11.2001 passed by the learned Civil Judge (Jr. Division), Gurdaspur, decreeing the suit of the appellant along with interest @ 9%, was modified to the extent that the appellant would not be entitled to wages for the period for which he did not work.

BRIEF FACTS

2. The brief facts of the case are that the appellant was appointed as Milk Procurement Assistant by the respondent on 02.09.1979. In the year 1983, his designation was changed from Milk Procurement Assistant to Milk Procurement Assistant Grade-I and again on 02.02.1987, his designation was changed as Milk

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Procurement Supervisor. In the year 1981, the appellant was transferred at Gurdaspur in Milk Union, Gurdaspur. While working with the respondents, he was suspended vide order dated 11.04.1995 and charge-sheet was served upon him on 19.04.1995. Thereafter, he was dismissed from service vide order dated 30.09.1996. He filed departmental appeal which was dismissed on 10.04.1997. Then, he filed civil suit before the learned Civil Judge (Jr. Division), Gurdaspur by stating therein that the dismissal order dated 30.09.1996 was passed without following the principles of natural justice. The dismissal order dated 30.09.1996 was set aside by the learned Civil Judge (Jr. Division), Gurdaspur, vide judgment and decree dated 12.11.2001 and the respondents were directed to release all the service benefits alongwith 9% interest and to re-instate the appellant from the date of his suspension.

3. The respondents filed appeal against the judgment and decree dated 12.11.2001, which was dismissed with modification to the extent that the appellant would be entitled to re-instatement with continuity of service but would not be entitled to wages for the period for which he did not work.

4. Hence, the present appeal.

SUBMISSION OF THE LEARNED COUNSEL FOR THE PARTIES

5. Learned counsel for the appellant contends that the learned First Appellate Court has wrongly modified the judgment and decree dated 12.11.2001 of learned Trial Court by holding that the appellant would not be entitled to the wages for the period for which he did not work. He further contends that once the dismissal order is set aside, the appellant would be entitled to back-wages as well.

6. *Per contra*, learned counsel for respondent Nos. 1 to 3 contends that the learned First Appellate Court has rightly held that the appellant would not be

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entitled to wages for the period he has not worked on the principle of 'No Work No Pay'. Therefore, he prays that the present appeal be dismissed.

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

8. A perusal of the record shows that the appellant was dismissed from service on 30.09.1996. He filed departmental appeal against the dismissal order dated 30.09.1996, which was dismissed on 10.04.1997. He filed civil suit, which was decreed in his favour. The appeal filed by the respondents was modified vide judgment and decree dated 21.01.2003 to the extent that the appellant be re-instated into service with continuity of service but he would not be entitled to the wages for the period for which he did not work.

9. In compliance of judgment and decree dated 21.01.2003, the respondent was re-instated and retired after attaining the age of superannuation in the year 2012.

10. The substantial questions of law involved in the present Regular Second Appeal, as per order dated 16.08.2005, whereby the present appeal was admitted by this Court are as follows:-

(a) Whether an employee can be denied the consequential benefits and wages while holding that the order of his termination was null and void and inoperative?

(b) Whether a person whose order of termination is set aside can be denied wages and consequential benefits on the principle of 'no work no pay' even though he is kept out of the service due to the wrong order of the management.?



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(c) Whether in view of the settled law that nobody can be allowed to take benefit of its own wrongs, the management could be granted the benefits even though they were at fault in terminating the services of the appellant?

11. Admittedly, both the Courts have held dismissal order dated 30.09.1996 to be illegal and unjustifiable. Further, the respondents did not file any further appeal against the judgment and decree dated 21.01.2003 passed by the learned Additional District Judge, Gurdaspur, whereby the appeal filed by the respondents was dismissed to the extent of setting aside the dismissal order by the learned Civil Judge (Jr. Division), Gurdaspur. Once the dismissal order is set aside and the appellant is held entitled to re-instatement with continuity of service by both the Courts, it would be unjustified to deprive him of the wages for that period i.e. from 30.09.1996 (when he was dismissed from service) till 21.01.2003 (when he was re-instated in service).

12. Hon'ble Supreme Court in *Union of India Vs. K.V.Jankiraman [1991(4) SCC 109]*, held that the rule of 'no work no pay' is not applicable to the cases where employee is willing to work but is kept away by the authorities for no fault of his. Relevant portion of the judgment is reproduced as under:-

"24. It was further contended on their behalf that the normal rule is "no work no pay". Hence a person cannot be allowed to draw the benefits of a post the duties of which he has not discharged. To allow him to do so is against the elementary rule that a person is to be paid only for the work he has done and not for the work he has not done. As against this, it was pointed out on behalf of the concerned employees, that on many occasions even frivolous proceedings are



instituted at the instance of interested persons, sometimes with a specific object of denying the promotion due, and the employee concerned is made to suffer both mental agony and privations which are multiplied when he is also placed under suspension. When, therefore, at the end of such sufferings, he comes out with a clean bill, he has to be restored to all the benefits from which he was kept away unjustly.

25. *We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases.*

26. *We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not 'found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/ criminal proceedings. However, there may be cases' where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings*



is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore however, such circumstances when they exist and lay down' an inflexible rule that in every case when an employee is exonerated in disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interests."

13. Hon'ble Supreme Court in the case of ***Shobha Ram Raturi Vs. Haryana Vidyut Prasaran Nigam Limited and Others [2016 (16) SCC 663]*** held as under:-

"3. Having given our thoughtful consideration to the controversy, we are satisfied, that after the impugned order of retirement dated 31.12.2002 was set aside, the appellant was entitled to all consequential benefits. The fault lies with the respondents in not having utilised the services of the appellant for the period from 1.1.2003 to 31.12.2005. Had the appellant been allowed to continue in service, he would have readily discharged his duties. Having restrained him from rendering his services with effect from 1.1.2003 to 31.12.2005, the respondent cannot be allowed to press the self

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serving plea of denying him wages for the period in question, on the plea of the principle of “no work no pay”.

4. *For the reasons recorded hereinabove, we are satisfied, that the impugned order passed by the High Court, to the limited extend of denying wages to the appellant, for the period from 1.1.2003 to 31.12.2005 deserves to be set aside. The same is accordingly hereby set aside.*

5. *The appellant shall be paid wages for the above period within three months from today. His retrial benefits, if necessary, shall be re-calculated on the basis thereof, and shall be released to him within a further period of three months.*

14 In view of the above referred to law laid down by the Hon’ble Supreme Court, the substantial questions of law as referred to in para-9 of this judgment are answered in favour of the appellant and against the respondents. Since the dismissal order is set aside by both the Courts, therefore, the appellant is held entitled to wages along with interest @ 9% for the period from 30.09.1996 to 21.01.2003.

15. The present appeal pertains to the year 2003, therefore, the respondents were directed to produce the service/salary record of the appellant and the calculation along with 9% interest of wages for the period from 30.09.1996 to 21.01.2003.

16. This Court appreciate the efforts made by Mr. Bikramjit Singh Patwalia, Advocate for respondent Nos.1 to 3 who produced before this Court the salary record from the year 1996 till 2003 and the calculation of salary for the period from 30.09.1996 to 21.01.2003 along with interest @ 9%. As per salary

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record, the calculation comes to be Rs.10,43,451/-. The same calculation was shared with the learned counsel for the appellant, who stated it to be correct, as per his salary record.

17. In view of the above, the present appeal is allowed. The judgment and decree dated 21.01.2003 passed by the learned Additional District Judge, Gurdaspur, to the extent of denying wages along with interest @ 9% to the appellant, for the period from 30.09.1996 to 21.01.2003 is set aside and judgment and decree dated 12.11.2001 passed by the learned Civil Judge (Jr. Division), Gurdaspur is upheld.

18. Since, the present appeal pertains to the year 2003 and is decided in the year 2025 i.e. after 22 years, therefore, to avoid further harassment to the appellant by way of filing the execution application, the respondents are directed to deposit Rs.10,43,451/- as per calculations submitted by them before this Court in the account of the appellant within a period of two months from the date of passing of this judgment. Further, the appellant is directed to provide his bank account details to the respondents.

19. Decree-sheet be drawn.

20. Pending applications, if any, also stand disposed of.

May 02, 2025
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(SUDEEPTI SHARMA)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes