

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

**Regular Second Appeal No.1817 of 1987 (O&M)
Date of decision:01.04.2015**

The State of Punjab

.....Appellant

Versus

Mohinder Singh

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vaibhav Sharma, DAG, Punjab,
for the appellant.

Mr. R.S. Sharma, Advocate,
for the respondent.

Ritu Bahri, J.

CM No.3451-C of 2015

Documents, Annexures A-1 to A-3, are taken on record.

Misc. application stands allowed accordingly.

RSA No.1817 of 1987

State of Punjab-defendant (appellant) has come up in regular second appeal against the judgment of reversal dated 17.01.1987 passed by the Additional District Judge, Jalandhar, whereby he has accepted the appeal filed by the plaintiff-respondent against the judgment and decree dated 22.01.1986 passed by the Sub Judge, 2nd Class, Jalandhar and decreed the suit filed by the plaintiff.

Mohinder Singh-plaintiff (respondent herein) was employed as a conductor in Punjab Roadways, Jalandhar. He had applied for medical leave w.e.f. 11.01.1978 to 18.01.1978, which was sanctioned by the authorities.

He again applied for extension of the leave. After recovery, he reported for

his duty, but he was not allowed to join his duty on the ground that his services stood terminated w.e.f. 19.01.1978 vide order dated 04.09.1978. Thereafter, he filed the present suit on 31.07.1984 challenging the aforesaid termination order on the ground that no enquiry was conducted against him as per mandatory provisions of Punjab Civil Services Rules, therefore, the same was illegal, null and void.

Upon notice, defendant-appellant filed written statement and controverted the allegations levelled by the plaintiff. It was submitted that the suit was barred by limitation.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the suit is within limitation? OPP
2. Whether notice under Section 80 CPC is invalid? OPP
3. Whether the impugned order dated 04.09.1978 is illegal, void and inoperative against the right of the plaintiff ? OPP
4. Relief.

Trial Court, after going through the evidence led by the parties, decided issue No.3 in favour of the plaintiff-respondent and against the defendant-appellant by observing that no enquiry was conducted against the plaintiff and no efforts were made by the department to hold an enquiry. However, issue No.1 was decided in favour of the defendant-State and against the plaintiff and held that the suit filed by the plaintiff on 31.07.1984 was clearly barred by limitation. Ultimately, the suit was dismissed being time barred.

However, the lower appellate Court set aside the findings recorded by the trial Court on issue No.1 and held that without conducting an enquiry,

the termination order was void and there was no limitation of three years for filing a suit against a void order. Consequently, the appeal was allowed and the suit of the plaintiff-respondent was decreed vide judgment dated 17.01.1987. Hence, this appeal.

The present appeal was admitted on 29.07.1987. Thereafter, vide order dated 30.01.1989, the stay order dated 01.12.1988 was vacated and the respondent-plaintiff could get the decree executed subject to the condition that he would file an undertaking to the effect that in case the appeal is allowed, the money would be refunded with 18% interest from the date of payment till the date of recovery. He was also directed to furnish security to the satisfaction of the executing Court.

Learned counsel for the appellant-State has placed on record entries made in the service book of Mohinder Singh-plaintiff (respondent) as Annexure A-1, according to which, the plaintiff-respondent was taken back on duty on 18.03.1987. The period he remained out of service i.e. 04.09.1978 to 17.01.1987 was treated as duty period for the purpose of continuity of service. But, he was held entitled to the benefit of pay etc. for a period of three years and two months (38 months) proceeding the date of institution of suit i.e. 31.07.1984 till the judgment of the suit i.e. 17.01.1987. Balance period from 11.01.1978 to 03.09.1978 was treated as E.O.L. vide order dated 31.03.1989. Thereafter, vide order dated 21.03.2002 (Annexure A-2/T), Mohinder Singh-respondent was retired on 31.03.2002 (AN) after attaining the age of superannuation. As per Annexure A-3, he has been granted pension, death-cum-retirement gratuity on 08.07.2002.

A perusal of Annexure A-1 shows that the plaintiff-respondent was taken back on duty on 18.03.1987. The present appeal was filed on

18.05.1987. The appellant-department had accepted the judgment passed by the lower appellate Court by taking him back on duty on 18.03.1987 itself. Initially, the execution of the impugned judgment was stayed by this Court in 01.12.1988 and thereafter, the stay order was vacated on 30.01.1989 subject to the condition that the plaintiff-respondent would give an undertaking that in case the appeal is allowed, the money would be refunded with 18% interest. Once, the defendant-department had taken the plaintiff-respondent back on duty vide order dated 18.03.1987 (Annexure A-1); the period for which he remained out of service from the date of termination i.e. 04.09.1978 to 17.01.1987 was treated as duty period and he was held entitled to arrears of 38 months' pay from the date of institution of suit i.e. 31.07.1984, for all intents and purposes, the judgment passed by the lower appellate Court had been implemented. This information was not given to the Court when the stay order was vacated on 30.01.1989. Once, the appellant-defendant had taken a conscious decision and allowed the plaintiff-respondent to join the duty before filing of the present appeal, it would amount to accepting the judgment of the lower appellate Court in toto. Thereafter, the plaintiff-respondent had retired on 31.03.2002 after attaining the age of superannuation. A perusal of Annexure A-3 further shows that the plaintiff had joined his services on 01.01.1966. Hence, he was a regular employee and was having a service of almost 12 years to his credit when his services were terminated by imposing a major penalty without conducting an enquiry. After retirement, the amount of gratuity has been granted to the plaintiff-respondent in accordance with the Punjab Civil Services Rules.

Keeping in view the fact that the plaintiff-respondent was immediately taken back in service after passing of the judgment by lower

appellate Court on 17.01.1987 i.e. prior to filing of the present appeal, this Court restrain to entertain this appeal on the ground that the suit was barred by limitation.

No substantial question of law arises for consideration.

Dismissed.

01.04.2015
ajp

(RITU BAHRI)
JUDGE