

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

**RSA No.943 of 1992 (O&M)
Date of Decision: 11.09.2015**

The Market Committee, Patran

....Appellant

Vs

Sukhdev Singh and another

....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. S.P. Garg, Advocate
for the appellant.

Mr. D.R. Parihar, Advocate
with Sukhdev Singh-respondent No.1.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J.

[1]. Defendant-Market Committee, Patran is in second appeal against the judgment and decree dated 12.12.1991 passed by Additional District Judge, Patiala, whereby judgment and decree dated 20.09.1988 passed by Sub-Judge Ist Class, Patiala has been affirmed.

[2]. Plaintiff-Sukhdev Singh filed suit for declaration to the effect that he was appointed as Auction Recorder in Market Committee, Patran in the year 1976 and he was confirmed as regular employee in the same year. He went on leave from 16.03.1980 to May 1981.

After availing the leave when he came back to join the office he was not allowed to join. In the year 1985 he was told that he has been removed from service, but no order was communicated to him. His earlier suit against the defendants was dismissed. By present suit plaintiff has challenged the resolution dated 16.08.1980 vide which his services were terminated, on the ground that no chargesheet was served upon him and the termination was not preceded by any inquiry or show cause by the competent authority and, therefore, rule of natural justice was not adhered to by the Authority.

[3]. The plaintiff contested the suit, alleging that the cause of action accrued to him on 05.11.1985 when the Market Committee in the written statement in the previous suit disclosed about his removal from service vide resolution dated 16.08.1980. Plaintiff served legal notice under Section 31 of Punjab Agricultural Marketing and Produce Act (for short 'the Act') before filing the suit.

[4]. Defendants contested the suit on all customary pleas. After completion of pleading following issues were framed by the trial Court:-

- “1. Whether the present suit is barred U/s 10 CPC? OPD.
2. Whether the suit is not within limitation? OPD
3. Whether the suit is bad for mis-joinder of necessary parties? OPD
4. Whether no valid notice has been served upon the defendant? OPD

5. *Whether the order dated 16.8.80 is illegal, null and void alleged in the plaint? OPP*
6. *Whether the plaintiff continued in services as Auction Recorder Market Committee Patran not with standing the order dated 16.6.80? OPP*
7. *Relief."*

[5]. Trial Court held issue No.1 in favour of the plaintiff on the ground that previous suit of the plaintiff was rejected by the Court on 07.01.1987 (Ex.DY), but the order passed under Order 7 Rule 13 CPC does not preclude the plaintiff from preferring fresh suit on the same cause of action. Even in the previous suit, the plaintiff got it dismissed as withdrawn for want of proper and valid notice under Section 31 of the Act, therefore Section 10 CPC has been held not applicable in the present case. Issue No.2 i.e. question of limitation was also decided in favour of the plaintiff.

[6]. Issue No.3 was decided against the defendants. Issue No.4 was also decided against the defendants. Issue No.5 was decided in favour of the plaintiff on the ground that the order of punishment has been passed without observing any procedural law and the inquiry conducted was not in consonance with Rule 8 of the Punjab Civil Service (Punishment and Appeal) Rules 1970 (for short 'the Rules').

[7]. Issue No.6 was decided against the defendants holding that the plaintiff is deemed to be in service as Auction Recorder as if the order of termination dated 16.08.1980 was never passed. Resultantly, suit of the plaintiff was decreed. The claim of arrears of

the salary was confined to three years. Suit of the plaintiff was decreed to the effect that order dated 16.08.1980 is illegal, null and void and the plaintiff was held entitled to all the benefits of service including pay and allowance for three years. The claim of the seniority of the plaintiff was held intact, treating him to be in service as if his services were never terminated.

[8]. Municipal Committee, Patran-defendant No.1 went in appeal. Additional District Judge, Patiala dismissed the appeal, upholding the judgment and decree dated 21.09.1988 passed by the trial Court.

[9]. Instant Regular Second Appeal was filed under Section 41 of the Punjab Courts Act. In view of Full Bench judgment of this Court in **Ganpat vs. Smt. Ram Devi and others 1977, PLR Page I**, framing of question of law was having no effect on the maintainability of the appeal. However, in view of amendment of Section 100 CPC, framing of substantial question of law is *sine qua non* for maintaining regular second appeal in this Court. Prior to amendment, the appeal could have been filed on the ground set out in clause (a) to (c) of Section 100(i) CPC. Now second appeal requires substantial question of law to be framed. The interference cannot be made only because the order is contrary to law, but when the disputed issues raised a substantial question of law. Limiting such a power in the Appellate Authority is based on public policy having roots in the maxim of "*interest reipublicae ut sit finis litium*".

[10]. Learned counsel for the appellant-Market Committee, Patran has placed on record the following substantial questions of law:-

- “1. *Whether the judgments of both the Courts below are illegal and are based on misreading and mis-appreciation of the evidence lead by the appellant?*
2. *Whether the suit of the respondent/plaintiff is barred by res-judicata?*
3. *Whether the suit of the respondent/plaintiff is barred by law of limitation?*
4. *Whether the suit of the respondent/plaintiff is liable to be dismissed as he has not approached the Courts with clean hands?*
5. *Whether the Courts below are justified in awarding the back wages for three years to the respondent/plaintiff inspite of the fact that he never worked from May 1981 till the date of judgments passed by the Hon'ble Courts below.”*

[11]. I have considered the submissions made by both the sides.

[12]. Questions No.1 and 2 has to be answered on the basis of cumulative findings recorded by the both the Courts below on different issues. Apparently, by terminating the services of the respondent No.1 no rule or procedure has been adopted by the appellants-Committee. The order passed in suit in terms of Rule 7 of Order 13 CPC dismissing the same to withdrawn for want of proper notice under Section 31 of the Act cannot operate as *res judicata* or

bar created under Section 10 CPC in any manner. Similarly the suit cannot be held to be beyond limitation.

[13]. Similarly question No.3 with regard to limitation cannot be observed in favour of appellants-committee in view of the fact that the plaintiff came to know about the resolution terminating his services only on 05.11.1985 when written statement was filed by the defendants in the previous suit. No evidence was led by the appellants-Committee to show that the order of termination was ever communicated to the plaintiff prior to 05.11.1985. In view of this, the present suit filed on 25.03.1987 was lawfully held to be within limitation of three years.

[14]. Question No.4, does not arise as no such evidence has come forth in evidence at the instance of the defendant-appellant to show that plaintiff has not come to the Court with clean hands. Issue No.5 has to be answered in favour of the plaintiff on the basis of evidence on record. Once the order of termination is found to be suffered with non-compliance of rule and natural justice, natural consequences would follow that the plaintiff would be entitled to back wages. However, the plaintiff has lawfully curtailed the period of arrears upto three years.

[15]. It has come on the record that the plaintiff himself has demonstrated that his prayer for leave has been proved by Mandi Supervisor Devender Singh while appearing as DW-1 when he proved the photocopy Ex-DA of the original leave application. The

application for extension of leave moved by the plaintiff was rejected vide resolution dated 16.08.1980. The services of the plaintiff were terminated without adhering to Rule 8 of the Rules.

[16]. No order of termination could have been passed without holding an inquiry. Admittedly, no inquiry has been held, nor any witness has been examined to prove the allegations against the plaintiff. Only a chargesheet was issued, but no Inquiry Officer was appointed and no inquiry was conducted. In view of blatant violation of natural justice, the impugned order of termination is *void ab initio*.

[17]. In view of aforesaid, no substantial questions of law can be answered in favour of the appellant-Committee. At the time of admission of the appeal, the respondent was ordered to be reinstated, but back wages were withheld. Under the orders of this Court dated 10.12.1993, Market Committee, Patran-appellant was directed to make payment of the salary for the period respondent/plaintiff had worked after reinstatement in service and continue to pay till further orders.

[18]. Since the order of termination was passed in blatant violation of relevant rules in terms of Punjab Civil Service (Punishment and Appeal) Rules 1970 and the principle of natural justice, therefore, the order of termination has been rightly held to be *void ab initio*. The grant of back wages is the normal rule whereas the plaintiff himself has curtailed the arrears of salary to the extent of three years.

[19]. In view of above, no illegality can be detected in the judgments and decrees passed by both the Courts below. No other issue worth cognizance is involved. Appeal is found to be totally devoid of merits and the same is accordingly dismissed, leaving both the parties to bear their own costs.

September 11, 2015

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(RAJ MOHAN SINGH)
JUDGE