

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

RSA No. 1850 of 1991 (O&M)

Date of decision: 09.12.2015

The Haryana State Co-operative Supply and Marketing Federation
Limited, ... Appellant

versus

Shri Rattan Kishan Kaul

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. G.S. Gill, Senior Advocate with

Mr. R.K.Dhiman, Advocate for the appellant.

None for the respondent.

K.Kannan, J.

Although the appeal has been admitted on 21.02.1992, no substantial questions of law have been framed and, therefore, I frame the following substantial questions of law:

1. Whether the civil suit was barred by virtue of Section 128 of Haryana State Co-operative Societies Act, 1984 (in short the 'Act') ?

2. Whether the plaintiff could seek for the relief of reinstatement inspite of the fact that he did not comply with the direction of rejoining service within the time before when the lien stood terminated and the failure to

rejoin within the time stipulated operated as the order of termination from that day itself ?

The learned senior counsel was ready to argue the case immediately and I proceed to dispose of the case as under.

The defendant is the appellant. The plaintiff joined on the post of SDO on 26.12.1972 and gained the promotion as X.En. on 04.01.1977. He was deputed to foreign assignment in Iraq on 07.12.1979 for a period of 2 years with a lien granted to him to the post that he held with the defendant. It was extended from time to time on his request till 30.05.1984 and in the last order making the extension he was clearly informed that the lien will not be extended beyond the period granted and that he will be terminated from services if he did not rejoin the duty. He did not rejoin before 30.05.1984 and sought to join on 28.07.1984. He was prevented from joining by citing the order passed on 15.02.1984 declaring the lien to be available on 30.05.1984 and verbally prevented from joining the duty. The verbal order of termination citing the earlier order delimiting the lien to be available only till 30.05.1984 was challenged by the plaintiff to declare it as null and void and for treating the entire spent on deputation as in public interest on extra ordinary leave and that time from 20.171984 to 24.07.1984 must be treated as the joining time with all consequential benefits.

The defence was that the suit was not competent and barred under the Provisions of the Act. It was also contended that the order

extending the lien passed on 15.02.1984 contained the express stipulation that if he did not join before the day when the lien was to expire he would stand terminated and the said order operated itself and no separate order of termination was necessary.

The trial Court dismissed the suit holding that the suit was not competent. The Appellate Court reversed the decision and held that the suit was well-founded and the order of termination could not be sustained. It referred to the letter dated 21.03.1984 issued from the Indian Embassy at Baghdad that the plaintiff was not being released from this contractual assignment and requesting the Government to relieve of his assignment on the completion of 6 months from June 1984. It was not, therefore, the plaintiff's mistake that he could not join and, therefore, the decision not to allow him to resume the duty was illegal. The Court held that the infirmity in the decision was that the plaintiff had not been given any opportunity to explain his position for the delay to return within the time fixed, namely, the end of 1st week of June 1984 and that infirmity vitiated the entire decision culminating the termination of services.

The learned senior counsel for the appellant would make reference to Section 128 of the Act as constituting the bar to Civil Court for entertaining the suit. The Section creates a bar to Civil Court or revenue Court to decide on any matter inter alia of any dispute required under Section 102 to be referred to the arbitration or any matter in which proceedings under Section 104 had been initiated. The

bar, therefore, in relation to an employee must refer to a dispute that could have been referred to Arbitration under Section 102 or any matter in respect of which proceedings under Section 104 could be vitiated. Section 102 refers to settlement of disputes setting out 4 subjects (a) to (d) and learned senior counsel refers me to Clause (b) as a dispute which would govern the rights of parties.

Settlement of Disputes

102. Disputes for arbitration

(b) between a member, past member or persons claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society or liquidator, past or present;

This dispute does not include a dispute between an employee and the co-operative society. It only contemplates a dispute between the Member or a past member and the Society, its member or its employee. The dispute between society and employee is not contemplated under Section 102 (b). Section 104 refers to a matter where the certificate for recoveries pursuant to proceedings under Section 102 and 103. We do not address the issue of settlement of claim or recovery of due which is contemplated through a certificate issued under Section 104. Sections 102 & 104 will not apply. Consequently, the bar under Section 128 also cannot apply. The argument that the suit is barred under Section 128 is therefore not tenable and rejected.

The other argument was that the letter issued in February 1984 itself set out the consequences of the person not joining the duty before the completion of lien and that stipulation was that his services would be terminated if he did not join. The Appellate Court has correctly addressed the issue by pointing out that in the place in which he was assigned he was not being relieved and there had been a communication to the Government of India as well from the Embassy that he should be allowed to continue his work at Iraq for a further period of 6 months, before he would resume duty in India. The decision taken to terminate him cannot be placed through an order issued in February 1984. If termination were to be operate against an employee, such a decision must be subsequent to the misconduct complained of and the termination cannot operate on a contingency of mis-conduct to happen in future. It was an utter travesty of justice to terminate him from service without even passing an order but citing the communication issued in February 1984 setting out a period of lien as constituting an order of termination to be effective from June 1984. The order was erroneous and correctly found to be so by the Appellate Court.

There is no merit in the appeal and the appeal is dismissed. The Appellate Court has granted all the consequential benefits on reinstatement. It would appear that the Court while sending notice granted interim stay and while admitting it allowed the stay of the operation of the judgment to continue till further orders. Consequently,

it would seem that the plaintiff had not been allowed to resume duty at all. A decision for payment of wages during the period when he was not working at all may not be appropriate,, if he had rejoined elsewhere and if he had taken up gainful employment elsewhere. The respondent is not present in Court and I have not the benefit of knowing what was his employment status at the time when the appeal was filed and when it was now being disposed of. Even while declining to make the modification of the order, holding that the termination was null and void and that he was entitled to consequential benefits, I restrict the benefit as applicable from the date when he offered to join till the date when the order of stay was granted by this Court. I deny to the employee the benefit of future wages for all the period from the disposal of the Appellate Court judgment till date.

The order copy will be despatched to the employee respondent and he shall be at liberty to rejoin services if he has not crossed the age of superannuation and all the benefits shall be calculated notionally during the entire period of pendency of the case and he shall be restored to the position which he would have obtained if he had continued in services and be placed in the scale appropriate to the service with full continuity of services for reckoning terminal benefits. If the benefit is not obtained by the respondent within four weeks from the date of the receipt of the copy of the order, the plaintiff's right shall stand restricted to all the financial benefits upto the date when this Court granted the relief of stay namely on

07.01.1991. The respondent shall also have for the benefit of cost of the trial Court and the Appellate Court.

The appeal is dismissed but with restriction of entitlement to the respondent in the manner referred to above.

In a situation where I find that there is no merit in the appeal, I dismiss the same. I cannot allow for a direction for all the wages to work itself out in the manner that the Appellate Court has provided without minding the long period of time between the time when the second appeal was admitted and when it was disposed of, namely, 24 years. We have come by an industrial jurisprudence that examines the issue of efficacy of relief of reinstatement and to compensate in appropriate cases by awarding damages instead of reinstatement, even if the initial order of termination is invalid. I will apply the same logic here and denied to the employee the benefit of future damages, but, modify it subject to the above conditions.

(K.KANNAN)
JUDGE

09.12.2015

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