

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

**Regular Second Appeal No.929 of 1991 (O&M)
Date of decision: 13.08.2015**

Major Singh

.....Appellant

Versus

The Punjab State and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

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

Mr. Vaibhav Sharma, DAG, Punjab.

Ritu Bahri, J.

Plaintiff-appellant has come up in regular second appeal against the judgment dated 08.01.1991 passed by the Additional District Judge, Gurdaspur, whereby appeal filed by the defendants-respondents against the judgment and decree dated 25.10.1989 passed by the Senior Sub Judge, Gurdaspur, has been dismissed, however, the plaintiff-appellant has not been held entitled to arrears of pay w.e.f. 15.05.1985 till the date of decree i.e. 25.10.1989.

In the month of September, 1972, Major Singh-plaintiff (appellant herein) was appointed as Chowkidar by the District Food & Supplies Controller, Gurdaspur-defendant No.3 and he continued in service till 15.05.1985, the date when his services were terminated. Appeal challenging

his dismissal was dismissed vide order dated 19/25.06.1986. As per plaintiff, the impugned orders were illegal, null and void, as no charge sheet was ever served upon him before passing these orders. The plaintiff challenged the aforesaid order by filing this suit.

Upon notice, the defendants-respondents filed written statement, wherein it was stated that the impugned orders were passed after detailed investigation and consideration of the facts. It was further stated that the services of the plaintiff were terminated after holding proper enquiry by the Deputy Director (Field), Jalandhar.

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

1. Whether the impugned order dated 15.05.1985 is illegal and void as alleged? OPP
2. Whether the impugned order dated 19/25.06.1985 is illegal as alleged? OPP
3. Relief.

The trial Court decreed the suit of the plaintiff-appellant in view of the law laid down in **Kewal Krishan Vs. State of Punjab and others**, 1987 (1) Service Law Journal 243, on the ground that a temporary employee, who had served for 11 years, could not be terminated by an order simpliciter and by retaining his juniors without giving any finding as to his suitability. Against the judgment of the trial Court, State of Punjab-defendant went in appeal. The lower appellate Court maintained the findings of trial Court on issue Nos. 1 and 2 and decreed the suit of the plaintiff-appellant. However, the plaintiff was held not entitled to arrears of pay w.e.f. 15.05.1985 till the date of decree passed by the trial Court i.e.

Plaintiff-appellant has challenged the judgment of the lower appellate Court, whereby judgment of the trial Court has been modified to the extent that he was not entitled to arrears of pay w.e.f. 15.05.1985 till 25.10.1989.

Short question for consideration before this Court is, “whether the plaintiff-appellant is entitled for full back wages when his termination has been set aside on the ground that he had been discharged from service after working w.e.f. September 1972 to 15.05.1985 i.e. for 13 years, without giving him any opportunity of hearing.”

Recently, the Hon'ble Supreme Court in **U.P. State Road Transport Corporation & another Vs. Zahid Hussain**, 2014 (4) RSJ 681, was considering the case of a driver, who had been dismissed from service as a result of disciplinary action. The Labour Court had set aside the order and reinstated him with back wages. The Hon'ble Supreme Court had granted 25% back wages keeping in view that the driver had been appointed way back in the year 1980 and disciplinary proceedings had been initiated on account of absence from duty from 01.07.1993 to 22.08.1993. He had served for almost 13 years when the aforesaid enquiry had been initiated against him. His services were terminated w.e.f. 31.03.1999. However, the Labour Court set aside the termination order and awarded full back wages to the employee. The Hon'ble Supreme Court granted 25 % of the back wages to meet the ends of justice.

A Co-ordinate Bench of this Court in **Pepsu Road Transport Corporation Vs. The Presiding Officer and others**, 2015 (1) SCT 708, has upheld the Award dated 18.01.2012 passed by the Industrial Tribunal, Bathinda, whereby the order of termination from service was held to be bad

50% back wages. In para No.11 of the judgment, it has been observed as under:-

“11. The inquiry report as has been placed on record at Annexure R-1 is wholly cryptic and is not supported by any reasons. The Inquiry Officer has proceeded in a slip shod manner. He has acted in a manner unbecoming of a quasi-judicial authority. Holding of a departmental inquiry is not an empty formality. The inquiry report does not show any application of mind as regards appreciation of evidence adduced before the Inquiry Officer and there are no findings recorded with regard to articles of charge formulated. The Inquiry Officer has gone on to record that it is on the basis of suspicion that charges No.1 and 2 are proved.”

Further, a Co-ordinate Bench of this Court in **Gian Chand Vs. Presiding Officer, Labour Court, Patiala and another**, 2011 (2) SCT 272, while setting aside the termination of a bus conductor, reinstated him with 40% back wages. While allowing the petitioner of employee, it was observed as under:-

“14. In view of the above, the Award passed by the Labour Court dated 30.03.1993 (Annexure P-9) cannot be sustained. A perusal of the evidence led by the parties before the Labour Court would show that as per the Rules, refund could be made for the tickets sold but the same could not be resold and were required to be deposited back by the petitioner. It can thus be said that an irregularity was committed by the petitioner and had violated the instructions in this regard especially when the tickets, which were resold on 8.10.1989 by the petitioner after giving refund to the passengers on 7.10.1989, were duly reflected in the way bills as is apparent from Annexure P-1 to P-3. For the misconduct committed by the petitioner, the punishment of dismissal was not called for and the interest of justice would be duly served by imposing a punishment of stoppage of two increments with cumulative effect. It is by now settled that reinstatement per se does not mandate the grant of full back wages. In view of the fact that the petitioner would not have remained unemployed all through from the date of his termination as he has to sustain his family and thus would have taken up some work during this period, the interest of justice would be duly served by awarding 40% back wages to the petitioner from the date of his termination till his reinstatement or super-annuation, whichever is earlier.”

In the facts of the present case, the suit of the plaintiff-appellant

was decreed by the trial Court as he had been discharged from service and the discharge order was simpliciter without offering any opportunity of hearing to him. The plaintiff-appellant had been involved in a criminal case vide FIR No.42 of 1979, under Section 379 IPC, registered at Police Station Fatehgarh Churian. Consequent upon registration of the FIR, his services had been terminated.

It was not the case of defendants-respondents before the Courts below that the plaintiff-appellant had been convicted in the aforesaid FIR. Plaintiff-appellant had been working as chowkidar since 1972 and after serving for almost 14 years, he had been discharged from service on 15.05.1985. He was denied payment of arrears w.e.f. 15.05.1985 till 25.10.1989.

In view of the judgment delivered by the Hon'ble Supreme Court in **Zahid Hussain's** case (supra), which has been followed by Co-ordinate Benches of this Court in **Pepsu Road Transport Corporation** and **Gian Chand's** case (supra), since the appellant would not have remained unemployed during this period, the judgment of the lower appellate Court is being modified and the plaintiff-appellant is held entitled to 50% of arrears of pay w.e.f. 15.05.1985 to 25.10.1989.

Present regular second appeal stands allowed to the above extent.

13.08.2015
ajp

(RITU BAHRI)
JUDGE