

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA No.2222 of 1997.

Decided on:-February 06, 2015.

Market Committee, Kalanaur and anotherAppellants.

Versus

Baljit Singh.Respondent.

CORAM: *HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.*

Argued by:- Mr. Nitin Kaushal, Advocate
for the appellants.

Mr. Sehaj Bir Singh, Advocate
for the respondent.

Dr. Bharat Bhushan Parsoon, J.

The defendants are in second appeal against judgment and decree passed by the trial court whereby order dated 13.6.1990 terminating the services of the plaintiff from the post of Chowkidar, was set aside and the appeal against the said decree was held to be not maintainable as the same was not accompanied by any resolution of the appellants.

2. The substantial questions of law which arise for determination in this Regular Second Appeal in terms of order dated 22.1.2015 of this Court are as under:

1. Whether the learned Additional District Judge, Gurdaspur

has erred in law in rejecting the appellant's appeal as being not competent especially in view of the specific power of attorney of the Punjab Mandi Board, Bye-law 21 of the Punjab Market Committee's Bye-laws and resolution dated 3.5.1992?

2. Whether the appeal before the learned Additional District Judge, Gurdaspur was maintainable keeping in view the specific resolution dated 3.5.1992 passed by the Market Committee, Kalanaur as well as the specific provisions of law and the power of attorney of appellant No.1?
3. Whether the learned Sub Judge (IIIrd Class) Gurdaspur has wrongly decreed the plaintiff's-respondent's suit in view of the fact that the appointment of the said plaintiff-respondent itself was void ab-initio?

3. Termination of the services of the plaintiff/respondent-herein as Chowkidar by the defendants, now appellants, is in question.

4. The trial court had framed the following issues for adjudication of rival claims of the parties:

1. Whether the order dated 13.6.1990 is illegal, null and void? OPP
2. Whether suit is bad for want of notice under Section 31 of the Punjab Agricultural Market Produce Act? OPD
3. Whether the suit is not maintainable in the present form? OPD
4. Relief.

5. Considering oral as well as documentary evidence produced by the parties, the lower court had come to a conclusion that the order of termination of services of the plaintiff of 13.6.1990 as Chowkidar is illegal, null and void and that he was entitled to all the benefits towards service, pay and allowances as if impugned order had never been passed.

6. This adjudication made by the lower court on 18.3.1992 was challenged in appeal by the defendants/appellants herein which was dismissed holding the appeal to be not maintainable as the appeal had been filed by the Secretary, Market Committee without being authorised to file the same by the appellants. It was observed further that the appeal could not have been filed without the resolution of the Market Committee and of the Punjab Mandi Board. The civil appeal thus was dismissed on technical grounds and was not decided on merits by the first appellate court.

7. In this Regular Second Appeal, the substantial questions of law arising for determination by this court have already been detailed and delineated in earlier part of the judgment.

8. Counsel for the appellants has urged that there are two appellants before this Court who were also appellants before the first appellate court. These are as under:

1. Market Committee Kalanaur through its Secretary Shri Bal Kishan Sarin; and,
2. Punjab Mandi Board, Chandigarh through its Secretary.

9. It is urged that not only Bye-Law 21 of the Punjab Market Committees Bye-Laws, published in Punjab Government Gazette (Extra.) on 9.8.1963 (for short, the Bye-Laws) gives powers to the Secretary of the Market Committee but there is also a specific resolution dated 3.5.1992 of the Market Committee whereby Secretary thereof had been authorised to file the appeal and engage a counsel for prosecuting the same. It is claimed that in addition, there is specific power of attorney granted by the Punjab Mandi Board in favour of the Secretary of the Market Committee to file and prosecute the cause of the appellants in the appeal.

10. Learned counsel for the respondent refuting these contentions has urged that neither there is any specific power of attorney from the Punjab Mandi Board nor there is resolution dated 3.5.1992 authorising the Secretary to file the regular first appeal before the first appellate court. It is claimed that Bye-Law 21 of the Bye-Laws does not give such general powers to the Secretary to enable him to file the appeal against the decision of the civil court.

11. Counsel for the respondent further has made reference to the authority ***Punjabi University Patiala Versus M.R. Garg 1996(1) CLJ (C.Cr. & Rev.) 52***. In this authority, Registrar of the Punjabi University had filed an appeal without any resolution passed by the competent authority i.e. Syndicate of the University authorising the Registrar to file an appeal. Consequently, this Court in this judgment had held the appeal to be incompetent. Following the judgment, there is a categorical finding of the first appellate court viz. Additional District Judge, Gurdaspur in impugned order dated 21.3.1997 that there is no resolution placed on record by the appellants vide which the Secretary of the Market Committee, Kalanaur was authorised to file the appeal on behalf of the appellants. The first appellate authority thus had come to a definite finding that the appeal was incompetent. Being not maintainable thus, it had dismissed.

12. When called upon, counsel for the appellants has neither been able to lay his hands on resolution dated 03.05.1992 nor could show the same authorising the Secretary to file an appeal on behalf of the two appellants. Learned counsel for the appellants has also not been able to show any special power of attorney executed by appellant Punjab Mandi Board, Chandigarh in favour of the Secretary of the Market Committee, Kalanaur. Having failed on these two fronts, then much stress has been laid by learned

counsel for the appellants on Bye-Law 21 of the Bye-Laws, which for ready reference is appended as below:

“21. Complaints, notices; suits against or on behalf of the Committee- How to be dealt with:-(1) Unless otherwise provided for in the Act, the Rules and these Bye-laws, all applications, notices, summons, warrants, appeals, letters complaints and any other documents or papers addressed to the committee delivered at its office shall be received by the Secretary or on his behalf by an employee of the Committee as may be authorised by him. The Secretary shall put before the Chairman all such papers for his orders.

(2) Unless otherwise provided for in the Act, the Rules and these Bye-laws, all letters, applications, notices and complaints on behalf of the Committee may be given, issued and lodged by the Secretary under his hand and seal of his office.”

13. Even liberal interpretation of this Bye-Law does not vest the Secretary of the Committee with any authority to file an appeal on behalf of the appellants. Rather, it is specifically mentioned in a mandatory form that if any documents in the shape of applications, notices, summons, warrants etc. as explained in the Bye-Laws are received by the Secretary, he is required to put up the same before the Chairman for his orders.

14. In short, the Secretary is having no independent, set apart and distinct power and can act only in accordance with the orders of the Chairman to deal with the matters referred to in Bye-Law 21 of the Bye-Laws.

15. There is not even a whisper that the Secretary of the Market Committee for and on behalf of the appellants had ever put up any papers regarding this case before the Chairman with an intention to obtain orders from him to file the appeal. Sequel, it is evident that neither Bye-Law 21

helps the appellants nor there is any special power of attorney from the Punjab Mandi Board nor even resolution from the Market Committee, Kalanaur in favour of the Secretary to file the appeal before the first appellate authority against judgment dated 18.3.1992 of the Sub Judge IIIrd Class, Gurdaspur.

16. As a consequence of the discussion made earlier, substantial questions of law No.1 and 2 are determined against the appellants and in favour of the respondent-employee.

17. So far as substantial question of law No.3 as reproduced in earlier part of the judgment is concerned, detailed discussion on this aspect is not required because it falls for discussion in the domain and sweep of the first appellate court. However, to make the adjudication clear and transparent, it is mentioned that even if plea of the appellants for discussion's sake that appointment of the respondent-plaintiff itself was wrong and was void ab-initio as two members of the recruitment authority who were to be nominated by the Secretary to join the Administrator as members of the three members recruitment authority had not been nominated by the Secretary and rather, the interview for the post of Chowkidar was cancelled and the Administrator acting solely and individually in absence of two other members of the recruitment authority which were to be nominated by the Secretary and had not been nominated, could not have appointed the plaintiff, is taken as such, once appointment had been given to the plaintiff, respondent herein, before terminating his services, he was entitled to the right of hearing because he could not have ever imagined that his appointment was bad in law due to some inherent error in the constitution of the three members recruitment authority when the Committee was under suspension. Merely because viewed from the eyes of the appellants-

defendants, if appointment of the plaintiff-respondent was wrong or was void, the respondent-plaintiff cannot be expected to be aware of the indoor management and recruitment policy or the procedure of the appellants and thus, was entitled to be heard before being removed from the job. Concedingly, no such notice had ever been issued to the respondent whose services were dismissed straightway without any notice.

18. Sequelly, even substantial question of law No.3 is determined against the appellants.

19. In conclusion, when all the three substantial questions of law have been determined against the appellants, affirming the impugned judgment and decree dated 21.3.1997 passed by the Additional District Judge, Gurdaspur, this Regular Second Appeal having no merit is dismissed.

February 06, 2015
'Yag Dutt'

(Dr. Bharat Bhushan Parsoon)
Judge

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