

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

R.S.A No. 1150 of 2012 (O&M)

Date of decision:- 10.07.2015

Kuldeep Singh

...Appellant

vs.

Punjab Energy Development Agency & anr.

..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Tribhawan Singla, Advocate
for the appellant.

RITU BAHRI J.

Plaintiff-Appellant (for short 'the appellant') is in second appeal against the concurrent finding of fact recorded by both the Courts below whereby the suit of the appellant (for short 'the appellant'), was dismissed.

Appellant was appointed as Junior Engineer (Electrical) with respondent No. 2, vide appointment letter dated 12.06.1995 on a consolidated salary of Rs.4000/- per month on contract basis for a period of six months. In the appointment letter, it was mentioned that the appellant shall be on probation for a period of three months which can be extended or curtailed at the discretion of the agency. Further it was mentioned in the appointment letter that if the appellant was considered unsuitable for the performance of the duties, he would be served one month notice or salary in lieu of the same. Since 1995, the appellant was performing his duties with due diligence and he made

representation to the respondents to regularize his contractual service on the basis of Punjab Government notification dated 23.01.2001 and 23.08.2003. The appellant was also appointed for the post of Junior Engineer on contract basis w.e.f 01.04.2003 but his services were terminated on 20.8.2004 w.e.f 11.08.2004 and no reason for termination of his service was given. The only reason was that Raminder Singh Manager, Jalandhar with whom the appellant was attached as Junior Engineer was involved in F.I.R No. 32 dated 11.08.2004, registered at P.S. Vigilance Bureau, Jalandhar u/s 7/13(1)(d) read with Section 13(2) of the Prevention of Corruption Act and the recovery was effected from him.

On notice, respondents appeared and filed written statement admitting that the appellant was working with them on contract basis and his services have been terminated in compliance with terms and conditions of the agreement dated 12.06.1995. He has received salary till 10.08.2004 and in lieu of notice in compliance with the order dated 10.08.2004 to 9.9.2004. Further notification dated 23.01.2001 is not applicable to the contractual employee. The case of the appellant was never considered for regularization and order dated 20.08.2004 was sent on available complete address, but he refused to accept the same. It was denied that the appellant was attached with

Raminder Singh, as he was posted at Jalandhar and the appellant remained at Kapurthala. The appellant was also arrested in F.I.R dated 11.08.2004 and remained in police custody till 13.08.2004 and in judicial custody from 13.08.2004 to 20.08.2004.

Both the Courts below dismissed the suit of the appellant on the ground that the appellant was not the regular employee and the respondents had terminated him in accordance with the terms and conditions of the appointment letter. The appellant had been made the payment of the salary in accordance with the terms and conditions of the appointment letter. Further the grouse of the appellant that the termination order dated 20.08.2004 was not conveyed to him, was discarded on the ground that the suit was filed by the appellant soon after passing of the impugned order, thus, he was well aware of the termination order. Moreover, the respondents have produced Ex D21 i.e the envelope addressed to the appellant at his residential address sent through registered post which he refused to accept on 24.08.2004.

Learned counsel for the appellant has referred to R.T.I information (Annexure A-1/A) which shows that the services of the appellant were terminated on account of registration of F.I.R and as per Annexure A-1/2, during the pendency of the appeal before the lower Appellate Court,

the appellant was exonerated in F.I.R No. 32 dated 11.08.2004 vide order dated 08.1.2009.

Even if the appellant was exonerated in F.I.R No. 32 dated 11.08.2004, the respondent can terminate the services of the appellant as per the appointment letter, as he was on contract basis and there is no need to give reason to him that why he was terminated from service. As per Ex D21 i.e the envelope was addressed to the appellant at his residential address sent through registered post which he refused to accept on 24.08.2004.

Reference at this stage can be made to a judgment of the Hon'ble Supreme Court of India in a case of Nand Kumar v. State of Bihar and others , 2014 (2) S.C.T 2015 wherein Hon'ble the Supreme Court while referring to the judgment of State of Karnataka and others vs. Uma Devi, 2006(4) SCC 1 held that the daily wagers are not appointees in the strict sense of the term 'appointment'. They do not hold a post. The scheme of alternative appointment framed for regular employees of abolished organisation cannot confer a similar entitlement on the daily wages of abolished organisation to such alternative employment. The status and right of daily wagers of a government concern are not equivalent to that of a Government servant and his claim to permanency has to be adjudged differently.

Further reference can be made to a judgment passed by this Court in a case of Tarlok Singh and others vs. State of Punjab and others, 2010(4) SLR 520 wherein it was held that the creation of post is a matter of policy for government/employer and Court cannot interfere and direct the creation of posts only to secure regularization of service in that post.

Both the Courts below had rightly dismissed the suit of the appellant, as the order of termination is not stigmatic and the service of the appellant has been terminated as per terms and conditions of the appointment letter.

No substantial question of law arises for adjudication by this Court.

Accordingly, regular second appeal is dismissed.

July 10, 2015
G Arora

(RITU BAHRI)
JUDGE