

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

**Regular Second Appeal No.4101 of 2012 (O&M)
Date of decision:10.04.2015**

Raj Kumar

.....Appellant

Versus

General Manager, Haryana Roadways, Yamuna Nagar & others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Karan Singh, Advocate,
for the appellant.

Mr. Siddharath Sanwaria, DAG, Haryana,
for the respondents.

Ritu Bahri, J.

CM Nos.11254-11255-C of 2012

For the reasons mentioned in the applications, same are allowed
and delay in filing and re-filing of the appeal is condoned.

RSA No.4101 of 2012

Plaintiff-appellant has come up in regular second appeal against
the judgments of concurrent finding of facts recorded by both the Courts
below i.e. Civil Judge (Junior Division), Yamuna Nagar at Jagadhri and
District Judge, Yamuna Nagar at Jagadhri, whereby his suit for declaration
has been dismissed.

Raj Kumar-plaintiff (appellant herein) filed a suit for declaration,
stating therein that he was appointed as driver by General Manager, Haryana
Roadways, Yamuna Nagar-defendant No.1 on contract basis w.e.f.
09.04.1994. Transport Commissioner, Haryana-defendant No.3 had issued

instructions dated 23.03.1998, whereby the contractual employees who had

completed two years of service, were to be regularized. As per plaintiff-appellant, he had completed two years of service as on 08.04.1996, therefore he should have been regularized on the said date. However, the respondent-department regularized him w.e.f. 23.04.1998 instead of 08.04.1996. Therefore, he filed a suit for declaration to the effect that the order dated 19.06.2000 issued by the General Manager, Haryana Roadways, Yamuna Nagar was illegal, null & void and was not binding on the right of the plaintiff-appellant with consequential relief that he was deemed to be regularized from 08.04.1996 instead of 23.04.1998 after completing two years of service.

Upon notice, defendants-respondents filed written statement and controverted the allegations levelled by the plaintiff. It was submitted that the plaintiff had not fulfilled the terms and conditions of the notification dated 23.03.1998, as an accident case was pending against him on the relevant date, therefore, he was not entitled to be regularized from 08.04.1996.

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

1. Whether order no.1321/ECD dated 19.06.2000 issued by defendant No.1 is illegal, null and void and not binding upon the rights of the plaintiff? OPP
2. If issue no.1 is proved, whether the plaintiff is deemed to be regularised from 08.04.1996 instead of 23.04.1998, as alleged? OPP
3. Whether the suit is not maintainable? OPD
4. Whether the plaintiff has no locus standi? OPD

5. Whether the plaintiff has not come to court with clean hands?

OPD

6. Whether plaintiff has no cause of action? OPD

7. Relief.

Trial Court, after going through the evidence on record, dismissed the suit by observing that as per instructions dated 23.03.1998, Ex.P2 issued by defendant No.3 and clarifications, Ex.P3, regarding regularization of contractual driver/conductors, any person against whom criminal proceedings or disciplinary actions were pending could not be regularized till their cases were pending. Therefore, the order dated 19.06.2000 issued by defendant No.1 regularizing the plaintiff-appellant w.e.f. 23.04.1998 instead of 08.04.1996 was legal and valid order.

The lower appellate Court affirmed the findings returned by the trial Court and dismissed the appeal. It was observed that other employees at serial Nos. 2, 3, 5, 11, 12, 13, 15 and 18 were not regularized with effect from the date they had completed two years of regular contractual service because disciplinary action of various cases remained pending against them and they were facing criminal cases. It was further observed that the plaintiff-appellant had not come to the Court with clean hands and had suppressed the factum of pendency of criminal case and disciplinary departmental proceedings against him for causing an accident. Therefore, he was not entitled to the relief claimed.

After going through the judgments passed by both the Courts below, it is apparent that as per instructions dated 23.03.1998, Ex.P2, all the drivers and conductors working on contractual basis, who had completed two years of services, were to be regularized. However, it was stipulated in

the instructions that the drivers and conductors against whom disciplinary actions or criminal cases were pending, would not be regularised in service till their cases were finalized. At the relevant time, the plaintiff-appellant was facing a criminal case for causing an accident while driving the bus. In that regard, departmental proceedings were also pending against him. Therefore, as per instructions/clarification, Ex.P2 and Ex.P3, he was not entitled to be regularised w.e.f. 08.04.1996. In these circumstances, both the Courts have rightly rejected the claim of the plaintiff-appellant while dismissing his suit.

After going through the impugned judgments passed by both the Courts below, no illegality, much less perversity has been found therein warranting interference by this Court.

No substantial question of law arises for consideration.

Dismissed.

10.04.2015
ajp

(RITU BAHRI)
JUDGE