

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

RSA No.4267 of 2012 (O&M)

Date of decision : 04.09.2015

Dalip Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Gagandeep Singh Sirphikhi, Advocate for the appellant.

Mr. Rajesh Mehta, Addl. A.G. Punjab.

AMIT RAWAL, J. (Oral)

Challenge in the present appeal is to the impugned judgment and decree, whereby the suit of the appellant-plaintiff for declaration to the effect that plaintiff is the Chowkidar of the Village Kathiala, Tehsil Dera Baba Nanak and is entitled to receive his salary and other emoluments which have been illegally detained by the defendants since April, 1996 alongwith interest @18% p.a. has been dismissed.

Mr. Gagandeep Singh Sirphikhi, learned counsel appearing on behalf of appellant submits that the aforementioned suit was filed, on the premise, that appellant-plaintiff was appointed as Chowkidar in the year

1993 and his father was also serving as chowkidar. He was denied the salary since 1996 as a result of which the appellant approached the officials of the defendant and, thereafter was constrained to sent legal notice dated 01.06.2000 under Section 80 of Code of Civil Procedure. He further submits that respondent-defendant came out with the plea in the written statement that services of the appellant-plaintiff had been terminated vide termination order dated 27.03.1996 (Ex.D1).

He further submits that aforementioned order was neither served, much less, no show cause notice or any enquiry proceedings were initiated, much less, served and, therefore there has been a blatant violation of principles of natural justice. This fact has totally been ignored by the Courts below. He further submits that the appellant-plaintiff had been discharging the duty of Chowkidar even without salary and this fact is admitted by Harjinder Singh, Tehsildar-DW1, who unequivocally, admitted that appellant-Dalip Singh, while working as Chowkidar, received the copy of summons dated 18.11.2005 issued by SDM, DBN in some matter and thus submits that following substantial questions of law arises for determination by this Court:-

- 1) Whether in the presence of the procedure adopted by the AC-Ist Grade while passing the alleged order Ex.D1 by which the AC-Ist Grade himself acted as the Investigator, Prosecutor and Judge, the findings of the Ld. Courts below are legally sustainable?
- 2) Whether the order Ex.D1 passed by AC-Ist Grade is a void order as no show cause notice was served upon the appellant-plaintiff, no charge sheet was served and no enquiry was held?

- 3) Whether in the absence of any such delegation of power, the order Ex.D1 passed by the AC-Ist Grade is against Rule 11 and Rule 43 of 'The Rules' and is without jurisdiction?
- 4) Whether the suit can be held to be barred by limitation in the absence of the respondent-defendant having failed to prove the service of order Ex.D1 upon the appellant-plaintiff?
- 5) Whether the judgments which are based on non-reading and misreading of the pleadings as also the evidence, can be legally sustained?

Mr. Rajesh Mehta, Addl. A.G. Punjab submits that once the defendant No.1 pleaded the factum of passing out of the termination order dated 27.03.1996, it was incumbent upon the plaintiff to seek declaration by seeking amendment of the plaint, but no such application has been moved, therefore, Courts below have rightly dismissed the suit. He further submits that suit is ex facie was time barred as it has been filed in 2000 for claiming the relief/salary w.e.f. April 1996. Thus, no substantial questions of law arises for adjudication.

I have heard learned counsel for parties and appraised the paper book.

Non-payment of salary is recurring to cause of action, therefore suit for claiming salary is not barred by law of limitation. The aforementioned contention reveals that, preceding to issuance of termination order dated 27.03.1996 Ex.D1, no show cause notice, much less, enquiry has been served/initiated by the defendant, thus, there is gross violation of principles of natural justice. Even DW1 unequivocally admitted that

appellant-plaintiff had been discharging the duties of Chowkidar till 2005 as he received the notice of the summons issued by SDM, DBN. The aforementioned facts, have not erroneously, but in my view, perversely not noticed by the Courts below, thus, in my view there is gross misreading and misdirection.

In identical matter i.e. in *State of Haryana through Collector, Hissar Vs. Ram Singh*, VOL.CLXII (2011-2) Punjab Law Reporter 279,, where such relief was sought, this Court granted the relief by holding that where no show cause notice, much less charge sheet was held/served, therefore it cannot be said that termination order was served in accordance with Rules.

In view of aforementioned facts and circumstances, substantial question of law noticed above is answered in favour of appellant-plaintiff and against respondent-defendant.

Impugned judgment and decree is hereby set aside. Suit filed by appellant-plaintiff is decreed by holding that termination order was bad in law as same was not passed in accordance with law, much less, in compliance with principles of natural justice.

Accordingly, appeal stands allowed.

04.09.2015

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**(AMIT RAWAL)
JUDGE**