IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Regular Second Appeal No.1929 of 2015 (O & M)
Date of Decision: *October 06, 2015*

Jeet Ram

..... APPELLANT

VERSUS

State of Haryana & others

..... RESPONDENTS

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

. . .

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

. . .

PRESENT: - Mr. V.K. Gupta, Advocate, for the appellant.

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Jaspal Singh, J

CM No.5123-C of 2015

Application is allowed as prayed for.

CM No.5124-C of 2015

For reasons mentioned in the application, delay of 146 days in filing the appeal is condoned.

Application stands allowed.

RSA No.1929 of 2015

1. The instant appeal has been preferred by plaintiff – Jeet Ram challenging judgment and decree dated February 23, 2011 by passed by the trial court as well as judgment & decree dated January 10, 2014 passed by

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the lower appellate court, whereby the findings recorded by the trial court have been upheld and appeal filed by the plaintiff against the judgment & decree passed by the trial court has been dismissed. Accordingly, the suit filed by plaintiff for mandatory injunction seeking direction to the defendants to allow him to join his duties; to regularize his service from February 1999; to grant all consequential benefits; and further for permanent injunction restraining the defendants from terminating his services, has been dismissed.

2. While assailing the impugned judgments & decrees passed by both the courts below, it has been ebulliently argued by learned counsel for the appellants that the same are absolutely against the evidence available on record and settled canons of law. Mis-appreciation of the legal proposition has resulted into mis-carriage of justice. Appellant – plaintiff has been denied the benefit of regularization of service in view of Government Instruction dated February 01, 1999 (Ex.D3). The appellant has fulfilled the requisite condition of five years of continuous service. A perusal of medical certificate furnished by him shows that he never absent from service w.e.f. May 5, 1995 to July 5, 1995. Learned counsel has contended that the plaintiff submitted medical certificate of leave to Naib Tehsildar, Radaur, but without holding any enquiry into the genuineness of the aforesaid certificate, the Deputy Commissioner, Yamuna Nagar concluded that the same was fake.

3. This Court has given an anxious thought to the aforesaid submissions made by learned counsel for the appellant and scrutinized the record but finds no legal weight in the same.

4. Grievance of the appellant – plaintiff is that he has been denied the benefit of regularization of service, in support of which, he has

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placed reliance on Government Instruction dated February 01, 1999 (Ex.D3). It is clear from the perusal of aforesaid government instruction that only such part time employee is entitled to regularization of service who has completed at least five years continuous service till the date of its issuance.

5. The plaintiff had joined service as part time water carrier on August 21, 1991. Government of Haryana issued a policy on February 1, 1999 to regularize the services of all part time employees who had complete five years of satisfactory service. He approached the defendants to regularize his services but the defendants decided to terminate him and regularized the services of persons junior to him vide order dated June 23, 2000. As per the defendants, appellant – plaintiff did not fulfil the condition of continuous five years' service for regularization as he absented himself from duty from May 5, 1995 to July 5, 1995.

6. DW-1 Rajbir Singh, Naib Tehsildar deposed that plaintiff did not submit any medical certificate to the department which fact would only indicate that he remained absent from duty without any justified cause. Even otherwise, Naib Tehsildar wrote a letter Ex.D5 to the Sub Divisional Magistrate (Civil), Jagadhri, recommending the regularization of plaintiff. However, a perusal of the letter Ex.D5 depicts that besides recommendation, the Naib Tehsildar also mentioned that plaintiff remained absent from duty w.e.f. May 5, 1995 to July 5, 1995. Thus, plaintiff had a break in service due to absence from duty and it cannot be said that he had a continuous service of five years on February 1, 1999. Moreover, the services of appellant – plaintiff were terminated w.e.f. September 30, 2001 but he did not challenge the aforesaid order of termination. In such circumstances, this Court is of the considered view that there is no scope for granting mandatory injunction.

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7. So, in view of the above narrated facts and discussion, this Court is of the considered view that judgments & decrees rendered by both the courts below are absolutely in consonance with the evidence available on file as well as legal proposition. The instant appeal being devoid of merits is dismissed. However, parties are left to bear their own costs.

(Jaspal Singh)
Judge

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