

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

**RSA No. 1804 of 1990 (O&M)
Date of decision: 14.07.2016**

The Registrar Cooperative Societies, Punjab and others

....Appellants

Versus

Tek Chand

.... Respondent

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

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

Present: Mr. Aman Chaudhary, Advocate for the appellants.

Mr. Rahul Verma AAG, Punjab.

P.B. Bajanthri, J.(Oral)

In this appeal, the appellants have questioned the appellate Court order dated 12.4.1990.

2) The respondent is stated to have been appointed initially in the transport department and his services were dispensed. Thereafter, he was appointed on ad hoc basis in the appellant's department-Registrar of Cooperative Societies Punjab, Chandigarh on 26.05.1980. Perusal of the appointment order it is crystal clear it was on ad hoc basis. As and when regular incumbent is joined service, persons who are appointed on ad hoc basis would be dispensed. While processing the regularization of adhoc employees, respondent's name was also taken into consideration. After

perusal of the records of the respondent, appellants found that respondent had concealed the fact that he was appointed in the transport Department and his services were dispensed. Therefore, his services were not regularized in the Transport Department and his services were dispensed while terminating on 20.02.1983.

3) Feeling aggrieved by the order of termination, respondent filed suit for declaration. Trial Court dismissed the suit filed by the respondent on the ground that termination order was issued with reference to decision taken in the matter of regularization, wherein respondent had concealed certain facts. Whereas, Appellate Court passed order in favour of respondent on the score that termination order is issued without hearing or giving an opportunity to the respondent who was an ad hoc employee. On technicalities the order of termination has been set aside. The appellant is entitled for reinstatement or not, is in question.

4) Learned counsel for the appellant submitted that at the time of ad hoc employment in the appellants' department, respondent had concealed the fact that he was appointed in the Transport Department and his services were dispensed. Therefore, there is no infirmity in the order of termination.

5) That apart, respondent was only an ad hoc appointee. In the appointment order of appellant it was made clear that his services would be dispensed as and when regular recruitment takes place. Therefore, respondent has not made out a case for setting aside the order of termination. To that extent Appellate Court has erred in quashing the order of termination.

6) On the contrary, learned counsel for the respondent submitted that even for ad hoc employee if he is terminated or dismissed from service,

he is entitled for notice or a preliminary enquiry if his termination is with reference to stigmatic issue. Therefore, appellate Court rightly set aside and ordered that respondent is deemed to be in continuous service from the date of termination and he is entitled for consequential reliefs as if his services have not been dispensed.

7) Heard learned counsel for the parties.

8) Short question for consideration is whether the order of termination is with reference to misconduct committed by the respondent or not. It is evident from the record that after appointment of the respondent on ad hoc basis when it was taken up for regularization the appellants' department noticed that the respondent had concealed the fact that he was appointed in the Transport Department and his services were dispensed, has not been disclosed to the appellant. Therefore, he was not entitled for regularization. With reference to said issue the order of termination has been issued. It is crystal clear that order of termination is with reference to certain misconduct/allegations. Therefore, it is necessary to hold departmental enquiry and to take a decision. The Supreme Court and other courts have held that even ad hoc employee if he is terminated on allegations of misconduct at least he is entitled for notice/enquiry before dispensing his services.

9) In view of these facts and circumstances, the order of the appellate Court is set aside in so far as “deemed to be in continuous service from that date, entitled to consequential reliefs as if his services had not been terminated. The appellant shall also entitled to costs” are concerned. The respondents are directed to hold an enquiry, in accordance with law with reference to decision taken for the purpose of regularization on

23.2.1983 after giving necessary hearing to the respondent within a period of 6 months' from today.

10) In the meanwhile, status of the respondent would be deemed to be under suspension. In view of the decision of the Supreme Court passed in *Managing Director Ecil versus B. Karunakar* reported as 1994 SCC, Supl(2) 391. The respondent is entitled for subsistence allowance as per the provisions. The same shall be calculated and disbursed within a period of 3 months and continue to pay subsistence allowance till a decision is taken in the enquiry.

11) Appeal stands disposed of.

14.07.2016

pooja saini

(P.B.BAJANTHRI)
JUDGE