

**In the High Court of Punjab and Haryana at Chandigarh**

**RSA No. 2019 of 1990**

Date of decision: 11.2.2016

Randhir Singh

.....Appellant

Versus

The Secretary, Govt.of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr. Samrat Malik, Advocate,  
for the appellant.

Mr.Ashok Muthreja, DAG, Haryana.

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- 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?*

**Raj Mohan Singh, J.**

1. Plaintiff Randhir Singh is in regular second appeal against the judgment and decree dated 18.7.1990 passed by Additional District Judge, Karnal, whereby judgment and decree dated 3.11.1987 passed by Sub Judge, Karnal was set aside.

2. Plaintiff filed a suit for declaration to the effect that the verbal order of termination of services of the plaintiff dated 30.10.1985 is null, void, ineffective and without jurisdiction. Declaration was sought regarding restoration of his previous post along with payment of all outstanding dues. Plaintiff was

working as a Work Charged Beldar in the office of defendant No.5 i.e. Sub Divisional Officer, Augmentation, Sub Division No.IV, Karnal since 1982. Vide order dated 1.9.1985, plaintiff was transferred to the office of defendant No.4 i.e. Sub Divisional Officer, Augmentation Canal, Sub Division No.III, Karnal in the same cadre and he continued to work as such in the office of defendant No.4 till 31.10.1985. Plaintiff alleged that his work and conduct during service was satisfactory to the satisfaction of his superiors. He further alleged that his services were illegally terminated without prior notice and without assigning any cogent reason. According to the plaintiff, termination of his services was on account of penalty, which was against principles of natural justice. Registered notice dated 11.11.1985 was served upon defendants No.1 and 3. Other defendants were also served with the registered notice of the even date, but the defendants refused to admit the claim of the plaintiff. Hence, the suit in question was filed by the plaintiff.

In the written statement, defendants contested the claim of the plaintiff on all counts. It was alleged that the plaintiff had gone to the Labour Court, Karnal and his case was considered on merits and after having failed therein, plaintiff approached the authority appointed under Payment of Wages Act (IV of 1986), where the case of the plaintiff was under process. Plaintiff had worked in Augmentation Canal, Sub

Division No.IV, Karnal up to 31.8.1985 on work charged basis. He was never transferred from the office of Sub Divisional Officer, Augmentation Canal, Sub Division No.IV, Karnal w.e.f. 31.8.1985 as there was no sanction for the work after 31.8.1985 and ten days' prior notice was served upon the plaintiff under paragraph 1.129 (7) of P.W.D. Code. Defendants further alleged that the plaintiff was re-engaged afresh on work charged basis in Augmentation Canal Division No.III, Karnal for a short period of two months against separate work assignment.

After filing replication, following issues were framed by the trial Court:-

- “1. Whether the order dated 31.10.1985 is illegal and not binding on the plaintiff as alleged ? OPP
2. Whether the plaintiff has no locus standi to file the present suit ? OPD
3. Whether the plaintiff has no cause of action in his favour ? OPD
4. Relief.”

Parties led their respective evidence in support of their case on the aforesaid issues.

Trial Court, vide judgment and decree dated 3.11.1987, decreed the suit of the plaintiff with costs, thereby re-instating him to the previous post along with payment of all outstanding dues.

Defendant No.1, through defendant No.3, filed appeal against the judgment and decree dated 3.11.1987 passed by the trial Court. Lower Appellate Court, vide judgment and decree dated 18.7.1990, set aside the judgment and decree passed by the trial Court and dismissed the suit in appeal. Hence, the present appeal by the plaintiff.

I have heard learned counsel for the parties and have also perused the record.

In the present appeal no substantial question of law has been framed. Framing of question of law was not necessary in the light of decision rendered by Full Bench of this Court in **'Ganpat versus Smt. Ram Devi and Ors. 1977 PLR Page-1'**, wherein it was held that the provisions of Section 41 of the Punjab Courts Act, are in no way effected and curtailed by the amendment made in Section 100 of CPC. Now, since the regular second appeal is maintainable only with the aid of section 100 CPC, therefore, substantial questions of law is *sine qua non* for maintaining the appeal.

Prior to amendment of Section 100 CPC, a second appeal could have been filed before this Court on the grounds set out in clauses (a) to (c) of Section 100 (1) CPC i.e. (a) the decision being contrary to law or to some usage having the force of law; (b) the decision having failed to determine some material issue of law or usage having the force of law and (c) a

substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits.

Now the interference in the second appeal could only be made if substantial question of law arises in the case. Therefore, the interference cannot be only because the order is contrary to law, but when the disputed issues raised a substantial question of law. Limiting such a power in the Appellate Authority is based on public policy having roots in the maxim '*interest reipublicae ut sit finis litium*'. The underlined purpose was to bring finality to the issues/litigation at some point of time.

Plaintiff alleged that he was in service of the defendants from December 1982 to 31.10.1985 and his services were verbally terminated in an illegal manner without issuing any notice. The stand of the defendants was that the services of the plaintiff were terminated on 31.8.1985 after giving ten days' prior notice as required under paragraph 1.129 (7) of the P.W.D. Code and thereafter, plaintiff was re-engaged afresh on work charged basis in Augmentation Canal Sub Division No.III, Karnal for a short interval of two months against different work assignment and therefore, no notice was required to be served upon the plaintiff for subsequent new assignment before

dispensing with his services.

Vide Ex.P1 i.e. letter No.1927-28 dated 20.8.1985 issued by Sub Divisional Officer, Augmentation Canal Sub Division No.IV, Karnal, which is duly proved on record, it was informed that the services of the plaintiff were no more required w.e.f. 31.8.1985 afternoon due to non sanctioning of work assignment and ten days' notice was served upon him w.e.f. 20.8.1985. It was only thereafter, services of the plaintiff were hired on fresh assignment for a limited period of two months for which it was claimed that no notice was required to be served upon him being a different work assignment that did not go beyond a small period of two months. Earlier assignment on work charged was duly culminated with the issuance of notice dated 20.8.1985 as required under paragraph 1.129 (7) of the P.W.D. Code.

Ex.D-2 i.e. letter No.7744-45 dated 29.11.1985, was issued by the Executive Engineer, Augmentation Canal Division, Karnal to the Executive Engineer, Hathnikund Barrage Division No.II, Yamuna Nagar in the context of notice under Section 80 CPC received in the office on 15.11.1985 from the Advocate at Karnal with regard to work charged employees, who were transferred to Yamuna Nagar Division w.e.f. 1.11.1985 vide letter dated 30.10.1985.

Defendants have proved on record, vide the aforesaid

notice dated 29.11.1985, Ex.D-2, that after dispensing with the services of the plaintiff, a new assignment was given on work charged basis by the defendants for a short period. Defendants further alleged that as per circulation dated 18.10.1985, Ex.D-1, the Executive Engineer, Augmentation Canal Division, Karnal had already informed the Superintending Engineer, Remodelling Circle, Karnal in respect of re-settlement/ retrenchment of surplus work charged employees. In this communication, it was recited that no regular workmen were surplus in the division, therefore, information regarding them was sought to be treated as nil. Notices of termination of services w.e.f. 31.8.1985 were issued to work charged employees as per the information attached with the aforesaid letter. Recital of the letter shows that due to completion of work / non sanction of further work on which work charged employees were working, their services were sought to be terminated, however, on their request six work charged employees were adjusted temporarily in Augmentation Canal Division No.III, Karnal up to 31.10.1985. Vide the aforesaid letter, the plaintiff was adjusted temporarily on his request after termination of work charged employment on 31.8.1985 for a short interval up to 31.10.1985. Order qua termination of services of the plaintiff was duly passed by way of issuing notice dated 20.8.1985, Ex.P1, thereby giving ten days' notice as required under rules and after completion of period of

ten days w.e.f. 31.8.1985, the services of the work charged employee/ plaintiff was lawfully terminated.

Learned counsel for the appellant has vehemently argued that the plaintiff has rendered un-interrupted service till the date when his services were unceremonially terminated without complying with provisions of law. Apparently, the plaintiff was a work charged employee. On culmination of project/ work and on account of non sanction of further work, his services were terminated by issuing 10 days' notice. Further engagement for a period of two months up to 31.10.1985 cannot be termed as continuous service after cessation of the same on 31.8.1985 as per notice Ex.P-1. The statement of PW-2, Narinder Kumar, Sub Divisional Clerk of Sub Division No.IV, Panipat is in the context of his service prior to termination of work charged assignment. The statement cannot be applied to mean that the continuous period of assignment was in Sub Division No.III up to 31.10.1985, rather as per Ex.D-1, the subsequent work charged engagement was temporarily for a period of about two months, therefore, it cannot be held that the plaintiff had rendered continuous service from December 1982 to October 1985 without any break. The plaintiff had served on a work charged basis on the post to which sanction was accorded by the authority and his services were terminated on account of non sanction of the post and therefore, there was no permanent

lien attached to the post in question.

Apparently, plaintiff has already resorted to proceedings before the Labour Inspector, Karnal as well as authority appointed under Payment of Wages Act. The legality of the order of termination on expiry of requisite period of ten days has not been assailed by the plaintiff, rather he has challenged the legality of order dated 31.10.1985, which cannot be read to be in continuity with order dated 31.8.1985 because for a period of two months, the plaintiff was engaged in Sub Division No.III on work charged basis on different assignment, therefore, in the list of six persons, the plaintiff being junior most at Sr.No.6 cannot take the plea that his juniors were retained. No junior was retained, while terminating the services of the plaintiff and five more persons.

A perusal of record shows that the plaintiff has not produced on record any such document which can show that he was transferred from Sub Division No.IV to Sub Division No.III in recognition of his past service or by way of any continuous process on administrative level. Plaintiff cannot draw benefit from the endorsement of Ex.P1 to the effect that the person, whose services were terminated, be absorbed somewhere else if possible. It was only a compensatory measure that the plaintiff was accommodated for a period of two months in different Sub Division No.III on work charged basis and it cannot be termed

to be an order of transfer by any stretch of imagination. Since the plaintiff had challenged the legality of order dated 31.10.1985 and has not challenged the legality of order dated 31.8.1985, therefore, scope of the suit vis-a-vis the applicability of provisions of Industrial Disputes Act, 1947 cannot be appreciated, because the work for which the employees were engaged stood completed and no further sanction was received for the work on which the employees were being charged. It was only on the request of the employees that they were temporarily adjusted in Sub Division No.III up to 31.10.1985.

Since the order dated 31.8.1985 was never assailed by the plaintiff, the arguments of completing 240 days of service entailing in benefit under Chapter V of the Industrial Disputes Act cannot be pressed into service because plaintiff had merely 60 days of service as on the date of termination of service on 31.10.1985, which was the impugned order in the suit. Since the fresh appointment made in Sub Division No.III could not be proved as a continuous feature after termination of services on 31.8.1985, no evidence has been brought on record to show that the fresh appointment was made after termination of services of the plaintiff, rather it was a temporary adjustment made in Sub Division No.III that too for a period of two months. In a case of fresh appointment for a period of two months, no such inference can be drawn in favour of the plaintiff. Since the

case is not proved to be a case of transfer from Sub Division No.IV to Sub Division No.III, therefore, the service tenure to the tune of two months cannot be treated to be protected under the Industrial Disputes Act. The argument raised by learned counsel for the appellant is that the plaintiff should have been given monetary compensation to meet the ends of justice, but the provisions of Industrial Disputes Act could have been attracted, had it been a case of termination on account of non compliance of provisions of Section 25-F of the Industrial Disputes Act, where re-instatement was not the remedy but right of workman could have been settled by ordering payment of compensation.

In the instant case, the termination has not been found to be illegal, therefore, the protection in terms of Section 25-F of the Industrial Disputes Act is not attracted. The plaintiff has not staked his claim with regard to services rendered by him from the year 1982 to 31.8.1985 before the competent Labour Court, therefore the factors, while ordering termination of services of a daily wage/ work charged employee, cannot be appreciated more particularly towards payment of compensation. Once the termination is not held to be illegal, question of payment of compensation does not arise. The plaintiff has already resorted to proceedings before Labour Court as well as the authority appointed under the Payment of Wages Act, therefore, on that score also it is not feasible to

opine anything, which was never pleaded before the Courts below nor any foundation was laid in terms of pleadings.

No substantial question of law has been formulated nor it could be pointed out during the course of arguments. Keeping in view the facts and circumstances of the case, this Court is not in a position to endorse the views expressed by the trial Court, rather the judgment and decree passed by the lower Appellate Court is found to be in consonance with the facts and circumstances of the case.

In view of aforesaid, this Court is of the view that there is no substance in this appeal and the same is accordingly dismissed.

**(RAJ MOHAN SINGH)**  
**JUDGE**

**February 11, 2016**  
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