

In the High Court of Punjab and Haryana at Chandigarh

Regular Second Appeal No. 5114 of 2012
Date of Decision: 25.2.2016.

Pawan Kumar

.....Appellant

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. K.S.Banyana, Advocate
for the appellant.

Mr. Gagandeep Singh Wasu, Addl. A.G., Haryana.

SABINA, J.

Appellant had filed suit for declaration challenging the orders dated 6.8.2005 and 4.1.2007.

Case of the appellant, in brief, was that he was appointed as a *Khidmatgar* in Haryana Raj Bhavan by defendant No. 2 vide order dated 2.12.2003. Appellant joined his duty in pursuance to the said order. On 5.8.2005, appellant performed his duty. On 6.8.2005, when appellant reported for duty, he was handed over the impugned order whereby his services were dispensed with. Later it transpired that on 5.8.2005, after the appellant had left, at about 6.00 P.M., Jasbir Kumar, *Khidmatgar* and Naresh, Butler, who were on duty from 2.00 P.M. to 8.00 P.M., had refused to serve tea on the directions of their superiors. The said officials were placed under suspension and departmental enquiry was initiated against them. Appellant came to know that on account of some misinformation, he had also been removed from service in terms of clause-6 of his appointment letter. The

impugned order had been passed on the allegation of misconduct against the appellant and the said order could not be passed without holding enquiry against the appellant.

Defendants, in their written statement, averred that the services of the appellant had been dispensed with in terms of clause-6 of his appointment letter. Appellant was on probation and his work and conduct was not found satisfactory. No enquiry or charge sheet was required to be held against him. It was further averred that on 7.9.2004, appellant had left the station after submitting his leave application from 8.9.2004 to 14.9.2004, although, he was directed not to leave the station without getting the leave sanctioned. Notice was issued to the appellant and he admitted his guilt and averred that he would be careful in future. Lenient view was taken and period of his absence was treated as extra-ordinary leave without pay. On 17.11.2004, Comptroller Governor's Household, Haryana had complained in writing against the appellant as he had proceeded to his home town without any information or leave. Appellant was placed under suspension on 18.11.2004 and was served with a charge sheet. Appellant submitted his reply to the charge sheet and assured that he would work with utmost commitment and sincerity in future. Appellant was reinstated on 2.3.2005. On 5.8.2005, at 5.30 P.M. rehearsal of State level Teej festival was held at Raj Bhavan. It was found that appellant was not available to serve refreshment to his seniors.

On the pleadings of the parties, following issues were framed by the Trial Court:-

“1. Whether the impugned order dated 6.8.2005/4.1.2007 passed by defendant No. 2 are

illegal and nonest as prayed for? OPP

2. *Whether the plaintiff is entitled for declaration as prayed for? OPP*
3. *Whether the present suit is not maintainable ? OPD*
4. *Relief.”*

Parties led their evidence in support of their respective pleas.

Suit filed by the appellant-plaintiff was dismissed by the Trial Court vide judgment/decreed dated 19.5.2009. Aggrieved against the said judgment and decree, appellant preferred an appeal and the same was dismissed by the First Appellate Court vide judgment/decreed dated 24.4.2012. Hence, the present appeal by appellant-plaintiff.

I have heard the learned counsel for the appellant and the learned State counsel and have gone through the record available on the file carefully.

Admittedly, appellant was appointed as a *Khidmatgar* in Haryana Raj Bhavan vide order dated 2.12.2003. Clause-6 of the appointment letter reads as under:-

“You will be on probation for a period of two years from the date of joining in the Haryana Raj Bhavan which can be extended upto 3 years i.e. for one more year. If during this period your work and conduct, at any stage, is found unsatisfactory, your services will be dispensed with without any notice.”

Services of the appellant were dispensed with vide order dated 6.8.2005 (within the period of probation). The said order

reads as under:-

“In accordance with condition no. 6 of the letter of appointment bearing no. HRB-GA2(4)-2003/10120 dated 2.12.2003, the services of Shri Pawan Kumar, Khidmatgar, Haryana Raj Bhavan, are hereby dispensed with immediate effect, due to his continuous unsatisfactory conduct, during the period of probation.”

Thus, the services of the appellant could be dispensed with without any notice in case his work and conduct was found unsatisfactory during the period of probation. Both the Courts below after appreciating the evidence led by the parties on record have given a finding of fact that the work and conduct of the appellant was not found satisfactory during the period of probation and the said fact was within the subjective satisfaction of the competent authority. On earlier occasions also, appellant had absented without leave and had been reinstated in service on his assurance that he would work with utmost sincerity in future. Apparently, the work and conduct of the appellant did not improve and the competent authority passed the impugned order dated 6.8.2005 in terms of the appointment letter of the appellant. In the facts and circumstances of the present case, the Courts below had rightly dismissed the suit of the plaintiff.

No substantial question of law arises in this case warranting interference by this Court.

Dismissed.

**(SABINA)
JUDGE**

February 25, 2016
Gurpreet