

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

RSA No.888 of 1993 (O&M)

Date of decision: 21.04.2017

Daljeet Singh

.... Appellant

VS

Municipal Committee, Amritsar

.... Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sukhbir Singh, Advocate
for the appellant.

Mr. Harsh Chopra, Advocate
for the respondent.

RAJIV NARAIN RAINA, J. (ORAL)

Learned Civil Judge (Sr. Divn.), Amritsar and Officer Incharge, Record Room (Judicial) has reported to the High Court on its administrative side that the original trial court record of the case has been destroyed in a recent fire incident along with other files lying in the old building of the Deputy Commissioner's office, Amritsar prior to the year 2001. The only available file is of the Appellate Court. Accordingly, counsel have been heard on the material available on the present file and the appellate record which is sufficient to decide the case on merits.

This is an appeal against the Appellate Court judgment and decree dated 17.09.1992 passed by the learned Addl. District Judge, Amritsar. The case was of termination from service of the plaintiff-appellant (hereafter 'plaintiff'). The removal of the plaintiff was based on a police report to the effect that the plaintiff was found to be a regular

member of All India Sikh Students Federation with recommendation to the municipality that he should not be retained in service in public interest. The plaintiff was a Tubewell Driver in the Municipal Corporation, Amritsar. He was employed on work charge basis for a period of 89 days. He was not a regular hand. A criminal case was also registered against him. He was discharged by the learned Chief Judicial Magistrate, Amritsar on November 07, 1985. After discharge, he was apparently allowed to join duty vide order dated February 07, 1986 on the basis of Punjab Government letter dated October 31, 1985. On the basis of police report, his services were terminated vide order dated September 11, 1986 against which he filed a suit for declaration that the order was illegal, void and deserves to be set aside and he is entitled to reinstatement in service with consequential benefits. The period of service was from 07.06.1985 to 11.09.1986 i.e. for a period of one year and three months.

The Trial Court vide judgment and decree dated 20.07.1988 partly decreed the suit. The termination order was set aside with the direction that he should be appointed as per the terms and conditions of the original appointment letter dated 31.05.1985. Since the pay for the time plaintiff worked was paid to him before termination, therefore, he was not entitled to any arrears of pay from the defendants. It was further directed that he would not be entitled to any arrears of pay during the period he was without work because he was appointed on work charge basis and no arrears could be allowed when the plaintiff had not worked.

The trial Court held that the police report was made at his back

and could not be used against him. The two police reports are dated 21.05.1986 Ex.PE and 07.11.1986 Ex.PF. The plaintiff pleaded that his past political activities and affiliation could not be taken into account as relevant for considering his fitness for the post of Tubewell Driver under the Corporation. For this proposition, he relied upon the decision of this Court in *Harjit Singh vs. The State of Punjab and another, 1977(2) SLR 749* wherein it was held that termination on the basis of vague, unconfirmed confidential police reports regarding alleged political activities amounted to violation of fundamental rules. There is no doubt that the plaintiff was on probation when he was removed from service. The fact also remains that he was discharged by Court on 07.11.1985 in the criminal case during the period of his work charge service.

The Appellate Court did not agree with the trial Court. The Court held that the plaintiff was a work charge employee and not a regular hand. He was not entitled to protection of Article 311 of the Constitution of India. The Judge narrowed down the scope of the case to the question whether the plaintiff was entitled to any relief in the case or not. The Judge read the order dated 31.05.1985 Ex.D1 being the appointment letter as TD on work charge purely on temporary basis and was put on probation for a period of two years. There was a condition that during probation if he was not found suitable for the job, his services could be dispensed with. He denied relief and allowed the appeal and dismissed the suit.

The Judge looked at the issues Nos.1 & 2 correctly and I think rightly so and held, as I would from the perspective or point of view of the

employer Corporation whether it would allow itself to carry on an employee and confirm him, who was involved in a criminal case and who was a regular member of All India Sikh Students Federation, which at that time suffered a ban imposed by the government in 1985. The position may be different today but the order was passed in the special and peculiar circumstances of the time when Punjab went through its terrible days of trembling unrest.

The first appellate Judge read the impugned order dated 11.09.1986 and found that it is an order of termination from employment simpliciter during probation and there is nothing mentioned in the order casting any stigma on the plaintiff while terminating his services and on this premise, the services of work charge employee could be brought to an end on a police report when the appointment was dependant on verification of antecedents as per recital therein. The political activities of the plaintiff were not disputed by him. The Lower Appellate Court disagreed with the trial Court that he should be appointed as per the terms and conditions of the appointment letter dated 31.05.1985 and such a direction could not be given by the Civil Court when the services of the plaintiff had been validly terminated as per terms and conditions contained in the appointment letter and the plaintiff could not draw any help from the case of *Harjit Singh case* as it turned on its own facts.

In the Courts below, the dispute was also based on assertion of industrial rights under the Industrial Disputes Act, 1947 claiming that he had served the department for more than 240 days at the time of termination

and was entitled to be treated as a regular employee in view of the judgment of the High Court then prevailing in the case of ***Piara Singh and another vs. The State of Haryana and others, 1989(1) RSJ 465***. The industrial rights could not be agitated before the Civil Court and the claim, if any, based on such rights could only be raised before the Labour Court or Tribunal set up under Industrial Disputes Act, 1947. The Lower Appellate Court noted that involvement in the criminal case had led to judicial custody after plaintiff had joined the post. In such cases, it is not of much moment that an accused has been discharged of criminal offence and therefore reinstatement or retention must automatically follow but the matter has to be viewed from the perspective of the employer whether it is still after the discovery of certain facts interested to retain such employee, who has suffered judicial custody in a terrorist related case and that it is not ordinarily open to judicial review especially when the termination order is innocuous in nature and that too in a case of a work charge employee, who is not a regular government servant. It was mainly for these reasons that the appeal filed by the Municipal Corporation, Amritsar against the verdict of the trial court was allowed and the judgment and decree of the first court was set aside while in the counter appeal i.e. CA No.24 of 1988 filed by the plaintiff – Daljit Singh claiming monetary benefits was dismissed.

Photocopy of the appointment letter was produced before me where there is a condition that a certificate from Sr. Superintendent of Police of the District in which the candidate is residing for the last three years is furnished verifying his antecedents.

On the other hand, learned counsel for the respondent has placed before me a bunch of four judgments in support of the order of termination. The Supreme Court in para. 10 in case ***Daya Shankar Yadav vs. Union of India and others, 2010(14) SCC 103*** has observed as follows:

“10. Thus an employee on probation can be discharged from service or a prospective employee may be refused employment: (i) on the ground of unsatisfactory antecedents and character, disclosed from his conviction in a criminal case, or his involvement in a criminal case (even if he was acquitted on technical grounds or by giving benefit of doubt) or other conduct (like copying in examination) or rustication or suspension or debarment from college etc.; and (ii) on the ground of suppression of material information or making false statement in reply to queries relating to prosecution or conviction for an criminal offence (even if he was ultimately acquitted in the criminal case). This ground is distinct from the ground of previous antecedents and character, as it shows a current dubious conduct and absence of character at the time of making the declaration, thereby making him unsuitable for the post.”

He next cites the judgment of Supreme Court in **Union of India & ors. vs. Bipad Bhanjan Gayen, 2008(4) SCT 456**. This is a case involving a probationer, who was involved in an FIR for an offence punishable under Section 376 IPC and there was another case under Section 417 IPC on complaint pending in Court. He was removed from service for his involvement in a police case. The ratio of this case is that the

candidate/employee terminated during probation was on account of the fact that he withheld the relevant information with him while filing attestation form by concealing involvement in a criminal case. To my mind, this case does not apply directly to the present case and is only noticed since it has been cited by the learned State counsel.

He has further placed reliance on the decision of this Court in ***Jarnail Singh vs. State of Punjab and others, 2011(3) SCT 734***, which is also a case of an appointment to a temporary post on probation for a period of two years and during verification of the appointee's antecedents and character, two criminal cases were registered against him were revealed. The allegation was of leakage of question papers of an annual examination. The Division Bench observed that relief of reinstatement was rightly declined by the Single Judge. The Court observed that the most precious assets of the nation cannot be placed in the hands of such person, who has dubious antecedents. The fourth is the case of Supreme Court in ***Rajasthan State Road Transport Corp. & ors. vs. Zakir Hussain, 2005(7) SCC 447***. This is a case involving termination of a bus conductor, who was appointed purely on temporary basis for a period of two years. The Court held that Civil Court is not the place for litigation and cannot entertain civil suit.

Learned counsel for the respondent submits that municipal employees are not civil servants and are not protected by the rigours of Article 311 of Constitution of India. The suit is not maintainable. The only remedy available to the person is by way of reference under the provisions of Industrial Disputes Act. The Supreme Court observed that reinstatement

by the Civil Court is not proper and set aside the order of the High Court.

In rebuttal, learned counsel for the appellant has placed reliance on the decision of Central Administrative Tribunal, Jodhpur Bench in ***Gopa Ram vs. Union of India and others, 1987 (2) SLR 100***, where the learned Tribunal held that an adverse police report could not become the foundation of an order of termination. An adverse police verification report against an employee suggesting termination of services renders the termination illegal. The petitioner in Gopa Ram's case (supra) was appointed as an Assistant Sorter in the Posts and Telegraphs Department. He was selected and appointed and had completed the prescribed course of training. Unlike this case in Gopa Ram's case, there was no threshold condition that the appointment would be based on production of antecedents and background check and antecedent certificate by the Senior Superintendent of District Police in troubled times. Actions of Government and its municipalities etc. have to be judged in the context of the times in which action was taken. Not in the rarefied air of a courtroom after the generation has changed and so the weather.

I do not find any merit in relying on Tribunal decision before the High Court as it is not binding. A short spell of work charge service in this case should not be converted into reinstatement. The matter has not come via the labour court for this Court to have seriously considered compensation even assuming for the sake of arguments the termination order was flawed.

Search yields no valid reason to upturn the judgment and

decree in appeal as the view taken is neither perverse, illegal, illogical nor irrational. It is a view which could possibly be taken on the evidence and the documents exhibited on record. No substantial question of law arises in this appeal to be determined.

Accordingly, the appeal is dismissed.

21.04.2017
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(RAJIV NARAIN RAINA)
JUDGE

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| 1. Whether speaking/non-speaking? | Yes |
| 2. Whether reportable/non-reportable? | No |