

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 14.02.2017****RSA-1035-1991 (O&M) with**
XOBJC-6-C-1992

State of Haryana & another

...Appellants

Vs.

Sajjan Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Saurabh Girdhar, AAG, Haryana, for the appellants.

Mr. Sanjay Mittal, Advocate, for the respondent.

RAJIV NARAIN RAINA, J. (ORAL)

The State is in second appeal feeling aggrieved by the judgment and decree passed by the learned first Appellate Court on 09.01.1991 reversing the judgment and decree passed by the learned trial Court on 12.05.1989, claiming that the following substantial question of law arises for consideration:

“Whether the civil court had jurisdiction to apply principles of Section 25-F of the Industrial Disputes Act, 1947 and grant relief of reinstatement?”

I have heard the respective counsel at great length on the substantial question of law and perused the record carefully. While granting relief to the cross-objector/plaintiff and declaring the impugned orders dated 15.07.1986, 18.09.1986 & 15.10.1986 as illegal and void and not binding on his rights, the lower Appellate Court denied benefit of pay for the period the cross-objector/plaintiff remained out of employment. The period is about 5 years. While moulding relief, the learned Additional District Judge, Narnaul in his verdict dated 09.01.1991 held the plaintiff entitled to continue in

service with all service benefits permissible to him under the Rules of the Department. The lower Appellate Court has not used word 'reinstatement' while granting relief although the impugned orders have been set aside and it would follow declaration. It has also not specifically used the word 'continuity of service' in the decree. Neither has the lower Appellate Court applied the principle of 'no work no pay' in as many words. Normally reinstatement would take with it past benefits including salary, but in the absence of any clear direction from the lower Appellate Court as per decree, some of the above principles might apply but are they to necessarily follow?

Still further, the termination was caused in terms of the condition of appointment letter and on completion of work when the plaintiff was working on work-charged basis. The Forum exercising jurisdiction would have been the Labour Court to apply industrial principles under Section 225-F of the Industrial Disputes Act, 1947 to award reinstatement, but the Additional District Judge in proceedings arising out of civil suit applied the principles of Section 25-F of the Act and faulted the termination, which was legally impermissible in the civil court. The special rights created under the Industrial Disputes Act, 1947 are not open for adjudication before the Civil Court and neither in the first instance in the High Court except via the Labour Court can they come. It is only a writ Court, which can apply industrial law principles for the first time without compelling party to approach the industrial adjudicator. But this power was not vested in the Civil Court. [See – Rajasthan State Road Transport Corporation & another Vs. Zakir Hussain (2005) 7 SCC 447; Rajasthan State Road Transport Corporation & another Vs. Ugma Ram Choudhary (2006) SCC (L&S) 58 and Rajasthan State Road Transport Corporation & others Vs. Ramdhara Indoliya (2006) 6 SCC 287]

However, since this appeal has been pending since 1991 and the respondent/plaintiff has retired from service in 2013, no useful purpose will be served to enter upon a debate on this point. Since the judgment and decree suffers from lack of jurisdiction, but the same is not being tinkered with only to disturb the settled rights of the cross-objector/plaintiff gained by passage of time, I would thus leave the matter resting at Para.12 of the judgment of the Court *a quo* against which the plaintiff had filed cross-objections in this appeal. Accordingly, objector would not be legally entitled to arrears of salary for the period he remained out of employment on the principle of 'no-work-no-pay' as any direction of the kind would cast an unjustified extraordinary financial burden on the State exchequer without due authority of law.

Consequently, while answering the question of law in favour of the State, the present appeal is accepted and cross-objections are dismissed. The judgment and decree passed by the lower Appellate Court is set aside. However, since the plaintiff has retired, it would be unjust to disturb his settled rights especially when he has superannuated from service in 2013. The cross-objector is not entitled to the salary for the period claimed in the cross-objections. Other benefits would stand and will not be disturbed.

14.02.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>