

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 280

Regular Second Appeal No.5071 of 2013 (O & M)
Date of Decision: July 27, 2017

The Ajit Gill Co-operative Agriculture Service Society Limited
..... APPELLANT

VERSUS

Tota Singh & others
..... RESPONDENTS

...

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

...

PRESENT: - Mr. S.S. Bhinder, Advocate, for the appellant.

Mr. M.S. Bedi, Advocate, for respondent No.1.

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Jaspal Singh, J

1. Defendant No.1 – The Ajit Gill Co-operative Agriculture Services Society Limited (for short, ‘Society’) has filed the instant appeal against judgments & decrees dated September 12, 2013 passed by the Additional District Judge, Faridkot and November 19, 2010 passed by the Civil Judge (Senior Division), Faridkot, whereby suit filed by the plaintiff – respondent No.1, Tota Singh, has been decreed and appeal preferred by defendant - Society dismissed.

2. Briefly stated, the facts giving rise to the instant appeal are that plaintiff – respondent No.1 joined the services of Society on May 19, 1989 as Salesman. The plaintiff was placed under suspension on December 18, 1998. Ultimately, he was dismissed from services on June 16, 1999.

Earlier to that, petitioner preferred a civil suit titled 'Tota Singh vs. Ajit Singh Co-operative Agriculture Service Society, Ajit Gill & others' claiming salary for the period from April 01, 1994 to March 31, 1995 and from March 01, 1996 to December 17, 1998 as well as subsistence allowance from the date of his suspension i.e. December 18, 1998 till the date of his dismissal i.e. June 16, 1999. The said suit was dismissed by the trial court vide judgment dated July 30, 2003, however, appeal filed by the plaintiff was succeeded vide judgment & decree dated February 12, 2004. It is pertinent to mention here that Society did not disclose the order of dismissal of petitioner nor produced the dismissal order dated June 16, 1999. Plaintiff filed an execution application wherein vide objections dated April 09, 2005 Society disclosed that petitioner has been dismissed on June 16, 1999 by the Managing Committee (JD No.1), however, Judgment Debtor failed to produce the dismissal order with the objections nor the order of dismissal was supplied to the plaintiff.

3. Consequently, plaintiff filed the instant suit seeking setting aside of order dated June 16, 1999; reinstatement with full back wages and consequential arrears alongwith interest @ 18% per annum from the date of his actual accrual till realization alleging that no formal enquiry was conducted by the defendants; no chargesheet was served upon him; no proper enquiry was conducted; plaintiff was not afforded any opportunity to defend himself; enquiry officer was not competent to conduct the enquiry; copy of impugned order was not supplied; impugned order passed by the Managing Committee is illegal, criptive and non-speaking; subsistence allowance was not paid and the entire enquiry as well as punishing orders have been passed at the back of the plaintiff in arbitrary manner.

4. Defendants contested the suit by filing joint written statement to the effect that suit filed by the plaintiff is not maintainable; order passed by the Managing Committee is legal and not liable to be set aside. Plaintiff is not entitled to be reinstated. Proper enquiry was conducted and chargesheet was duly served upon the plaintiff. Punishing orders were not passed at the back of plaintiff, rather he never appeared before the enquiry officer.

5. The trial court framed the issues. Parties led their evidence. After hearing learned counsel for the parties and perusing the record, decreed the suit of plaintiff vide judgment & decree dated November 19, 2010 and set aside order dated June 16, 1999 observing that the same has not been conveyed or served upon the plaintiff vide which plaintiff was dismissed from his service and that, the same is illegal, void, abinitio, wanton, without jurisdiction, against the law of natural justice and equity, good consensus, in violation of departmental rules & regulations and in violation of Punjab State Civil Services (Punishment & Appeal) Rules. Consequently, plaintiff was held entitled to reinstatement with consequential relief of arrears of back wages from the date of dismissal till reinstatement.

6. Defendant No.1 – appellant went up in appeal against the judgment & decree passed by the trial court but same was also dismissed vide judgment & decree dated September 12, 2013, affirming the findings of trial court.

7. Aggrieved by the aforesaid judgments & decrees passed by the courts below, defendant No.1 – appellant has preferred the instant regular second appeal.

8. While assailing the impugned judgments & decrees, learned counsel for the appellant has vehemently contended that the same are liable

to be set aside on the ground that suit of the plaintiff is barred by limitation. Document Ex.P6 clearly shows that services of the plaintiff were terminated on December 18, 1998 whereas the suit has been filed by him on October 28, 2005 i.e. after the period of limitation of three years from the date of his termination. Learned counsel has further contended that courts below have erred in granting the arrears of back wages from the date of dismissal till reinstatement alongwith interest. Plaintiff has committed grave misconduct during his service and embezzled a lot of money of members of the Society.

9. This Court has given an anxious thought to the aforesaid submissions of learned counsel for the appellant and does not find any legal weight therein.

10. As regards contention of learned counsel for the appellants that suit was filed on October 28, 2015, thus it was beyond limitation, as such not maintainable because it was required to be filed within three years from the date of termination i.e. December 18, 1998. Undisputably, defendants have failed to establish that impugned order dated June 16, 1999 was ever delivered to the plaintiff, so question of limitation does not arise. Moreover, it has been proved that department has for the first time disclosed the impugned dismissal order to plaintiff in execution application when objections were filed by the defendants in the year 2005. Accordingly, it is held suit is maintainable and within limitation. The courts below have rightly held that the defendants have concealed the dismissal order from the plaintiff and all proceedings have been conducted at the back of plaintiff. As such, no proper opportunity of being heard was afforded to the plaintiff. Defendants have also failed to prove embezzlement on the part of the plaintiff.

11. This Court in **The Punjab State Co-operative Supply & Marketing Federation Ltd. vs. Kartar Chand & another, 2015(8) RCR (Civil) 137**, has held that disputes relating to service conditions of employees of Society would not come within ambit of Section 55 of the Punjab Co-operative Societies Act, 1961 (for brevity, 'Act'). Even though arbitrator award is appealable under Section 68(h) of the Act, since dispute was not covered within scope of Section 55 and award of Arbitrator being one without jurisdiction, certainly said award can be challenged before Civil Court.

12. As regards contention of learned counsel that jurisdiction of the civil court is barred. As per the provisions of Section 82(bb) of the Act, no civil or revenue court shall have any jurisdiction in respect of any matter relating to service conditions of employees of cooperative societies.

13. This contention of learned counsel for the appellant also does not carry any weight. Sub section (bb) of Section 82 of the Act is not applicable to the facts & circumstances of the instant case as it was inserted vide amendment – Punjab Act No.14 of 2014 which became operative w.e.f. July 28, 2014. As such, it cannot have retrospective effect.

14. As such, in the light of what has been discussed above, this court finds that no question of law, muchless any substantial question arises in this appeal. Consequently, it stands dismissed. Judgments & decrees passed by the courts below are affirmed.

15. No order as to costs.

July 27, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No