

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 108

Regular Second Appeal No.3532 of 2017 (O & M)
Date of Decision: August 18, 2017

Bhim Singh

..... APPELLANT

VERSUS

Incharge, Haryana Tourism Corporation Limited & another

..... RESPONDENTS

. . .

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

. . .

PRESENT: - Mr. Pankaj Mohan Kansal, Advocate, for the appellant.

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Jaspal Singh, J

CM Nos.8524-C & 8525-C of 2017

For reasons given in the applications, delay in refiling and
filing the appeal is condoned.

CMs allowed.

RSA No.3532 of 2017 (O & M)

1. The instant regular second appeal has been preferred by the
appellant-plaintiff against judgment & decree dated August 21, 2014 passed
by the Civil Judge (Junior Division), Karnal, whereby the suit instituted by
the plaintiff has been dismissed as well as judgment & decree dated May 18,
2016 passed by the Additional District Judge, Karnal, vide which, appeal
preferred by the plaintiff against judgment & decree of trial court has been
dismissed.

2. Brief facts giving rise to the instant lis are that plaintiff filed a suit seeking for declaration to the effect that he is entitled to the job of Mali in Haryana Tourism Corporation Limited, Yamuna Nagar with all withheld benefits of salary, PF and other consequential benefits and letter dated March 20, 2012 showing his absence in record be declared illegal, null and void. Plaintiff alleged that he was working as Mali on daily wages at Karan Lake under Haryana Tourism Department. He worked upto the year 1992, whereafter he was transferred to the office of Haryana Tourism Pipli, Kurukshetra by defendant No.2 – Manager, D.S. Service Provider, wherefrom, defendant No.1 shifted him to Haryana Tourism, Yamuna Nagar. Since then, appellant – plaintiff is working under defendant No.1. Appellant – plaintiff alleged that defendant No.1 did not allow him to work after March 28, 2012 and did not pay his salary from February 28, 2012, rather he was shown absent from duty. Defendant No.2 sent a letter No.5803 dated March 20, 2012 directing him to join his service in Panchkula office within two days and also threatened to terminate his service. Plaintiff sent a legal notice under Section 80 CPC to defendants on June 15, 2012 but it did not bring any fruit and plaintiff was constrained to file the instant suit claiming aforesaid benefits.

3. Defendant No.2 was given up by counsel for the plaintiff vide statement dated August 29, 2013. Defendant No.1 contested the suit by filing written statement and raising preliminary submissions regarding maintainability of suit, locus standi and cause of action to file the present suit. On merits, defendant submitted that plaintiff had earlier raised an industrial dispute in the year 2001 to the effect that he was working with HTC at Parakeet Tourist Complex, Pipli since November 17, 1990 and his services were terminated on February 22, 2000. The said industrial dispute

was rejected by the Labour Court vide award dated August 23, 2004 holding that plaintiff was never engaged by HTC, Parakeet, Pipli and as such, he was not entitled to reinstatement. Defendants submitted that neither plaintiff was engaged by HTC at Karan Lake, Parakeet, Pipli and Yamuna Nagar in any capacity nor was he paid any wages from HTC. Plaintiff was deployed by defendant No.2 to provide services of cleaning utensils in the office of defendant No.1. After February 2012, plaintiff did not turn up for providing services which fact was brought to the notice of defendant No.2 by defendant No.1.

4. From the pleadings of parties, issues were framed and parties led their evidence in order to establish their respective case. After hearing learned counsel for the parties and on appraisal of evidence as well as documents, trial court dismissed the suit vide judgment & decree dated August 21, 2014. Appeal preferred against the said decision was also dismissed by the lower appellate court vide judgment & decree dated May 18, 2016.

5. Aggrieved by the aforesaid judgments & decrees passed by the courts below, plaintiff has approached this Court.

6. Learned counsel for the appellant has contended that the impugned judgments & decrees passed by the courts below are absolutely against the evidence available on file and settled canons of law. Misappreciation of evidence as well as legal proposition has resulted into miscarriage of justice. The courts below have not applied judicious mind and accordingly the impugned judgments & decrees are liable to be set aside by way of acceptance of instant regular second appeal.

7. This Court has given an anxious thought to the aforesaid submissions made by learned counsel for the appellant and perused the

documents available on file but the same do not carry any legal or factual substance.

8. Case of the appellant – plaintiff is that he was employed as Mali on daily wages on Karan Lake by Haryana Tourism Department and remained as such upto the year 1992. His services were illegally terminated. His salary from June 1991 onwards was not paid. He raised an industrial dispute which was contested by HTC stating that plaintiff was never engaged by it and as such, no relationship of employee and employer was existing between the parties. Neither plaintiff was never engaged nor appointed by HTC. The Labour Court dismissed the claim of appellant – plaintiff vide award dated August 23, 2004. Plaintiff examined himself as PW-1 and stated during his cross examination that he was recruited as Mali in the year 1987 in Haryana Tourism Corporation at Karnal, but no appointed letter was issued. He admitted it to be correct that he filed a case before Labour Court, Ambala which was dismissed. He admitted that in the year 1995, he had gone to Yamuna Nagar, but has no proof in respect of performing services at Yamuna Nagar. Other witnesses (PW-2 & PW-3) also could not produce any document in respect of employment of appellant – plaintiff. Defendant examined Jai Singh, Manager as DW-1 who stated in his cross examination that plaintiff had come on work through contractor D.S. Service Provider (defendant No.2). Plaintiff has failed to prove that he was either temporary or daily wage employee of defendant – respondent No.1 and also failed to summon any record from the defendant(s) in this regard.

9. In the light of what has been discussed above, this Court does not find any infirmity or illegality in the impugned judgments & decrees passed by the courts below which are hereby upheld. Consequently,

10. No order as to costs.

August 18, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No