

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

1084

**RSA-3593-2002 (O&M)
Date of decision:21.03.2018**

Haryana Seeds Development Corporation Limited and another

...Appellants

Versus

Kuldeep Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Vishal Gupta, Advocate for the appellants.

Mr.M.K.Sood, Advocate for the respondent.

P.B. BAJANTHRI, J. (ORAL)

In the instant appeal, appellants have questioned the validity of the appellate as well as trial courts judgments dated 19.04.2002 and 05.06.2002.

2. The respondent was appointed as a Driver in the pay scale of Rs.1200-2040/- plus special pay of Rs.200/- for a period of 89 days with a condition that such appointment would be stop gap arrangement till regular appointment is made or government made alternative arrangement. Thereafter, his appointment was renewed from time to time and his services were continued up to 03.06.1998. Thereafter, orally respondent's services have been dispensed. Thus respondent filed a civil suit seeking for his

reinstatement with reference to fact that he has completed 240 days etc. Trial court considered the factual aspect that real reason for dispensing the respondent's service is based on the allegation that petitioners vehicle which was driven by the respondent met with an accident. Thus, his work was not satisfactory. While considering the said issue trial court has held that in that event before dispensing the service of the respondent inquiry is required to be held. Thus, decree was passed in favour of the respondent. Appellant filed appeal and it was dismissed. Hence the present appeal.

3. Learned counsel for the appellant vehemently submitted that trial court should not have entertained the suit of the respondent having regard to the prayer made by the respondent in particularly for his reinstatement with reference to the fact that he has completed 240 days and in that event the course of action of the respondent is to raise industrial dispute. On this issue itself trial court as well as appellate court have erred in entertaining the respondent's claim. Learned counsel for the appellant relied on the fact that reasons for dispensing the respondent's services is that one Sh. Kanwaljit Singh who has been transferred in the place of the respondent where he was working on 23.10.1997. Therefore, there is compliance to condition imposed in the order of appointment dated 19.01.1996. In other words, as and when regular employee is posted on the post where respondent was working, therefore, he has to make way for the regular appointee. Learned counsel for the appellant relied on the following decisions to support the contention that civil suit is not maintainable having regard to the prayer made by the respondent to the extent that he is entitled

for reinstatement in view of the fact that he has completed 240 days.

1. ***Chief Engineer, Hydel Project & others versus Ravinder Nath and others*** reported in 2008(2) SCT 412
2. ***Jitendra Nath Biswas versus M/s Empire of India and Ceylone Tea Co. and another*** reported in 1989(4) SLR 214
3. ***The Rajasthan State Road Transport Corpn. Versus Krishna Kant etc.*** reported in 1995 AIR (SC) 1715
4. ***The Premier Automobiles Ltd. versus Kamlakar Shantaram Wadke and others*** reported in 1975 AIR (SC) 2238

4. Per contra learned counsel for the respondent submitted that trial court has taken note of the reason for dispensing his services is based on the allegation as is evident from written statement filed before the trial court wherein alleged incident took place in the year 1998 when he was transferred from Yamuna Nagar to Head Quarter Panchkula. The official car which was driven by him met with an accident. Based on these allegations appellants have found that respondent work was not satisfactory. It was also submitted that no written order was passed insofar as terminating the services of the respondent so as to know the reason. Therefore, even if the respondent raised plea in the suit to the extent that he is entitled for reinstatement with reference to service of 240 days that does not wipe out that the dispensing of the respondent service is with reference to the allegations. Thus, appellant should have held inquiry before dispensing his services. It was also submitted that with reference to order of appointment that as and when regular candidate from employment exchange or the Government is appointed in that event respondent was to make way whereas transfer of Sh. Kanwaljit Singh is dated 23.10.1997. On the other

hand, respondent was continued up to 03.06.1998. Therefore, reason that Sh. Kanwaljit Singh was transferred in place of the respondent may not hold good. The real reason is that respondent met with an accident while he was driving appellant's vehicle thus, it was found by the appellant to the extent that respondent's work was not satisfactory.

5. Heard the learned counsel for the parties.

6. Question for consideration in the present appeal is whether respondent's services have been dispensed with reference to condition imposed in the order of appointment or based on the allegation that without holding any inquiry his services have been dispensed or not?

7. Preliminary issue raised by the appellant is that suit is not maintainable having regard to the pleadings in the suit to the extent that respondent has sought for reinstatement with reference to the fact that he has completed 240 days of service. Whereas, suit has been decreed on the fact that respondent services have been dispensed based on the allegations. No doubt having regard to the pleadings in the suit that respondent should have resorted to industrial dispute. At the same time one cannot ignore the fact that appellants have not passed any order of termination. Whereas, in their written statement before the trial court they have admitted that respondent while driving the appellants vehicle met with an accident. Consequently, they have found that his work was not satisfactory and his services have been dispensed. Therefore, it is evident from the record that respondent's services have been dispensed based on the allegation and opinion that his work was not satisfactory and not that one Sh. Kanwaljit

Singh was appointed on transfer. Even assuming that respondent's service have been dispensed based on the transfer of Mr. Kanwaljit Singh his services were taken on 23.10.1997 whereas respondent has been continued up to 03.06.1998. Therefore, reason assigned by the appellants that respondent has been replaced in view of the posting of Mr. Kanwaljit Singh is incorrect. In view of these facts and circumstances, the cited decisions *Chief Engineer's case, Jitendra Nath Biswas's case, The Rajasthan State Road Transport Corpn.'s case and The Premier Automobiles Ltd. (supra)* are not helpful having regard to the factual aspect that service of the respondent was dispensed based on the allegations without holding disciplinary inquiry. Therefore, there is no infirmity in the order passed by the courts below.

8. Accordingly, appeal stands dismissed.

9. At this stage, learned counsel for the appellant submitted that trial court has exceeded its jurisdiction in awarding back wages to the respondent. Even assuming it is accepted. In that event also if the order of termination is illegal consequently all service benefits as if respondent is in service from the date of termination he is entitled to benefit including monetary benefits till he was reinstated. Therefore, the aforesaid contention would be too technical.

21.03.2018

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No