

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

**CM-3124-C-2018 in/and
RSA No.1245 of 2018 (O&M)
Date of decision : May 23, 2018**

Jaswinder Singh

..... Appellant

Versus

Sub Divisional Magistrate, Dasuya

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Rohan Mittal, Legal Aid Counsel for the appellant.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

CM-3124-C-2018

There is delay of 40 days in filing the present regular second appeal.

For the reasons mentioned in the application, delay of 40 days in filing the present regular second appeal is condoned, subject to all just exception.

Application stands disposed of.

Main Case

Impugned in the present regular second appeal is the order dated 01.05.2017 passed by learned District Judge, Hoshiarpur, affirming the judgment and decree dated 05.10.2016 passed by learned Civil Judge (Jr. Divn.), Dasuya, vide which a suit filed by the plaintiff-appellant for mandatory injunction directing the defendant to call back him at Suvidha Centre, Dasuya and he be transferred from Suvidha Centre, Mahilpur to Suvidha Centre, Dasuya, was dismissed.

I have learned counsel for the appellant and have also carefully gone through the case file.

The plaintiff-appellant was appointed as Data Entry Operator at Suvidha Centre, Dasuya. He was subsequently transferred to Suvidha Centre, Mahilpur by the Deputy Commissioner, Hoshiarpur.

The plea of learned counsel for the plaintiff-appellant is that there was no condition in the appointment letter that he can be transferred outside Dasuya. Therefore, his transfer order is illegal and he should be called back to the original place of posting.

First of all, it is to be noted that the order was passed by the Deputy Commissioner, Hoshiarpur and he was not made party. Only Sub Divisional Magistrate, Dasuya was made party. Therefore, no relief can be granted to him. Moreover, if a suit is filed against a public servant, the State has to be made party. The State of Punjab has not been made party in the present case.

To overcome the difficulty, an application under Order I, Rule 10(2) CPC, 1908 has been filed.

I am of the view that after the decision by two Courts below, the said application cannot be allowed to put the clock back. Moreover, even if, there is no condition in the transfer order, an employee can be transferred by the authority under his control from one place to another. The trial Court has discussed the condition, wherein it is mentioned that an employee can be assigned duty outside the place of posting. He can claim T.A./D.A. as per rules.

It being so, it is found that the present suit as well as appeal as well as the regular second appeal are frivolous. The precious time of three

Courts has been wasted. As such, the present regular second appeal is dismissed with costs qualified at ₹5,000/-, which can be recovered by the State from the plaintiff-appellant and deposited in the Government Treasury under the appropriate head.

As such, the present regular second appeal stands dismissed. Since, the main appeal has been decided, therefore, the pending application, if any, also stands disposed of.

May 23, 2018

sarita

Whether speaking / reasoned

Yes

(KULDIP SINGH)

JUDGE

Whether Reportable:

No