

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

**RSA No.411 of 2018 (O&M)
DECIDED ON: JULY 05, 2018**

SANDEEP SINGH

.....APPELLANT

VERSUS

STATE OF PUNJAB AND ORS.

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Swapanh Shaorey, Advocate for the appellant.

JASPAL SINGH, J.

CM-1049-C-2018

This is an application for condonation of delay of 30 days in filing the appeal.

In view of the contents of the application, delay of 30 days in filing the appeal is condoned.

CM stands disposed of.

Main case

Challenge in this regular second appeal is to the judgment and decree dated 01.08.2016 passed by Civil Judge Jr. Division Gurdaspur whereby the suit of the appellant-plaintiff for declaration to the effect that the impugned order bearing endorsement No.PB(5) P-12/3702-3704 dated, 19.12.2012 vide which the service of the plaintiff has been dismissed is illegal and unlawful along with mandatory injunction for reinstatement in service and grant of all service benefits along with interest, has been dismissed as well as the judgment and

decree dated 18.01.2017 passed by Additional District Judge Gurdaspur whereby an appeal preferred against the judgment and decree dated 01.08.2016 referred to above was also dismissed.

2. The facts giving rise to the instant appeal are that appellant-plaintiff was appointed as Radiographer on contract basis vide order bearing No.PB(5). Pb. 06/3188-89 dated 22.12.2006 issued by respondent/defendant No.2 and his services were dismissed vide order bearing Endorsement No.PB(5)-P-12/3702-3704 dated 19.12.2012 with retrospective effect i.e. w.e.f. 16.07.2012 on the allegations that he remained absent on various dates, fully depicted in the impugned order dated 19.12.2012. It has further been averred that the appellant has been discharging his duties efficiently, honestly and to the entire satisfaction of his superior during his entire service but on account of unavoidable absence, appellant has been shunted out without affording an opportunity of hearing. Moreover, the impugned order dated 19.12.2012 has been passed with retrospective effect which is impermissible under law and no legal and valid charge-sheet was served upon him prior to his dismissal from service. No such inquiry was also got conducted and order of dismissal was passed in a casual manner without proper application of mind by the concerned authorities. The aforesaid suit was resisted by the respondents and ultimately, it was dismissed vide impugned judgment dated 01.08.2016 passed by Civil Judge Junior Division, Gurdaspur and an appeal preferred against the aforesaid judgment and decree also met with the same fate passed by the Additional District Judge, Gurdaspur vide judgment and decree dated 18.01.2017, which necessitated the filing of the instant appeal.

3. Assailing the impugned judgments dated 01.08.2016 and 18.01.2017

passed by both the courts below as well as the impugned order dated 19.12.2012, it has been contended by learned counsel for appellant that the same were absolutely against the evidence and settled proposition of law. Mis-appreciation of evidence has resulted into miscarriage of justice. The entire approach of the courts below to determination of material points involved in the lis is perverse. In fact, appellant has been discharging his duties with utmost sincerity and had become entitled for regularization of service as the similar employees, who were appointed along with appellant-plaintiff were given regular appointment w.e.f. 30.06.2011. There is nothing on the record to suggest that as to why services of appellant were not regularized and just to cover an illegal act, respondent has passed the order of dismissal of appellant.

4. This Court has given a thoughtful consideration to the submissions made by learned counsel for appellant-plaintiff and have scanned the impugned judgments as well as the documents available on file but comes to the conclusion that the same do not carry any legal and factual weight.

5. At the very outset, it is pertinent to mention that appellant-Sandeep Singh was appointed to the post of Radiographer on contract basis vide order dated 22.12.2006 by the Director Health Family Welfare, Punjab, Chandigarh.

6. A glance at the aforesaid letter dated 22.12.2006 transpires that appointment of appellant-plaintiff was purely on contract basis though it was extendable depending upon the work requirement/work performance and his conduct during the service period. One of the conditions at Serial No.7 makes it abundantly clear that contractual appointment could be terminated on one month notice from either side and condition No.8 clearly specifies that in case of any mis-conduct or the conduct being reported unsatisfactory, the services

could be terminated without any notice. Though, in the case in hand, he was served with show cause notice and heard prior to the passing of the impugned order, but the services of appellant-plaintiff were never regularized. It is also important to mention here that he did not challenge the order when he was ignored for regularization of services.

7. A close scrutiny of the impugned judgments makes it clear that appellant-plaintiff remained absent from service almost for 321 days. This fact has also been categorically admitted by appellant-plaintiff. So, this Court is of the considered view that there is no illegality or infirmity or any substantial question of law to be dealt with and dispose of by this Court. There is no question of law what to talk of any substantial question which requires determination by this Court in the regular second appeal. Rather, the judgments and decrees passed by the courts below are absolutely inconsonance with the evidence available on file as well as settled proposition of law. Otherwise also, an employee appointed on contract basis cannot take the shelter of Civil Services Rules as it is governed by the terms and conditions of the appointment letter.

8. Thus, considering all the aspects of the case, this Court does not find any merit in the instant appeal. Accordingly, it stands dismissed whereby the impugned judgments and decrees are upheld.

9. No order as to costs.

JULY 05, 2018
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned ***Yes***
Whether reportable ***Yes/No***