

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

C.M.No.33-C-2019 in/and  
RSA No. 3872 of 2002 (O&M)  
Date of Order: 21.01.2019

Satbir Singh

..Appellant

Versus

State of Haryana and others

..Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Anil Ghanghas, Advocate,  
for the appellant.

Mr. Saurabh Girdhar, AAG, Haryana  
for respondents no.1, 2 and 4.

Mr. Rajesh Lamba, Advocate,  
for respondent no.3.

**ANIL KSHETARPAL, J(Oral)**

**C.M.No.33-C-2019**

Application is allowed.

Appeal is restored to its original number for the reasons stated  
in the application.

Counsel for the parties have been heard at length in the main  
case as indicated in the order dated 14.01.2019..

**MAIN**

Plaintiff-appellant is in the regular second appeal against the  
judgment passed by the learned first appellate court reversing the judgment  
and decree passed by the trial court.

Dispute in the present case is “whether the plaintiff is entitled  
to salary for the period he has not worked or on the principles of “No work

No Pay”, he is not entitled to pay for the period he has not worked.

Plaintiff-appellant was working as a Leading Fireman with Municipal Committee, Bhiwani. The Director, Local Bodies, Government of Haryana, issued a transfer order dated 28.06.1996, transferring the plaintiff to Gurgaon (now Gurugram) from Bhiwani. Plaintiff was relieved from Bhiwani on 05.07.1996 and he reported to the concerned Municipal Committee, Gurgaon on 12.07.1996. However, he was not permitted to join as there was no vacancy of Leading Fireman at Fire Station, Gurgaon. On the same day, Executing Officer of the Municipal Committee, Gurgaon intimated this fact to the Director, Local Bodies as well as to other concerned officials that the plaintiff cannot be permitted to join as there is no vacancy.

Plaintiff claims that he thereafter went back to Municipal Committee, Bhiwani, but he was not permitted to join. Plaintiff filed the present suit on 02.08.1996 for claiming the relief of mandatory injunction.

In response to the notice, defendants no.1 and 2 filed a reply on 08.04.1997, copy whereof was given to counsel for the plaintiff disclosing that there is a subsequent transfer order dated 16.09.1996 through which he has been transferred to Karnal. However, plaintiff did not join or act upon the transfer for a period of almost 3 years.

The learned trial court decreed the suit, however the learned first appellate court reversed the judgment and decree passed by the learned trial court.

Learned counsel for the plaintiff-appellant while referring to the oral evidence has submitted that the transfer order dated 16.09.1996 was never communicated and therefore, the plaintiff is entitled to salary .

On the other hand, learned counsel for the State has submitted that the plaintiff came to know of the transfer order on 08.04.1997 but he never thereafter took any step to join at Karnal. He has further submitted that the transfer order dated 28.06.1996 was issued by the Director Local Bodies, Haryana, and the plaintiff after finding that he has not been permitted to join at Gurgaon, should have immediately contacted the Director Local Bodies. He has further submitted that there is no assertion that the plaintiff that he ever went to the Director Local Bodies or ever made a representation in this regard.

This court with the able assistance of learned counsel for the parties gone through the documents available on the file and the judgments passed by both the courts below.

The order dated 28.06.1996 has been issued by the Director Local Bodies. Thus, the plaintiff very well knew that the transfer order has been issued by the Director Local Bodies. Once on 12.07.1996 he was not permitted to join at Gurgaon, he ought to have immediately contacted office of the Director Local Bodies, Haryana, however, he did not do so.

Still further, after filing of the suit, the plaintiff came to know that he was transferred to Karnal vide order dated 16.09.1996, which was specifically pleaded in the written statement but the plaintiff still did not take any step.

Learned counsel for the appellant has submitted that it was the duty of the employer to serve with him a notice of transfer only than the plaintiff would have joined. He drew attention of the court to the oral evidence in which official has admitted that there is no evidence to the fact that the order dated 16.09.1996 has been served on the plaintiff.

No doubt, there is some oral evidence suggesting that. However once the plaintiff has been supplied a copy of the written statement on 08.04.1997 wherein the factum of order dated 16.09.1996 transferring the plaintiff has been brought to his notice, he should have immediately joined at Karnal. Rather the plaintiff did not do so and continued to fight suit. Obviously, it compels the court to an inference that the plaintiff was never interested in joining at Karnal.

In such circumstances, learned first appellate court has recorded the cogent reasons to reverse the judgment of the learned trial court. In view thereof, this court does not find any good ground to interfere with the findings of fact arrived at by the learned first appellate court.

The regular second appeal is dismissed.

**January 21, 2019**  
**nt**

**(ANIL KSHETARPAL)**  
**JUDGE**

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No