

In the High Court of Punjab and Haryana at Chandigarh

RSA- 3302 of 1997 (O&M)
Date of Decision: 25.7.2019

State of Punjab and others

---Appellants

versus

Parminder Kaur and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. A.A.Pathak, Addl. A.G.Punjab

Mr. Sunny Singla, Advocate,
for the respondents

Rekha Mittal, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the courts whereby suit filed by the respondent-plaintiff (since deceased) represented by his Lrs was decreed by the trial court to the following effect:-

“..... that order of suspension and subsequent dismissal of Sh. Amrik Singh, husband of the plaintiff No. 1 and father of plaintiffs No. 2 and 3 is illegal and void and that plaintiffs are entitled to the salary and all consequential benefits attached to the post of deceased plaintiff Amrik Singh, till the date of his death i.e. 23.9.89.”

The appeal preferred by the State of Punjab against the judgment and decree of the trial court did not find favour with the

Additional District Judge, Jalandhar as the said court affirmed findings of the trial court without any variance.

Amrik Singh was working as teacher in Government High School, Garha (Jalandhar). He was placed under suspension by the District Education Officer, Jalandhar, vide order dated 30.1.1978 on registration of a criminal case against him. The respondent (since deceased) was acquitted in the criminal case on 5.3.1980 by the Punjab and Haryana High Court. Plea of respondent-plaintiff is that after his acquittal, he submitted his joining report but to no effect rather he was dismissed from service. He assailed order dated 30.1.1978 regarding his suspension as well dismissal being illegal, unconstitutional, arbitrary, mala fide and against principles of natural justice on the grounds set up in sub paras (i) to (v) of para 3 of the plaint. Hence the suit.

The appellants/defendants filed the written statement and raised preliminary objections that the suit is barred by limitation as plaintiff was relieved in 1977 but the suit has been filed in 1988. The plaintiff was working on purely temporary basis and the suit is not maintainable in the present form; no notice under Section 80 of the Code of Civil Procedure (in short "the CPC") was served by the plaintiff. On merits, it is averred that since the plaintiff was working on purely temporary basis, rules framed under Article 311 of the Constitution of India are not applicable in this case. However, it was admitted that plaintiff was placed under suspension as there was criminal case against him but later he was relieved of his duties by the Head Mistress vide office letter No. 154-55/79 dated 7.8.1979 with effect from 26.8.1977. The suspension of plaintiff was superseded by his relieving

from service. All other material averments of the plaint have been denied with a prayer for dismissal of the suit.

The controversy between the parties led to framing of following issues by the trial court:-

1. Whether impugned order dated 30.1.1978 is illegal & void?

OPP

2. Whether suit is barred by limitation? OPD

3. Whether plaintiff was working purely on temporary basis?

OPD

4. Whether notice under Section 80 CPC has not been served on defendants? OPD

5. Relief

The parties were permitted to adduce evidence in support of their respective contentions. Since Amrik Singh had already passed away in the year 1989 during pendency of the suit, his widow Smt. Parminder Kaur was examined on behalf of the plaintiff-respondent. The appellant examined one of the officials of the department to controvert case of the respondent-plaintiff. The trial court answered issues No. 1 to 4 in favour of the plaintiff and eventually the suit was decreed in the aforesaid terms.

Counsel for the appellants would argue that findings of the trial court on issue No. 2 relating to limitation and affirmed in appeal are the result of non-considering materials on record in right perspective, thus suffer from perversity and are liable to be set aside. To bring home his contention, it is argued that in para 6 of the plaint, it is specifically averred that cause of action accrued to the plaintiff when the plaintiff was

suspended and thereafter when dismissal order was passed and at the last time after expiry of notice period. It is further argued that order of dismissal was passed in the year 1979, therefore, suit for declaration to challenge legality of the dismissal order filed in the year 1988 is clearly beyond the period of three years from the date of accrual of cause of action and as such, the suit is barred by limitation. It is argued that merely because the respondent -plaintiff submitted an application dated 10.11.1980 seeking permission to join duty and no action had been taken by the authority in view of his request for joining duty would not extend the period of limitation till 1988. In addition, it is argued that the trial court has wrongly taken into consideration testimony of Parminder Kaur that order of dismissal was communicated in November 1986 and as such the suit filed in the year 1988 is within the stipulated period of limitation. According to counsel, statement of Parminder Kaur with regard to communication of dismissal order in November 1986 is beyond pleadings nor is supported by any documentary evidence, therefore, has wrongly been taken into consideration by the courts to decide the question of limitation.

Another submission made by counsel is that as Amrik Singh was arrested in a criminal case in August 1977, his suspension from service with effect from that date vide order dated 30.1.1978 (Ex. P2) cannot be faulted with, therefore, the courts have committed an illegality by holding that Amrik Singh could not be suspended with retrospective effect. It is further argued that as Amrik Singh never performed his duty since his arrest in the criminal case and he died during pendency of the suit before the trial court, the principle of 'no work no pay' should be applied and

findings of the courts holding the appellants liable to pay service benefits to the respondent-plaintiff may be set aside.

Counsel representing the respondent (since deceased) now represented by his Lrs has supported consistent findings recorded by the courts. It is argued that the appellants were the best person to adduce documentary evidence with regard to communication of dismissal order to the respondent and in absence of any evidence led by them, statement of Parminder Kaur has rightly been accepted by the courts that dismissal order was conveyed to Sh. Amrik Singh in November 1986 and suit filed in the year 1988 is within limitation. It is further argued that Sh. Amrik Singh was dismissed from service on account of registration of criminal case against him and his arrest in the said case, but in view of acquittal in the criminal case vide judgment Ex.PA rendered by Punjab and Haryana High Court on 5.3.1980, the same cannot be allowed to stand in the way of respondent to seek service benefits which the respondent-plaintiff was entitle to had he not been dismissed from service. It is further argued that though Sh. Amrik Singh was placed under suspension with effect from the date of arrest but no provision was made for payment of subsistence allowance in view of the relevant rules governing his service.

I have heard counsel for the parties, perused the paper book and records.

Indisputably, Amrik Singh was placed under suspension with effect from the date of his arrest by the police i.e. 26.8.1977 in criminal case for murder of Pal Singh and attempt to murder Paramjit Singh, in regard whereof, FIR was registered in the concerned police station. The trial court

has held that the appellants' counsel did not cite any rule under which Amrik Singh could be placed under suspension from back date i.e. 26.8.1977 vide order dated 30.1.1978. It is apparent that the trial court did not bother to examine the relevant rules of Punjab Civil Services that provide that 'if a government employee is arrested in a criminal case and he remains in custody for a period of more than 48 hours, there would be automatic suspension from service". In this view of the matter, findings of the courts that Amrik Singh could not be suspended from the date of arrest are illegal, unsustainable and accordingly set aside.

The trial court uphold plea of the respondent and set aside dismissal order. As has been noticed hereinbefore, findings of the trial court were affirmed in appeal filed by unsuccessful defendants-appellants. It is surprising rather shocking that both the courts failed to consider that there is no order of dismissal passed against Sh. Amrik Singh and as such the question of setting aside dismissal order does not arise in the given circumstances. On the contrary, vide order passed in July 1979, Sh. Amrik Singh was ordered to be relieved from service with the observations that he was appointed on ad hoc basis and his suspension from service is not correct. The appellants produced letter dated 7.8.1989 written by Head Mistress Government School, Garha whereby Sh. Amrik Singh was stated to be relieved from service and a copy thereof was forwarded to D.P.I., Punjab (s), Chandigarh.

Perusal of the aforesaid document makes it evident that address of Amrik Singh is that of the school where he was posted at the relevant time but was under suspension. In the letter, there is reference to

'registered' but counsel for the appellants, in response to a query, would fairly inform that there is no document available with the appellants to prove that this order dated 7.8.1989 in respect of relieving Amrik Singh from service was either served upon him personally or through registered letter. That being so, it can safely be held that order passed by DPE/Headmistress for relieving Amrik Singh from service was never given effect to or at least it was never conveyed to the delinquent official. Since the order of relieving was never conveyed to the delinquent official, as a natural consequence, order of suspension from service would remain in force until it was revoked by competent authority by passing an appropriate order. In this view of the matter, it can be held that Sh. Amrik Singh remained under suspension till his death during pendency of the suit.

Indisputably, Amrik Singh submitted application dated 10.11.1980 seeking permission to join duty which was addressed to the District Education Officer, Jalandhar through proper channel. The said document contains endorsement of the same date made by Head Mistress, Government School, Garha, Jalandhar to District Education Officer. Copy of the judgment and other documents were appended thereto. There is nothing on record suggestive of the fact that any decision was taken by the competent authority on representation made by Sh. Amrik Singh till the filing of suit in the year 1988. Even if the authorities had not taken any decision on representation made by Sh. Amrik Singh or he had submitted reminders etc. to the authorities though no such document has been produced and proved, in accordance with law, the respondent-plaintiff was required to seek necessary relief from the court by filing an appropriate suit

within a period of three years from the date of acquittal or from the date of his submitting application seeking permission to join duty. The respondent cannot justify his silence for eight years and assert that he is entitled to benefits of service or even subsistence allowance from the date of suspension till his death.

Notice purported to be issued under Section 80 CPC does not bear any date. The UPC receipt Ex. P5 also does not bear any date. The appellants denied receipt of the notice. Testimony of Parminder Kaur is not sufficient to prove issuance of notice Ex. P4 much less its receipt by the authorities/addressee. As has rightly been argued by counsel for the appellants, statement of Parminder Kaur that order of dismissal was conveyed in November 1986 is beyond pleadings and cannot be taken into consideration. This apart, as has been held hereinbefore, since the authorities never passed any order of dismissal from service, there was no question of any such order of dismissal being conveyed to Sh. Amrik Singh in November 1986. Statement of Smt. Parminder Kaur that any such order was conveyed to Sh. Amrik Singh in November 1986 does not find support from any documentary evidence. In this view of the matter, findings of the courts that suit filed in the year 1988 with effect from conveying of order of dismissal is within limitation are grossly erroneous and result of failure to appreciate the materials on record in right earnestness. As a matter of fact, Amrik Singh had no occasion to file a suit against his dismissal from service because no order of dismissal was passed by the District Education Officer. On the contrary, since the respondent did not challenge the order relieving him from service, any such statement made by Parminder Kaur with regard

to order of dismissal being conveyed to Amrik Singh in November 1986 is of no consequence. At the same time, since the order of relieving from service was never served upon the delinquent official, in view of discussion made hereinbefore, the appellants cannot derive any benefit of the said order to deny the respondent of entitlement to subsistence allowance. Since the suit was filed by the respondent in the year 1988, he would be entitled to arrears of subsistence allowance for the period of three years prior to institution of the suit and thereafter till his death, in case the same is not already paid to him. As such, findings of the courts on issues No. 1 to 3 are modified accordingly.

The trial court framed issue No. 4 in respect of notice under Section 80 CPC. As has been noticed hereinbefore, but at the cost of repetition, the respondent failed to prove that any such notice was actually served upon the appellants. However, taking into consideration that the respondent had already passed away during pendency of the suit and much water has flown since institution of the suit in the year 1988, it would be travesty of justice if the suit is disposed of without any decision on merits and the respondent-plaintiff represented by his Lrs is relegated to file a fresh suit after issuance of notice under Section 80 CPC. That being so, this court will leave findings of the courts on issue No. 4 as it is.

In view of what has been discussed hereinbefore, the appeal is partly allowed. The judgments and decrees passed by the courts are modified to the effect that respondent-plaintiff shall be entitled to arrears of subsistence allowance w.e.f. 27.2.1985 till death of Sh. Amrik Singh with

interest @ 7.5% per annum from the date, the arrears fell due till its actual realization.

(Rekha Mittal)
Judge

25.7.2019
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No