

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

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Regular Second Appeal No.3250 of 2017 (O&M)
Date of Decision: May 2nd, 2019

Malkeet Kaur and another

...Appellants

Versus

General Manager, Verka Milk Plant, Dabwali Road, Bathinda and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. G.L. Bajaj, Advocate
for the applicants-appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.7975-C of 2017

Prayer in this application is for condonation of delay of 29 days in filing the appeal.

It has been stated that the appellants being poor could not arrange the amount for filing the appeal and being residents of a remote rural area and having no male member in family to accompany them to Chandigarh for engaging a counsel, they could not file the appeal in time and on 23.04.2017, they requested one of their relatives to accompany them and for providing funds for engaging a counsel, which resulted in delay of 29 days in filing the appeal.

For the reasons mentioned in the application, which is supported by the affidavit of appellant No.1, the same is allowed.

Delay of 29 days in filing the appeal stands condoned.

CM No.7976-C of 2017

Prayer in this application is for exemption from filing the certified copy of grounds of appeal dated 08.03.2016 filed before

Application is allowed subject to just exceptions.

Exemption, as prayed for, is granted.

RSA No.3250 of 2017

Challenge in this appeal is to the judgment and decree dated 27.01.2016 passed by the Civil Judge (Junior Division), Bathinda, dismissing the suit for declaration and mandatory injunction preferred by the appellants to the effect that the respondents-defendants had terminated the services of the appellants-plaintiffs on 05.03.2014 illegally and have refused to permit the appellants-plaintiffs to perform their duties illegally, appeal against which preferred by the appellants-plaintiffs has been dismissed by the learned Additional District Judge, Bathinda, vide judgment and decree dated 23.12.2016.

2. It is the contention of learned counsel for the appellants that the appellants have been performing their duties in the Verka Milk Plant, Bathinda, for four years till their services were terminated on 05.03.2014 by refusing them to perform their duties and, therefore, not allowing them to continue in their service without issuing any charge-sheet or giving a show cause notice, thus, violating the principles of natural justice as well as the mandate of the statute. His further contention is that the respondents have taken a stand that the plaintiffs were appointed through contractor and they were not the employers nor has any termination order been passed by them, which cannot be sustained as the appellants-plaintiffs have been performing their duties in the Milk Plant, which is owned and run by the respondents and since they were performing their duties there, they were very much the employees of the said respondents. Apart from that, Employees' Provident

respondents were the employers of the appellants-plaintiffs and they were, therefore, mandated to comply with the provisions of the statute, thus, the termination of the plaintiffs being illegal, was required to be set aside by the Courts below with a mandatory injunction to the respondents to take back the appellants-plaintiffs in service along with all consequential benefits. He, thus, prays that the impugned judgments and decree deserve to be set aside.

3. I have considered the submissions made by the counsel for the appellants-plaintiffs and with his assistance, have gone through the impugned judgments.

4. A perusal of the judgments passed by the Courts below would show that the plaintiffs, when appeared before the trial Court, in support of their contention, had admitted the factum that they were appointed through different contractors and the contract has been allotted to different person every year. Plaintiffs had also admitted the factum that they had worked with the contractor upto February 2014. Documents Exhibit D-1 to D-6 were signed by the plaintiffs, which established that the salary was being paid by the contractor for the job which was being performed by them in the Milk Plant. The factum that there was no termination order ever issued by the respondents has also been admitted and it has also been admitted that they were never issued any appointment letter by the respondents-defendants. As regards the deduction of the Employees' Provident Fund is concerned, that is not even a part of the pleadings. In the absence of the pleadings, the assertion of the counsel for the appellants that the Employees' Provident Fund was being deducted by the respondents, cannot be accepted.

Nothing has been indicated which would show that the deduction of the

Employees' Provident Fund was being done by the respondents-defendants. Even in the cross-examination of the witnesses, who had appeared for the respondents, nothing has been solicited in this regard. In the light of the admission on the part of the plaintiffs as also the evidence which has been produced on record, the findings as recorded by the Courts below while dismissing the civil suit preferred by the appellants-plaintiffs, cannot be faulted with.

5. Both the Courts below have returned concurrent findings after properly appreciating the pleadings and the evidence brought on record by both the parties and the same cannot be interfered with as there is no perversity or illegality in the same.

6. No substantial question of law is involved in the present appeals. Therefore, finding no merit in the present appeal, the same stands dismissed.

May 2nd, 2019
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No