

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

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Regular Second Appeal No.5101 of 2018 (O&M)
Date of Decision: January 16th, 2019

The Khudal Kalan Co-operative Agricultural Service Society Limited,
Khudal Kalan, Tehsil Budhlada, District Mansa

...Appellant

Versus

Labh Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. Ramesh Goyat, Advocate
for the appellant.

AUGUSTINE GEORGE MASI, J. (ORAL)

Present is an appeal preferred by the appellant-Cooperative Society challenging the judgment and decree dated 19.08.2016 passed by the Civil Judge (Junior Division), Budhlada, whereby the suit preferred by respondent No.1 for declaration and mandatory injunction stands decreed ordering reinstatement of Labh Singh-respondent No.1 with the appellant-society with back wages along with interest at the rate of 6% per annum, appeal against which preferred by the appellant stands dismissed by the learned Additional District Judge, Mansa, vide judgment dated 02.01.2017.

2. It is the contention of learned counsel for the appellant that the instructions dated 27.11.1991 issued by the Registrar, Cooperative Societies, indicate that an employee can be transferred permanently from one Cooperative Society to the other Cooperative Society if the management committees of the two societies agree. He contends that in pursuance to the said decision, a resolution dated 27.04.2005 was passed by The Kahangarh Co-operative Agricultural Service Society Limited, Kahangarh-respondent No.2 herein seeking services of respondent No.1 due

to the shortage of employees. In the said resolution although there is a mention that in case an old employee of the society comes back with reinstatement through Court, Labh Singh would be bound to go back to his old parent Cooperative Society i.e. the appellant. The said resolution was considered by the appellant-Cooperative Society and on 30.04.2005, services of Labh Singh were transferred to respondent No.2 on permanent basis. Counsel for the appellant asserts that in the light of the fact that the services of respondent No.1 were transferred on permanent basis and he had joined respondent No.2-society accepting the said terms of appointment, the judgments as passed by the Courts below cannot sustain. That apart, he asserts that the prayer made by respondent No.1 in the civil suit was primarily against respondent No.2 and, therefore, the relief which has been granted against the appellant-society could not have been so granted by the Courts below. He, thus, contends that the judgments and decree passed by the Courts below cannot sustain and deserve to be set aside.

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

4. No doubt the instructions dated 27.11.1991 issued by the Registrar, Cooperative Societies, Punjab, deals with a case where the societies agree to the transfer of the employees on permanent basis amongst them but that does not mean that an employee cannot be taken by a society with the consent of the other society for any other purpose except for permanent basis. The request of respondent No.2-The Kahangarh Co-operative Agricultural Service Society Limited was for an employee Labh Singh, Salesman, who was to be taken in the society and obviously

there was a rider, which indicated that his services could be reverted back to the appellant-society in case of a contingency happening, which indicated the transfer of Labh Singh was not on permanent basis, although the resolution passed by the appellant-society dated 30.04.2005 did put the services of Labh Singh at the hands of respondent No.2-society on permanent basis. The fact, therefore, which comes out is that the services of respondent No.1 were taken subject to certain conditions and those contingencies having happened, respondent No.1 would for that intent and purposes continue to be the employee of the appellant-society. The findings as recorded by the Courts below, therefore, on this aspect, cannot be faulted with.

5. As regards the contention of learned counsel for the appellant that no relief has been claimed against the appellant and, therefore, the judgments and decree cannot sustain. Prayer made by respondent No.1-plaintiff has been reproduced by the appellant in para 6 of the grounds of appeal, which reads as follows:-

“It is therefore prayed that the suit of the plaintiff may be decreed with the declaration that the plaintiff is entitled to resume his duties at Kahangarh CASS from 8.10.2009 to onwards with consequential benefits and interest @18% PA. on arrears and the action of defendants for not allowing the plaintiff to resume his duties, as usual, is illegal, mala fide and against service rules and liable to be set aside being without jurisdiction, and the defendants may be directed to allow the plaintiff to resume his duties as usual w.e.f. 8.10.2009 with consequential benefits and interest @18% PA.”

Perusal of the said prayer, as reproduced, would although indicate that the primary prayer is against The Kahangarh Co-operative

not restricted to the said society. The word used in the ultimate prayer is 'defendants'. This includes the appellant as well, who was defendant No.3 in the civil suit.

6. In the light of the findings recorded by the Courts below and keeping in view the prayer made by respondent No.1-plaintiff, this Court does not find any force in the contention of learned counsel for the appellant. There is indeed a prayer made directing respondent No.1-plaintiff to resume his duties as usual with effect from 08.10.2009 with consequential benefits along with interest from the defendants. In any case the Courts in the facts and circumstances of the case can mould the relief appropriately as would be deserving to a plaintiff or the party concerned.

7. 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.

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

9. In the light of the dismissal of the appeal, all the pending applications stand disposed of as infructuous.

January 16th, 2019
Puneet

AUGUSTINE GEORGE MASI(H)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No