

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.126 of 2018 (O & M)
Date of Decision:6.1.2020

Kamal Kishore

...Appellant

Versus

Punjab State through Collector and another

...Respondents

CORAM: HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr.Rajeev Dev Sharma, Advocate
for the appellant

RAJIV NARAIN RAINA, J. (ORAL):

CM-209-C-2018

For the reasons stated in the application, the same is allowed.

Delay of 37 days in re-filing the appeal is condoned.

CM-210-C-2018

Application is allowed as prayed for.

CM-6254-C-2018

Application is allowed as prayed for. Annexures A1 to A5 are taken on record.

RSA No.126 of 2018

1. Prayer in the suit filed on 31.5.1997 before the trial Court was for mandatory injunction directing the defendants-respondents to calculate and release the monthly salary of the plaintiff-appellant w.e.f. 26.6.1996 or in the alternative a declaration that the plaintiff-appellant was in service w.e.f. 26.6.1996 on regular basis with consequential relief that the plaintiff-appellant was entitled to all the benefits of service with continuity of

service.

2. The present appeal has been filed by the plaintiff-appellant against the judgement of reversal dated 26.10.2016 passed by the Additional District Judge, Gurdaspur

3. To cut the long story short, the burden of proof was on the plaintiff-appellant to produce evidence of his arrival report submitted in pursuance of the offer of appointment dated 25.6.1996 Ex.P1/Ex/D1.

4. In order to satisfy the Court that the joining as a Team Mate at Madhopur had taken place there is no evidence on record to complete the appointment process. Though, the defendant-State of Punjab in the department concerned did not produce on record the arrival report but the learned Additional District Judge, Gurdaspur, in his judgement dated 26.10.2016 has taken a view that no effort seems to have been made by the plaintiff to have got produced the said order from the department. Therefore, for this reason, the plaintiff had to suffer. The Court *a quo* accepted the fact that the plaintiff was appointed as a Team-mate as against the vacant post once occupied by Rattan Chand who was promoted as a Pump Operator but inferred that the plaintiff had never submitted any arrival report with the department to have brought into existence an employer-employee relationship. It may be true that the plaintiff withdrew pay of Rs.1250/- as Beldar in the month of June 1996 but in the absence of evidence of joining the new post, the lower appellate Court was not wrong in concluding that this was sufficient reason for non-passing of the termination order.

5. In the written statement filed by the State in reply to the plaintiff's suit for mandatory injunction and for declaration it was

categorically asserted in para No.1 on merits that although the defendants had issued appointment letter as a Team-mate to a person named Kamal Kishore vide letter No.2301/112-E dated 25.6.1996 but the plaintiff had never submitted his arrival report to the defendants. Strict proof was required of this fact by the plaintiff upon whom the burden fell. He failed to discharge that burden and the onus by not even being vigilant enough to move an application during the trial addressed to the defendants for production of record. Accordingly, the learned Additional District Judge has reversed the trial Court judgement and decree and dismissed the first appeal. I find no error of reasoning in the judgement of reversal dated 26.10.2016. No substantial question of law arises in second appeal for determination as the judgment is based on appreciation of the available evidence on record adduced by the parties or the lack of it.

6. The same is upheld and the appeal is dismissed.

7. It may be noticed before parting that 14 years were spent in the litigation all because of an *ex parte* judgment and decree against the defendant State, which the trial Court refused to set aside on an application under Order 9 Rule 13 of the CPC filed by the defendants and unfortunately the State was forced to spend 14 years up to the Supreme Court only for a remand of the case to the trial Court for a decision on merits. Though the plaintiff has lost, and rightly so, but I still feel sorry for him for the time wasted only to dash his hopes at the end of the day.

January 6, 2020
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(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned
Whether reportable-

Yes
Yes/No