

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

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**RSA-954-1992(O&M)
Date of decision: 15.11.2023**

**HARYANA STATE CO-OP SUPPLY AND MARKETING
FEDERATION LIMITED AND ANOTHER ..Appellants
Versus**

RAJINDER KUMAR ..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Shireesh Gupta, Advocate
for the appellants.

ANIL KSHETARPAL, J(Oral)

1. The defendant [Haryana State Cooperative Supply and Marketing Federation Limited (hereinafter referred to as 'HAFED')] assails the correctness of the judgment and decree passed by the First Appellate Court. The judgment and decree passed by the trial Court while dismissing the suit filed by the respondent has been reversed by the First Appellate Court. As per the office report, the sole respondent has been served, however, he remains unrepresented.

2. On 07.05.1992, the operation of the impugned judgment and decree passed by the First Appellate Court was stayed. Resultantly, the respondent has not been reinstated in service pursuant to the order passed by the First Appellate Court.

3. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.

4. The plaintiff (respondent herein) claims to be appointed as a clerk on 25.10.1976 and after the completion of probation, his appointment was made regular on 03.08.1982. He was arrested for an offence under

Section 302 IPC on 14.07.1983 and was convicted by the learned Sessions Judge, Narnaul. However, in appeal, the conviction was converted into an offence under Section 304 Part-I of the IPC and was released on probation. It was observed that it shall not be treated as a disqualification for appointment or continuation in service. The appellant terminated the services of the respondent on 03.07.1984 on the basis of conviction for the offence of murder. His representation against the order of termination was rejected on 19.04.1985. He filed a suit on 18.09.1985 for the grant of decree of declaration that his services have wrongly been dispensed with. The trial Court on appreciation of evidence found that initially the plaintiff was appointed as a salesman, however, he was appointed as a clerk on 03.08.1982. As per the appointment letter, he will be considered for grant of regular scale for the post of clerk after one year if his work was found satisfactory. It was also provided that after he has been granted regular scale of the post of clerk, he will be on probation for a period of one year, which can be extended by the competent authority. It was stipulated that the post against which the respondent was appointed is purely temporarily, which can be terminated at any point of time. Thus, the trial Court dismissed the suit. However, the First Appellate Court has reversed the judgment and decree passed by the trial Court primarily on the ground that the respondent has not been given any notice before terminating the services and as per the judgment of the High Court dated 23.01.1985, the conviction of the appellant shall not be considered disqualification from continuing in service.

5. This Bench has heard the learned counsel representing the appellant at length and with his able assistance perused the paperbook.

6. The learned counsel representing the appellant submits that the First Appellate Court has overlooked the fact that the respondent was not even granted a regular scale for the post of clerk and therefore, there was no question of his regularization because the respondent was arrested on 14.07.1983 i.e. before the completion of his probation period from the date he was appointed. He submits that the services of the respondent has been terminated in accordance with Rule 19 of the Haryana State Supply and Market Cooperative Service (Common Cadre) Rules 1988 (hereinafter referred to as the '1988 Rules'). He further submits that the respondent did not inform the High Court that his services have already been dispensed with effect from 03.07.1984 and there was no occasion for the Federation to take him back in service. He submits that the First Appellate Court has erred in reversing the judgment and decree passed by the trial Court.

7. This Court has considered the submissions of the learned counsel representing the appellant.

8. A perusal of the appointment letter issued to the respondent on 03.08.1982, makes it evident that he was appointed against a temporary post on a consolidated salary of Rs.500/- per month for a period of one year, which shall be reviewed for the grant of a regular scale after a period of one year if his work was found satisfactory. Even after grant of regular scale of the post of clerk, the respondent was required to remain on probation for a period of one year. Thus, the respondent was working at the relevant time on a consolidated salary of Rs.500/- per month. Moreover, Rule 19(3) of the 1988 Rules, provides that services of an employee who is convicted by a

competent authority for an offence involving moral turpitude shall be terminated forthwith by the Managing Director.

9. Rule 19(3) of the 1988 Rules, is extracted as under:-

“Notwithstanding anything contained in these rules, the services of an employee who is convicted by competent court for an offence involving moral turpitude shall be terminated forthwith by the Managing Director.”

10. The First Appellate Court has failed to take note of the aforesaid rule in proper perspective. In the peculiar facts of the case, the appellant cannot be considered to have been appointed on a regular basis when his services were dispensed with because he had to remain on probation only after grant of regular pay scale. Still further, on account of interim order passed by this Court on 07.05.1992, the respondent has never worked for the Federation. A period of 31 years has already been elapsed. By now, he would have attained the age of superannuation.

11. Keeping in view the aforesaid facts and discussion, the judgment and decree passed by the First Appellate Court is set aside and that of the trial Court is restored.

12. With these observations, the present appeal is disposed of.

13. All the pending miscellaneous applications, if any, are also disposed of.

November 15th, 2023

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**(ANIL KSHETARPAL)
JUDGE**

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