

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(109)

CM-746-C-2023 in/and
RSA-1949-1996
Date of Decision : March 15, 2023

State of Punjab

.. Appellant

Versus

Kewal Krishan

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Gurvinder Singh, Assistant Advocate General, Punjab,
for the appellant-State.

Mr. Prateek Mahajan, Advocate, with
Ms. Saloni Sharma, Advocate, for the respondent.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-746-C-2023

As prayed for, the application is allowed.

List of events is taken on record.

On joint request of learned counsel for the parties, the main
appeal is taken up for hearing today itself.

RSA-1949-1996

Present Regular Second Appeal has been filed by the State of
Punjab challenging the judgment and decree of the Court below by which,
the suit filed by the respondent-plaintiff was allowed and the appeal
preferred by the State against the judgment and decree of the trial Court

dated 15.11.994 was dismissed.

Certain facts needs to be mentioned herein for appreciating the controversy in the correct perspective.

The respondent-plaintiff was working as Junior Assistant with the appellant-State of Punjab and he applied for leave from 05.11.1992 to 20.11.1992 and after availing the said leave, he moved an application for extension of leave upto 31.12.1992. The said extension was neither accepted nor declined by the concerned Department and when the respondent-plaintiff went back to join the duties, he was not allowed to join. The respondent-plaintiff filed a civil suit against the appellant seeking a mandatory injunction that he be permitted to join his duties and he should be paid his salary along with interest. The said suit was partly dismissed but the appeal preferred by the respondent-plaintiff was allowed and he obtained a decree against the Department that the respondent-plaintiff be allowed to join the duties. Regular Second Appeal filed by the Department was also dismissed by this Court on 20.09.1991.

Despite a decree, the respondent-plaintiff was not being allowed to join the duties and he was being asked to get himself medically checked before allowing him to re-join the duties. He was issued a letter on 25.11.1992 that he should get himself medically checked before he is allowed to re-join the duty despite there being a decree against the appellant-Department to allow him to join the duties. Said letter dated 25.11.1992 was challenged by the respondent-plaintiff by filing a civil suit. The said suit was allowed by the trial Court on 15.11.1994 and the order dated 25.11.1992 asking the respondent-plaintiff to undergo the medical examination, was held to be without any valid justification and the said

letter dated 25.11.1992 was set aside and a direction was again given to the appellant-Department to allow the respondent-plaintiff to join the duties with all service benefits along with arrears of pay and emoluments.

Feeling aggrieved against the said decision, an appeal was preferred by the State of Punjab before the lower Appellate Court and the lower Appellate Court upheld the judgment and decree of the trial Court dated 15.11.1994 and the appeal filed by the State was dismissed vide judgment and decree dated 28.02.1996, hence, the present Regular Second Appeal.

Learned counsel for the appellant-State argues that the respondent-plaintiff was in habit of writing letters to the higher authorities and making allegations against the Department due to which he was asked to get a fitness certificate before he could be allowed to join, which factor has not been taken into account by the Courts below while allowing the suit filed by the respondent-plaintiff.

The said argument is totally fallacious.

Writing a letter to the higher authorities does not give a jurisdiction to a Department to declare a person insane. Mere writing a letter to higher authorities is not a misconduct in itself unless and until fake allegations are made in those letters, in which circumstances, it will be a misconduct for which, the Department could have availed appropriate remedy as provided under the Rules. Once, no charge-sheet issued to the respondent-plaintiff and nothing has been pointed out by the learned counsel for the appellant that against such alleged action of the respondent-plaintiff, any charge-sheet was ever served upon him, writing the impugned letter to the respondent-plaintiff to get himself medically checked, is

without any valid justification. No rule has been cited or brought on record to show that in case a letter is written by an official to the higher authorities, he is required to undergo a medical examination so as to join the duties and that too in pursuance to a direction by the competent Court of law.

No evidence or fact has been brought to the notice of this Court, which has been relied by the Courts below to be perverse. In the absence of any perversity being pointed out, no interference is called for in the present Regular Second Appeal.

No other argument was raised.

Dismissed.

March 15, 2023

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No