

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

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RSA-3515-2008 (O&M)
Date of Decision: 06.12.2023

State of Haryana and others

...Appellants

Versus

Santosh Kumari and another

...Respondents

CORAM : HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Jagdish Manchanda, Additional AG Haryana.

None for the respondent.

AMAN CHAUDHARY, J (ORAL)

1. The present regular second appeal is filed challenging the concurrent findings of facts returned by the Courts below in favour of the plaintiff-respondent in a suit filed for declaration and permanent injunction.

For the sake of convenience, parties shall be referred as per their original status.

2. Summarily, the facts are that the plaintiffs were working in group D category as daily wage employees in the office of the defendants for the last 15 years, having been engaged since 1990. As per instructions issued by the State of Haryana vide letters dated 07.03.1996 and 18.03.1996, the services of daily wages employees were to be regularised, who had regularly and continuously worked for the last three years, had 240 days of working in a year and were in service on 31.01.1996. Having fulfilled the requirements outlined in the afore-mentioned instructions, they sought regularisation. However, their services were arbitrarily terminated on 29.01.2000 and June, 2000 respectively. Being aggrieved, the said orders were brought before the

Labour-cum-Conciliation Officer in Karnal, wherein, a compromise was arrived at stipulating their reinstatement, effective from 20.11.2000, with the continuity of service. Since then, they are in service of the defendants and are still employed in the same capacity. A suit was filed for declaration and permanent injunction to restrain the defendants from terminating her services.

3. In the written statement filed on behalf of the defendants, it had been submitted that no proper notice under Section 80 CPC was served on them and averred that the plaintiffs failed to meet the specified requirements within the policy, thus were not entitled to regularisation.

4. During the interregnum, the suit qua plaintiff No.2-Ram Kumar was withdrawn with permission to file a separate suit.

5. The learned trial Court after framing the issues decreed the suit in favour of plaintiff No.1 by holding that her case fell within the purview of policies of 1996 and 2003, since the attendance record was not found to be genuine. It was directed that her services be regularised along with all consequential reliefs and service benefits in group D category. The defendants were also restrained from terminating her services.

6. Assailing the aforesaid judgment and decree, the defendant-State had stated that since the plaintiff did not complete the required 240 working days in the year of 1993, hence was not covered by the said policy. However, the appeal was dismissed by observing that she is entitled to the regularisation of services on the ground that since she had proven her case before the trial Court, she was reinstated with the continuity of service.

7. Learned State counsel would contend that the plaintiff was not covered by the policy issued by the Government, as she was not working as

on 31.01.1996 or 30.09.2003. Moreover, she did not engage in the work for a minimum period of 240 days within a single year from 1993 to 2003. As indicated by the report of the Range Officer, she had not worked for a single day in the Karnal (T) Range. Therefore, it is submitted that both the Courts below have committed an error while accepting the prayer of plaintiff.

8. Heard and perused.

9. The trial Court rightly took into consideration the lack of authenticity of attendance record Ex.DW1/D, as furthered by the admission of DW1- Indedraj Singh that the original record of attendance was unavailable. Therefore, no reliance could be placed on the same. Consequently, taking account of her reinstatement, an inference was correctly drawn that her case conformed to the guidelines outlined in the policies of 1996 and 2003. Upholding the aforesaid, the learned appellate Court rightly held her entitled to regular services as she had been reinstated with continuity of service.

10. It would be worthwhile to refer to the judgment in **Sheo Narain Nagar vs. State of U.P.**, (2018) 13 SCC 432, wherein Hon'ble the Supreme Court set aside the termination of employees and held that the appellants therein having been employed since 1993 had the right to be considered for regularisation, as a one time measure. The relevant portion thereof reads thus:

“...That spirit of the Uma Devi (supra) has been ignored and conveniently over looked by various State Governments/ authorities. We regretfully make the observation that Uma Devi (supra) has not be implemented in its true spirit and has not been followed in its pith and substance. It is being used only as a tool for not regularizing the services of incumbents. They are being continued in service without payment of due salary for which they are entitled on the basis of Article 14, 16 read with Article 34 (1)(d) of the Constitution of India as if they have no constitutional protection as envisaged in

D.S. Nakara v. Union of India, AIR 1983 SC 130 from cradle to grave. In heydays of life they are serving on exploitative terms with no guarantee of livelihood to be continued and in old age they are going to be destituted, there being no provision for pension, retiral benefits etc. There is clear contravention of constitutional provisions and aspiration of down trodden class. They do have equal rights and to make them equals they require protection and cannot be dealt with arbitrarily. The kind of treatment meted out is not only bad but equally unconstitutional and is denial of rights. We have to strike a balance to really implement the ideology of Uma Devi (supra). Thus, the time has come to stop the situation where Uma Devi (supra) can be permitted to be flouted, whereas, this Court has interdicted such employment way back in the year 2006.”

11. The learned Courts below have meticulously analysed and sifted through the evidence adduced, thus are aligned in their decisions and findings. Furthermore, no instances of misreading or ignoring of evidence can be made out.

12. The lower appellate Court being the last Court of facts and law has examined the same, in the correct perspective. Hon’ble the Supreme Court in **Randhir Kaur vs. Prithvi Pal Singh**, (2019) 17 SCC 71, observed and held that, “A perusal of the aforesaid judgments would show that the jurisdiction in second appeal is not to interfere with the findings of fact on the ground that findings are erroneous, however, gross or inexcusable the error may seem to be. The findings of fact will also include the findings on the basis of documentary evidence. The jurisdiction to interfere in the second appeal is only where there is an error in law or procedure and not merely an error on a question of fact... In view of the above, we find that the High Court could not interfere with the findings of fact recorded after appreciation of evidence merely because the High Court thought that another view would be a better view...”

13. In the aforesaid view of the matter, there being evidently no question of law involved and the impugned judgments and decree found not to suffer from any infirmity or illegality, the present appeal fails and is hereby dismissed.

(AMAN CHAUDHARY)
JUDGE

06.12.2023
Hemant

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