

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-325-2017 (O&M)
Date of Decision :23.02.2023

Prem Kumar

...Appellant

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. A.S. Jattana, Advocate for the appellant.

Mr. Manpreet Singh Khangura, AAG, Punjab.

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Harsimran Singh Sethi, J. (Oral)

In the present regular second appeal, the challenge is to judgment and decree dated 19.10.2007 of the trial Court by which, suit filed by the appellant/plaintiff seeking declaration and mandatory injunction so as to claim reinstatement in service has been dismissed as well as to the judgment and decree of the Lower Appellate Court dated 25.04.2008 by which, an appeal preferred by the appellant/plaintiff against the judgment and decree dated 19.10.2007 of the trial Court, was dismissed.

Certain facts need to be mentioned here for the appreciation of facts in correct perspective.

Appellant-plaintiff was appointed as Peon with NMGC, Mansa on 01.03.1984 and while the appellant-plaintiff was working in the said college, the said college was taken over by the Government of Punjab on 10.03.1994 with all assets and liabilities. Vide a verbal order dated

27.08.1996, services of the appellant-plaintiff were terminated however, the appellant-plaintiff was only paid up to 25.12.1995. The said grievance was raised by the appellant-plaintiff by way of filing CWP-5986-1995 before this Court, which writ petition was ultimately decided on 26.08.1996 granting the relief of pay to the appellant-plaintiff up to the date the appellant-plaintiff had worked with the said institution but the claim of the appellant-plaintiff for reinstatement in service was declined by this Court. A review petition was filed by the appellant-plaintiff, which was also dismissed by this Court vide order dated 20.12.1996. Thereafter, appellant-plaintiff had filed a civil suit for reinstatement in service being Civil Suit No.594-1997, which was also dismissed by the trial Court on 08.08.2000 with cost.

Feeling dissatisfied, appellant-plaintiff once again filed a writ petition being CWP-2686-2000 before this Court claiming the relief of reinstatement in service, which was dismissed by this Court vide order dated 04.09.2001. Order passed by this Court in CWP-2686-2000 was challenged before the Hon'ble Supreme Court of India in SLP (Civil) No.2701-2002 which was also dismissed vide order dated 18.02.2002. After the dismissal of the SLP, another civil suit was filed by the appellant-plaintiff in May, 2002 raising grievance that one employee namely, Suresh Kumar has been appointed in the NMGC, Mansa hence, appellant-plaintiff is also entitled for reinstatement in service in the said college being similarly situated.

The respondent-State appeared in the civil suit and filed written statement stating that on two occasions, this Court had already declined the prayer of the appellant-plaintiff for reinstatement in service hence, filing of

a civil suit again raising a similar claim is not permissible and the same should be dismissed and qua the said employee Suresh Kumar, it had been mentioned that he was given fresh appointment by the Government of Punjab and not the benefit of reinstatement in service as being claimed by the appellant-plaintiff.

Keeping in view the facts and evidence which had come on record, a finding was recorded by the trial Court that as the claim of reinstatement in service had already been adjudicated more than once not only by the Civil Court when the suit filed by the appellant was dismissed in the year 1997 but even the High Court had declined the same relief while passing order dated 26.08.1996 in CWP-5986-1995 as well as order dated 04.09.2001 passed in CWP-2686-2000, which judgement has already upheld by the Hon'ble Supreme Court of India vide order dated 18.02.2002 as the SLP filed by the appellant-plaintiff was dismissed, the civil suit filed by the appellant-plaintiff was dismissed by the trial Court vide judgment and decree dated 19.10.2007.

Feeling aggrieved against the said judgment and decree dated 19.10.2007 of the trial Court, an appeal was preferred by the appellant-plaintiff before the Lower Appellate Court which also came to be dismissed on 25.04.2008 hence, the present regular second appeal.

Learned counsel for the appellant-plaintiff argues that the grant of appointment to Suresh Kumar, who was also working with the NMGC, Mansa has given a fresh cause of action to the appellant-plaintiff to file the present civil suit hence, without adverting to the said cause of action, civil suit filed by the appellant-plaintiff was dismissed by the Courts below on

the ground of resjudicata.

Argument raised by the learned counsel for the appellant-plaintiff is not correct. It may be noted that CWP-5986-1995 was dismissed by this Court on 26.08.1996 qua the grant of benefit of reinstatement in service thereafter, a civil suit filed on the same cause of action in the year 1997, which was also dismissed by the trial Court on 08.08.2000 with cost. Once again, by total abuse of process of law, appellant-plaintiff had filed CWP-2686-2000 before this Court, which was also dismissed by this Court vide order dated 04.09.2001, which judgment was upheld on 18.02.2002 by the Hon'ble Supreme Court of India.

It may be noticed that when the litigation qua CWP-2686-2000 was pending, the said Suresh Kumar was appointed afresh and the said claim was available to the appellant on the date when the SLP filed by the appellant-plaintiff was dismissed by the Hon'ble Supreme Court of India on 18.02.2002. The plea being raised in the civil suit was available with the appellant-plaintiff to be raised before the Hon'ble Supreme Court of India which averment was never raised and if raised, was rejected as the copy of the SLP filed by the appellant-plaintiff was not brought on record.

Under these circumstances, the claim of the appellant-plaintiff that the grant of appointment to Suresh Kumar has given fresh cause of action to him to file a civil suit is misconception and the order passed by the Courts below are perfectly valid and legal, keeping in view the facts and circumstances of the present case.

Even otherwise, the employee namely, Suresh Kumar was not reinstated in service as it has already come on record by way of evidence

that Suresh Kumar had been appointed afresh by the Government of Punjab as a new entrant in the year 2001. That being so, a subsequent appointment of Suresh Kumar without there being any correlation with his earlier appointment, will not give cause of action to the appellant-plaintiff to claim the benefit of reinstatement in service and said plea being raised by the appellant-plaintiff is a misconception that Suresh Kumar was reinstated in service. That being so, claiming fresh benefit of reinstatement in service especially, when the said claim of the appellant-plaintiff has been rejected more than four times by the competent Courts of law will operate as resjudicata.

No other argument raised.

No perversity in the findings of the Courts below is pointed out by the learned counsel for the appellant-plaintiff hence, the present regular second appeal is accordingly dismissed.

February 23, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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