

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

RSA No.2174 of 1992 (O&M)  
Reserved on: 16.04.2024  
Pronounced on: 24.04.2024

State of Punjab and others  
....Appellants  
Versus  
Bakhshish Singh  
....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Rajesh Sehgal, Addl. A.G., Punjab  
for the appellants.  
  
Mr. Sushane Puri, Advocate  
for Mr. K.G. Chaudhary, Advocate  
for the respondent.

NAMIT KUMAR J. (Oral)

1. Having lost before the Courts below, by recording the concurrent finding, the State of Punjab has filed the instant appeal impugning the judgments and decrees dated 03.02.1990 and 25.05.1992, passed by the said Courts, whereby the suit filed by the plaintiff/respondent was decreed and the appeal preferred by the State was dismissed by upholding the findings recorded by the learned trial Court. Parties to the lis are hereinafter shall be referred to by their original position before the trial Court.
2. Brief facts of the case are that the plaintiff was appointed as Dumper Operator on 13.06.1985, and his services were terminated on 10.07.1987. The said termination was impugned by the plaintiff by filing a civil suit for declaration, which was decreed by the learned trial

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Court vide judgment and decree dated 03.02.1990. The findings recorded by the learned trial Court, reads as under:-

*“6. It is the admitted case of the parties that the plaintiff was appointed as a Dumper operator with effect from 13.6.85 and that his services were terminated with effect from 10.7.87 on the ground that there was a report against him by the senior Superintendent of Police Gurdaspur to the effect that his presence at the Ranjit Sagar Dam was a threat to the security of the Dam. Admittedly no charge sheet/Departmental inquiry or any other proceedings were taken against him before terminating his services; Ranjit Singh DW-1 the Sub Divisional Officer concerned has deposed that the Senior Superintendent of Police had reported against the plaintiff that he was undesirable and risk to the security of the Dam and had been arrested several times being a desperate character. He has further deposed that the Senior Superintendent of Police has suggested that the plaintiff was not a fit person to be kept in service at such a sensitive place. In support of his statement he has produced the original letter Ex. D-1 received from the Senior Superintendent of Police, Gurdaspur. In this letter, the senior Superintendent of police had no doubt reported that the plaintiff had been found undesirable and a risk to the security of the Dam and had further reported that the plaintiff had been arrested on several occasions and was of desperate character and had, accordingly suggested that such a man should not be kept in the service at such a sensitive place. But this letter does not in any way indicate that any opportunity of being heard had been granted to the plaintiff before making these observations. In these circumstances, the termination of the services of the plaintiff clearly amounts to punishment without affording*

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*him any opportunity to explain his position. Apart from that the Senior Superintendent of Police had merely suggested that the plaintiff should not be kept in service at such a sensitive place. This recommendation could have been easily given effect to by just merely transferring the plaintiff from this Dam to a non-sensitive area.*

7. *The learned Govt. Pleader has cited para 24 of the Certified standing Orders in respect of the work charge staff of Ranjit Sagar Dam, Shahpur Kandi. Sub para (1) whereof provides that the service of a workman who has been in continuous employment for not less than one year in the establishment, may be terminated if he is declared as a traitor or as a person likely to jeopardise the safety of the establishment or if he develops a serious defect in the eye-sight or hearing or mental or a physical deficiency. It further provides that such termination of services shall be effected for reasons to be recorded and shall be subject to the provisions of the Employees' State Insurance Act and the Workmen's Compensation Act, and the management shall give to the workman one month's notice in writing or salary in lieu thereof. It next provides that this clause shall not involve retrenchment or closure. In my opinion, this provision is hardly any help to the defendants. Firstly there is no plea in the written statement to indicate that the plaintiff was a work-charge employee so that he was governed by these standing Orders. Secondly, the plaintiff had admittedly rendered more than one year service, as such, para 24(1) is not applicable to him. Thirdly he has neither been declared as a traitor nor as the person likely to jeopardise the safety of the establishment under any inquiry or proceedings conducted by the employer.*

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8. *Learned Govt. Pleader has next contended that the plaintiff was intentionally absent from duty from 21.5.87 till the termination of his services on 10.7.87. Be that as it may, the services of the plaintiff for his willful absence from duty could only be terminated after affording him an opportunity of being heard, before imposing this punishment.*

9. *In view of my foregoing discussion, I would hold that the impugned order terminating the services of the plaintiff is illegal, as the same imposed punishment upon the plaintiff without affording him a reasonable opportunity of being heard. So, I decide this issue in favour of the plaintiff.”*

3. With regard to the objection raised by defendant/State qua territorial jurisdiction, Issue No.2 was decided by the learned trial Court in favour of the plaintiff by recording the following findings:-

*“ISSUE No.2.*

*This issue is based upon the objection of the defendants that since the plaintiff was an employees of Ranjit Sagar Dam located in Gurdaspur District and his services were terminated from that Dam, this court has no territorial jurisdiction to entertain and try the suit. I, however, find no force in this contention. Admittedly, the plaintiff was absent from duty when the order for the termination of his services was passed. The plea of the plaintiff is that this order was communicated to him at village Kot Puran, Ropar, This fact could not be controverted by the defendants. Rather a photostat copy of the termination order which is available on the file goes to show that the same was addressed to the plaintiff at village Kot Puran, Ropar. So, a part of the cause of section has arisen within the territorial jurisdiction of this court and,*

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*as such, this court has the jurisdiction to entertain and try the suit. Resultantly, I decide this issue in favour of the plaintiff.”*

4. The learned Lower Appellate Court has upheld the findings recorded by the learned trial Court in Para Nos.7 to 9 of the said judgment, which reads as follows:-

*“5. The learned Senior Sub Judge, on the appraisal of the evidence on record had returned findings on all the issues in favour of the respondent/plaintiff. The suit ultimately was decreed with costs.*

*6. I have heard the arguments of the learned Govt. Pleader for the appellants and the counsel for the respondent and have also gone through the evidence on record.*

*7. Concededly, the respondent/plaintiff was appointed as Dumper Operator w.e.f. 13.6.85 and his serviced were terminated vide order dated 10.7.87 simply on the ground that the senior Superintendent of Police, Gurdaspur had brought to the notice that he had been arrested several times and that he was of desperate character and his continuance in service was dangerous for the safety of the Ranjit Sagar Dam Project.*

*8. The reamed Govt. Pleader for the appellants making reference to Section 24 of Certified standing Order in respect of work charged staff of Ranjit Sagar Dam Project, Shahpur Kandi (Gurdaspur) had contended that the services of the plaintiff had rightly been terminated. To settle the controversy, essentially, Section 24 of the Certified Standing Orders has to be reproduced as under:-*

***"24. TERMINATION OF EMPLOYMENT AND RESIGNATION***

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*(1) Service of a workman who has been in continuous employment for not less than one years in the establishment, may be terminated if he is declared as a tractor or as a person likely to jeopardise the safety of the establishment or if he develops a serious defect in the eye-sight or hearing or mental or a physical deficiency, Such termination of service, shall be effected for reasons to be recorded and shall be subject to the provisions of the Employees State Insurance Act, 1948 and the Workmen's Compensation Act, 1923 and the management shall give to the workman one month's notice in writing or salary in lieu thereof. This clause shall not involve retrenchment or closure.*

*2) No notice shall be necessary for the termination of the services of any other class of employees. The above provisions shall not however, absolve the management of their obligation to abide by the provisions of the Industrial Disputes Act, 1947, or any other law for the time being intarce for the termination of service by way of retrenchment or otherwise.*

*(3) A workman who has been in continuous service for not less than one year in the establishment intends to leave the service of the establishment shall give one month's notice of his intention to do so in writing to the management or if he wants to be relieved earlier, surrender of lieu of notice wages equivalent to the days for which the notice falls short of one month. But if the exigencies of work so require, the management may not relieve him earlier than the date of the expiry of period of the notice.*

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*EXPLANATION: The expression continuous service' for the purposes of these rules shall have the meaning assigned to it in the section 25-B of the Industrial Disputes Act, 1947."*

*Thus, apparently this section is ill-applicable in this case. The respondent/plaintiff had rendered service for more than one year. Further, it is not the plea of the appellants/defendants that the respondent/plaintiff was a workcharged employee governed by the certified Standing Orders. The appellants have not been able to show if he has been declared a traitor or was a person likely to jeopardise the safety of the establishment. No enquiry has been conducted against him. The mere report of the Senior Superintendent of Police was not sufficient to come to a conclusion that the presence of the plaintiff at the Dam was likely to jeopardise the safety of the establishment. The Department was required to hold enquiry in this respect. The principles of natural justice of affording reasonable opportunity to the respondent-plaintiff to defend himself have altogether been ignored. The impugned order apparently has been passed in an arbitrary manner. In the circumstances, the impugned order has to be taken as illegal and inoperative, To, the finding of the Lower Court on issue No.1 is maintained."*

5. Hence the present regular second appeal has been filed by the State of Punjab.

6. Learned counsel for the appellants – State submits that both the Courts below have misread Clause 24(1) of the Certified Standing Orders and have wrongly held that the same is not applicable. He further submits that the action of the State in terminating the services of the plaintiff is strictly in terms of Clause 24(1) of the Standing Orders.

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He also submits that the specific objection taken by the State with regard to territorial jurisdiction was wrongly decided by the learned Courts below. He further contends that since the plaintiff was working at Gurdaspur, therefore, the Civil Court at Ropar has no jurisdiction to entertain and adjudicate the suit filed by the plaintiff. Merely, the order of termination was served at his residential address at Ropar does not confer jurisdiction to the Civil Court at Ropar. The service of the plaintiff was terminated on the report of the SSP concerned whereby it was informed that the presence of Bakshish Singh, Dumper Operator is threat to the safety and security of the project i.e. Ranjit Sagar Dam Project. The termination was strictly in accordance with the provisions of the Certified Standing Orders and inquiry in such cases was not necessary.

7. Per contra, learned counsel for the respondent/plaintiff has argued that the findings recorded by the learned Courts below are perfectly legal and valid and are liable to be upheld as the services of the respondent have wrongly been terminated.

8. I have heard learned counsel for the parties and perused the record.

**RE: VALIDITY OF ORDER OF TERMINATION**

9. The present appeal was admitted on 27.11.1992 and operation of the decree was stayed and thereafter, two applications filed by the plaintiff/respondent for vacation of stay were dismissed vide orders dated 21.01.1993 and 14.01.1997. Since from the perusal of the record, it was not clear about the nature of employment of the

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respondent, therefore, the appellant/State was directed to apprise the nature of employment of the plaintiff/respondent and consequently, an affidavit dated 16.04.2024, has been filed on behalf of State of Punjab, which is taken on record. In the said affidavit, it has been stated that the plaintiff had joined as Dumper Operator on work charge basis w.e.f. 13.06.1985.

10. Admittedly, the plaintiff was appointed as Dumper Operator on 13.06.1985 on work charge basis and he remained absent from duty from 21.05.1987 till 10.07.1987, when his services were terminated. The termination of the plaintiff is strictly in terms of Clause 24(1) of the Standing Orders of the Ranjit Sagar Dam Project, Shahpur Kandi (Gurdaspur), which reads as under:-

“24. TERMINATION OF EMPLOYMENT AND RESIGNATION

*(1) Service of a workman who has been in continuous employment for not less than one years in the establishment, may be terminated if he is declared as a traitor or as a person likely to jeopardise the safety of the establishment or if he develops a serious defect in the eye-sight or hearing or mental or a physical deficiency. Such termination of services shall be effected for reasons to be recorded and shall be subject to the provisions of the Employees' State Insurance Act, 1948 and the Workmen's Compensation Act, 1923 and the management shall give to the workman one month's notice in writing or salary in lieu thereof. This clause shall not involve retrenchment or closure.”*

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11. The abovesaid reproduced Clause provides that service of a workman, who has been in continuous employment for not less than 01 year, may be terminated, if he is declared as a traitor or as a person likely to jeopardize the safety of establishment. In the present case, the services of the petitioner, who was a work charge employee, have been terminated vide order dated 13.07.1987. The operative part of the said order, reads as follows:-

*“You are absenting yourself without permission with effect from 21/5/87 as reported by the Executive Engineer, Tunnelling Divn No.I vide his letter No.5078-80/5E Dt. 1/7/87 which is more than 10 days.*

*The S.S.P. Gurdaspur has brought to the notice of Ranjit Sagar Dam Administration that you had been arrested several times on several occasions. But you have concealed this vital information from the Administration. It has also been reported by the Police authorities that you are a desperate character. Your continuance in service is dangerous for the safety of RSD Project.*

*Keeping in view the police report against you as mentioned above, your services are hereby terminated under clause 19(1) of Nodal Standing Orders of 1978 w.e.f 10/7/87. You may collect salary of one month in lieu of one months notice from the Executive Engineer, Tunnelling Divn. No.I RSD Project on any working day.”*

12. A perusal of the record shows that earlier also the plaintiff remained absent from duty on various dates, for which he was issued notices dated 04.02.1987, 01.07.1987. Further Clause 24(1) of the Standing Orders empowers the employer to terminate the employment if the person likely to jeopardize the safety of the establishment. The

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Senior Superintendent of Police, Gurdaspur, has brought to the notice of the establishment that the plaintiff had been arrested several times on several occasions and this fact has been concealed by the plaintiff from the Administration. It was further reported that the plaintiff was of desperate character and his continuation in service is dangerous to the safety of Ranjit Sagar Dam Project.

12A. No enquiry was required to be held as an employee working on contract/adhoc or temporary basis has no right to continue in service. Reference may be made to the judgment of Hon'ble Supreme Court in ***“Yogesh Mahajan vs Professor R.C. Dekha”*** passed in SLP Nos.22475-22476 of 2012, decided on 31.01.2018, has held as under: -

*“6. It is settled law that no contract employee has a right to have his or her contract renewed from time to time. That being so, we are in agreement with the Central Administrative Tribunal and the High Court that the petitioner was unable to show any statutory or other right to have his contract extended beyond 30th June, 2010. At best, the petitioner could claim that the concerned authorities should consider extending his contract. We find that in fact due consideration was given to this and in spite of a favourable recommendation having been made, the All India Institute of Medical Sciences did not find it appropriate or necessary to continue with his services on a contractual basis. We do not find any arbitrariness in the view taken by the concerned authorities and therefore reject this contention of the petitioner.*

*7. We are also in agreement with the view expressed by the Central Administrative Tribunal and the High Court that the petitioner is not entitled to the benefit of the decision of this Court in Uma Devi. There is nothing on*

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*record to indicate that the appointment of the petitioner on a contractual basis or on an ad hoc basis was made in accordance with any regular procedure or by following the necessary rules. That being so, no right accrues in favour of the petitioner for regularisation of his services. The decision in Uma Devi does not advance the case of the petitioner.*

*8. Insofar as the final submission of the petitioner to the effect that some persons were appointed as Technical Assistant (ENT) in May 2016 is concerned, we are of the view that the events of 2016 cannot relate back to the events of 2010 when a decision was taken by the All India Institute of Medical Sciences not to extend the contract of the petitioner. The situation appears to have changed over the last six years and the petitioner cannot take any advantage of the changed situation. There is no material on record to indicate what caused the change in circumstances, and merely because there was a change in circumstances, does not mean that the petitioner is entitled to any benefit. On the other hand, it might have been more appropriate for the petitioner to have participated in the walk-in interview so that he could also be considered for appointment as Technical Assistant (ENT), but he chose not to do so.”*

### **RE: TERRITORIAL JURISDICTION**

13. With regard to territorial jurisdiction, the Hon’ble Supreme Court in “***M/s. Kusum Ingots & Alloys Limited vs Union of India and another***”, 2004 AIR (Supreme Court) 2321, has held that accrual of cause of action would not be dependent on the residence or location of the person affected by the order but the person or authority passing the order and the place where the order has effect is the determinative

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factors for considering the question of jurisdiction. Para 24 and 25 of the said judgment, read as follows:-

*“24. Lt. Col. Khajoor Singh v. The Union of India and another, 1961(2) SCR 828 whereupon the learned counsel appearing on behalf of the appellant placed strong reliance was rendered at a point of time when clause (2) of Article 226 had not been inserted. In that case the Court held that the jurisdiction of the High Court under Article 226 of the Constitution of India, properly construed, depends not on the residence or location of the person affected by the order but of the person or authority passing the order and the place where the order has effect. In the latter sense, namely, the office of the authority who is to implement the order would attract the territorial jurisdiction of the Court was considered having regard to Section 20(c) of the Civil Procedure Code as Article 226 of the Constitution thence stood stating:*

*"....The concept of cause of action cannot in our opinion be introduced in Article 226, for by doing so we shall be doing away with the express provision contained therein which requires that the person or authority to whom the writ is to be issued should be resident in or located within the territories over which the High Court has jurisdiction. It is true that this may result in some inconvenience to persons residing far away from New Delhi who are aggrieved by some order of the Government of India as such, and that may be a reason for making a suitable constitutional amendment in Article 226. But the argument of inconvenience, in our opinion, cannot affect the plain language of Article 226, nor can the concept of the place of cause of action be introduced into it for that would do away with the two limitations on the powers of the High Court contained in it."*

*In view of clause (2) of Article 226 of the Constitution of India now if a part of cause of action arises*

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*outside the jurisdiction of the High Court, it would have jurisdiction to issue a writ. The decision in Khajoor Singh (supra) has, thus, no application.*

*Forum Conveniens*

25. We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens. (See **Bhagar Singh Bagga v. Dewan Jagbir Sawhany**, AIR 1941 Calcutta ; **Mandal Jalan v. Madanlal**, 1945(49) CWN 357; **Bharat Coking Coal Limited v. M/s Jharia Talkies & Cold Storage Pvt. Ltd.**, 1997 CWN 122; **S.S. Jain & Co. and another v. Union of India and others**, 1994 (1) CHN 445 and **M/s New Horizon Ltd. v. Union of India**, AIR 1994 Delhi 126).

*Conclusion*

*For the aforementioned reasons, there is no merit in this appeal which is dismissed accordingly. No costs.*

*Appeal dismissed.”*

14. Further this Court in “**Manoj Kumar vs Union of India and others**”, passed in CWP No.8829 of 2021, decided on 26.07.2023, has held as under:-

“9. A similar question came up for consideration before Division Bench of this Court in **M/s Vijay K. Jairath And Co. Versus Union of India and Another**; CWP No.12420 of 2008 (decided on 01.05.2012). There was a difference of opinion among the Judges of the Division Bench, thus, matter was referred to third Judge of this Court. On the basis of opinion of majority, it was

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*concluded that this Court on the basis of mere communication of order has no jurisdiction to entertain writ petition.”*

15. In the present case, the substantial cause of action has accrued to the plaintiff at Gurdaspur where he was working and his services have been terminated. Merely the fact that the said order was addressed at his Ropar address will not confer jurisdiction to the Civil Court at Ropar. Consequently, it is held that the Civil Court at Gurdaspur had the jurisdiction to entertain the suit and the present suit entertained and adjudicated by the Civil Court at Ropar had no jurisdiction.

16. In view of the above, it is held that the learned Courts below have misread the provisions of Clause 24(1) of the Standing orders. Further the Civil Court at Ropar had no jurisdiction to entertain and adjudicate the suit filed by the plaintiff. Consequently, the judgments and decrees passed by the learned Courts below are liable to be reversed.

17. Accordingly, the present appeal is allowed and the judgments and decrees passed by the learned Courts below are hereby set-aside and the suit of the plaintiff stands dismissed with no order as to costs.

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

24.04.2024

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(NAMIT KUMAR)  
JUDGE

Whether speaking/reasoned:  
Whether reportable:

Yes/No  
Yes/No