

RSA-1571 of 1994 (O&M)

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

RSA-1571 of 1994 (O&M)

Reserved on: 25.01.2024

Pronounced on: 07.02.2024

Haryana State and others

.....Appellant

Versus

Lakhender Prakash (died) through LRs

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Ms. Vibha Tewari, AAG, Haryana,
for the appellants.

None for the respondents.

NAMIT KUMAR, J.

1. State of Haryana has filed the present Regular Second Appeal and is directed against the judgment and decree dated 19.11.1993, passed by the Court of Additional District Judge, Faridabad, which dismissed the appeal of the State by affirming the judgment and decree dated 03.03.1992, passed by the Court of Sub Judge 2nd Class, Faridabad, which decreed the suit of the plaintiff-respondent-Lakhender Prakash for declaration that verbal orders of the termination of the service of the plaintiff on 11.11.1987, were illegal, unlawful, malafide and plaintiff continues to be in service. It was also declared by the Court that the plaintiff would be entitled for back pay and allowances from the date of his termination and that he would be entitled for reinstatement into service.

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2. It is apt to mention here that earlier the instant appeal was dismissed by the learned Single Judge of this Court vide judgment dated 03.05.2000. The said judgment was challenged before the Hon'ble Supreme Court by the appellant-State of Haryana and respondent-Lakhender Prakash (deceased) and the Hon'ble Supreme Court was of the view that neither any substantial question of law was framed nor it was considered in the impugned judgment, therefore, the case was remanded to this Court vide order dated 30.01.2003.

3. Thereafter, while admitting the appeal, following substantial questions of law were framed vide order dated 21.09.2004: -

- “1. Whether the plaintiff, a patwari, who was appointed on a fixed term is entitled to any notice of termination after the expiry of fixed period in his letter of appointment?
2. Whether the plaintiff is entitled to the declaration that he continues in the service of the defendants and is entitled to all pay and allowances?”

4. Brief facts of the case are that plaintiff joined the services of Haryana State as Patwari in Sub Division No.1, PWD (B&R) w.e.f. 22.01.1986 from where he was transferred to the Land Acquisition Department under the supervisory control of Executive Engineer and Superintending Engineer. According to the plaintiff, he was in continuous employment of the State with effect from 22.01.1986. His services were interrupted by showing notional breaks on account of holidays. He was shown in service from 22.01.1986 to 11.09.1986 and again from 01.12.1986 to 11.11.1987. His services were orally terminated on 11.11.1987. The plaintiff filed a suit for declaration by stating the verbal order of his termination w.e.f. 11.11.1987 is illegal,

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unlawful and malafide and the plaintiff is entitled to be reinstated in service with all consequential benefits. In the said suit following issues were framed by the trial Court: -

1. Whether termination of the plaintiff was as per the order or not? OPP
 2. Whether the plaintiff has been paid full and final payment before giving him termination orders and his seniority is maintained from the date of joining and he has completed more than 240 days unbreakable and continuous service? OPP
 3. Whether the plaintiff is entitled for service from the date of seniority and payment of pay and allowance and other departmental benefits from the date of termination? OPP
 4. Whether the plaintiff was terminated without giving proper notice of termination or not? OPP
 5. Whether the plaintiff was engaged on short term period of work charge basis? OPD
 6. Whether plaintiff was never given any appointment and thus no question of interruption in service arises as alleged by defendant? OPD
 7. Whether the suit is time-barred? OPD
 8. Whether the suit is not maintainable? OPD
 9. Whether this Court has no jurisdiction to try the present case? OPD
 10. Relief.
5. The parties led oral as well as documentary evidence support of their case.
6. The trial Court held that oral termination of the services of the plaintiff took place on 11.11.1987 and it is illegal, ultra vires and arbitrary. Issues No.1 to 6 were decided in favour of the plaintiff. Issues

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No.7 to 9 were also decided against the defendants. Resultantly, the suit of the plaintiff was decreed vide judgment and decree dated 03.03.1992.

7. The State of Haryana filed the first appeal in the Court of Additional District Judge, Faridabad, which vide judgment and decree dated 19.11.1993 dismissed the appeal by affirming the judgment and decree of the trial Court.

8. Learned counsel for the appellant-State submitted that plaintiff was engaged on short-term basis on 22.01.1986 and the said term got expired on 31.03.1986 and he was again engaged from time to time for short-term and breakup of the said period is as under: -

Sr. No.	Period of services	Sanction No. and dated E.E. (P-1) Faridabad
1.	22.1.1986 to 31.03.1986	No.821 dt.04.02.1986
2.	02.04.1986 to 31.05.1986	No.2616 dt.08.04.1986
3.	02.06.1986 to 31.07.1986)	
	02.08.1986 to 31.08.1986)	No.5647-48 dt.01.07.1986
	01.09.1986 to 11.09.1986)	
4.	02.12.1986 to 31.12.1986	No.11689-90 dt.12.12.1986
5.	02.01.1987 to 31.01.1987	No.1098-99 dt.04.02.1987
6.	02.02.1987 to 31.03.1987	No.2832-33 dt.23.03.1987
7.	02.04.1987 to 31.05.1987	No.5008-09 dt.16.04.1987
8.	02.06.1987 to 31.07.1987	No.2456/57 dt. 22.06.1987
9.	02.08.1987 to 30.09.1987	No.3391-92 dt.02.09.1987
10.	01.10.1987 to 31.10.1987 to 11.11.1987	No.4178 dt.12.11.1987

9. Since the plaintiff served only from 22.01.1986 to 11.11.1987 on short term basis, therefore, he is not entitled for reinstatement in service. She further submitted that services of the respondent were not terminated by way of punishment. No question of

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seniority or juniority arises in relation to two other persons as they have been appointed after the termination of the services of the respondent. Termination of services of work charge employee having less than two years of service is not arbitrary in any manner. She further submitted that it is wrong to say that respondent has worked for more than 240 days continuously and even if it is presumed to be so, still no right is accrued to the respondent particularly when department does not require his services. Therefore, in this view of the matter, judgments and decrees passed by the Courts below are liable to be set aside.

10. On the last date of hearing, following order was passed: -

“Learned State counsel seeks adjournment to address arguments.

Adjourned to 25.01.2024.

Since the matter relates to the year 1994 and has been remanded by the Hon’ble Supreme Court, no further adjournment shall be granted on the next date of hearing.

Office shall inform the learned counsel for the respondents about the next date of hearing.

Despite above order, no one has appeared on behalf of the respondents.

11. I have heard learned counsel for the appellant-State and perused the record.

12. Admittedly, plaintiff worked from 22.01.1986 to 11.09.1986 and again from 01.12.1986 to 11.11.1987 on short-term basis and has rendered less than 11 months service. The case set up by the plaintiff before the trial Court was that PWD (B&R) is an industry, therefore, on completion of 240 days of service by the plaintiff, it

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amounts to retrenchment, which is unlawful and illegal under the Industrial Disputes Act. It was further pleaded that since the principle of last come and first go was not followed, therefore, civil Court has no jurisdiction to try the suit. The plaintiff could raise the issue of retrenchment on completion of 240 days of service only before the Labour Court by invoking the provisions of Industrial Disputes Act. The Hon'ble Supreme Court in ***Milkhi Ram v. Himachal Pradesh State Electricity Board, 2021(4) S.C.T. 331*** has held that the civil Court did not have the jurisdiction to entertain a claim based on Industrial Disputes Act and if any decree is passed by the Court without jurisdiction, the same shall have no force of law. Relevant portion from the said judgment reads as under: -

16. As can be seen from the material on record, the challenge to the termination was founded on the provisions of the ID Act. Although jurisdictional objection was raised and a specific issue was framed at the instance of the employer, the issue was answered against the defendant. This Court is unable to accept the view propounded by the courts below and is of the considered opinion that the civil court lacks jurisdiction to entertain a suit structured on the provisions of the ID Act. The decree favouring the plaintiff is a legal nullity and the finding of the High Court to this extent is upheld.”

13. To the same effect is the judgment of the Hon'ble Supreme Court in ***R.S.R.T.C. and others v. Ramdhara Indoliya, 2006(6) SCC 287*** wherein the Hon'ble Supreme Court held as under: -

“3. We have heard Mr. S.K. Jain, learned counsel for the appellants. The respondent was appointed as A Conductor on daily wages by the Corporation. His services were

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terminated as the same were not required by the Corporation. The High Court, without considering the fact that the respondent being daily wager has no substantive right to hold the post, however, has committed serious error in dismissing the second appeal filed by the Corporation and affirming the judgment and decree passed by the Appellate Court and also of the Trial Court. In our view, the High Court has committed a grave error in not considering the fact that the respondent being workman and a dispute being an industrial dispute, Civil Court has no jurisdiction and try the suit for reinstatement. Trial Court which passed the decree has got no pecuniary jurisdiction and, therefore, the decree passed by the Trial Court is without jurisdiction. The above submission made by Mr. S.K. Jain merit acceptance In fact, in the written statement filed by the appellant Corporation, the question of jurisdiction has been specifically raised. The Court has also framed an issue in regard to the jurisdiction and hearing by the Civil Court. However, the said issue has not been rightly considered and properly answered.

4. The case on hand is covered by a very recent decision of this Court reported in 2005 (7) SCC 447 (decided by Mrs. Justice Ruma Pal and Dr. Justice AR. Lakshmanan). The said appeal was filed by the very same Road Transport Corporation, against its workman, who was appointed as Conductor on probation and his services were terminated by the Corporation, which was challenged by the workman. The very same workman had approached the Civil Court and obtained a decree, which was affirmed by the Appellate Court and also by the High Court, against which Civil Appeal No.5176 of 2005 was filed by the Rajasthan State Road Transport Corporation in this Court. This Court, after hearing the counsel appearing for the respective parties, held that the only remedy available to the workman was by

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way of reference under the Industrial Disputes Act and not by way of a suit. This Court also held that the workman in that case was also not entitled to the protection under Article 311(2) of the Constitution of India. This Court also held that if the Court has no jurisdiction, the jurisdiction cannot be conferred by any order of the Court. This Court also held that where an Act creates an obligation and enforces the performance in a specified manner, the performance cannot be enforced in any other manner. The respondent in that case has failed to approach the remedies provided under the Industrial Disputes Act.

5. In the instant case also, the respondent, who is also similarly placed as in the other case covered by the Industrial Disputes Act, has failed to approach the Industrial Court, but approached the Civil Court, which on the facts and circumstances of the case had no jurisdiction to entertain and try the suit. Therefore, this judgment (supra) rendered by this Court squarely applies to the facts and circumstances of this case. In our view, the respondent is not entitled for any payment by way of salary or other wages. He is also not entitled for any reinstatement or back wages. However, if the respondent has already been paid some amount, the same amount may not be recovered from him. We make it clear that the respondent shall not be entitled to continue in service any further and he shall not be entitled for any wages except to already paid to him. The respondent shall be discharged forthwith.

6. The Appeal is accordingly allowed. There shall be no orders as to costs.”

14. Further, the Hon’ble Supreme Court in ***Dhananjay v. Chief Executive Officer, Zila Parishad, Jalna, 2003(1) S.C.T. 822*** has held that temporary employee has no right to continue in service. Relevant

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“4. It is not in dispute that the appellant was appointed on a temporary basis, his services could be terminated without notice and without assigning any reason within a period of one year in fact, his services were terminated within a period of one year under Rule 5(1) of the Central Civil Services (Temporary Service) Rules. The only question that is required to be answered is whether the order of termination of services is simpliciter or is punitive attaching stigma to the appellant. No doubt in the order of suspension, an enquiry was directed against the appellant in regard to the alleged misconduct. But, no enquiry was held pursuant to the said order, having regard to the Government Order dated November 24, 1987 that service of a temporary servant could be discharged within a period of one year without keeping him under suspension and without holding an enquiry. Although initially the enquiry was ordered, in view of this Government Order, the respondent did not proceed to hold any enquiry. In the criminal case filed against the appellant, he was acquitted.

x x x x x

7. In our view, having regard to the facts and circumstances of the case, it is not possible to hold that the order of termination of services was not simpliciter or the misconduct was the foundation for passing such order. Even if an enquiry was ordered to find out or verify the truth or otherwise and the allegation by itself does not establish that the respondent had any such design to some-how remove the appellant from services, in our view, the High Court was right in dismissing the writ petition in the light of the facts of the present case and the judgment of this Court, referred to above.”

15. It has been held by the Full Bench of this Court in ***Shyam***

Lal Arya v. State of Haryana, 1991(3) SCT 667 that in case of

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termination of temporary employee violation of Articles 14 and 16 cannot be claimed even if juniors have been retained. The Full Bench held as under: -

“6. We have heard the learned counsel for the parties at length and find that the judgment in Y.K. Bhatia's case (supra), as explained in Krishan Chand Goyal's case, still holds the field and the judgment of the Supreme Court in Jarnail Singh's case (supra) has not departed from the earlier legal proposition. In Y.K. Bhatia's case it was held by the Full Bench in the passage already quoted above, that the termination of service of a temporary Government servant does not offend Articles 14 and 16 of the Constitution, merely because his juniors are retained in service, but it is open to the persons affected to establish discriminatory treatment which cannot be explained except on the basis of 'malice in law' or 'malice in fact.' The above words cannot be read in isolation. The status of a temporary Government employee, who, as already indicated above, has no right to hold the post and his tenure is tenuous and fragile as his services are liable to be terminated at any time in terms of the contract or the service rules. That being so, the onus is on the Government employee, who claims to have been discriminated against, to show by producing relevant material that he has temporary employees, who are junior to him. 'Malice in law' or 'malice in fact' to which reference has been made by the Full Bench in Y.K. Bhatia's case (supra) is, in fact, a manifestation of arbitrary action which would attract the vice of Articles 14 and 16 of the Constitution. It is also to be kept in view that Jarnail Singh's case (supra) on which primary reliance has been placed by the petitioner, has itself indicated the extent to which the protection of Articles 14 and 16 of the Constitution would be available to a temporary Government employee. While

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*examining D.B. Bhalliapa's case (supra), the Supreme Court held that the protection of these Articles would be available to Government servant, if he is being arbitrarily discriminated against and singled out for harsh treatment in preference to his junior similar circumstanced. The italicised words are significant in their import. It is only when the seniors and juniors are similarly circumstanced and a preference is made in favour of the junior employee, would there be a violation of Articles 14 and 16 of the Constitution. Conversely, if the senior employee is found unsuitable on account of his work and conduct and his services are terminated and the junior employees retained, the action cannot be dubbed as arbitrary and violative of Articles 14 and 16. The reliance put by the petitioner on **Civil Appeal No. 4152 of 1985 (Jag Pal Vig v. State of Punjab)** on 15th July, 1985, is also misplaced, as in this case, the termination of the services of a temporary employee was sought to be justified solely on the ground that he being a temporary servant, had no right to hold the post and, as such, his services could be terminated at any time. This plea was put forth on behalf of the State that the services were terminated on the ground of unsuitability or for any other valid reason. It was in this situation that the following observations were made :-*

“The State has no right to terminate the service even of a temporary employee without any valid reason if juniors to the employee are retained in service. If there is a valid reason such as non-suitability, the State Government may terminate the service of a temporary employee so long it does not cast stigma on the employee so as to attract the applicability of Article 311 of the Constitution but the State Government cannot act arbitrarily, because the thrust of Article 14 as interpreted in several decisions

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of this Court including Royappa's case and Maneka Gandhi's case is against arbitrariness in State action. Here no justification at all has been shown by the State Government for terminating the service of the appellant nor has any Justification been alleged even in the affidavit filed in reply to the special leave petition."

From the passage quoted above, it would be clear that the Supreme Court has implicitly even in this judgment held that if discriminatory treatment can be shown by the senior employees that action will be arbitrary, but, if the services have been terminated on the ground of unsuitability so long as it does not cast a stigma) the State Government cannot be said to have acted arbitrarily.

7. The burden of this Full Bench has, however, been considerably lightened in view of the judgment of the Supreme Court in Kaushal Kishore Shukla's case (supra). While dealing with the very question now posed before us, this is what the Court had to say:

"In our opinion, the principle of 'last come first go' is applicable to a case where on account of reduction of work or shrinkage of cadre retrenchment takes place and the services of employees are terminated on account of retrenchment. In the event of retrenchment the principle of 'last come first go' is applicable under which senior in service is retained while the junior's services are terminated. But this principle is not applicable to a case whether the services of a temporary employee are terminated on the assessment of his work and suitability in accordance with terms and conditions of his service. If out of several temporary employees working in a department a senior is found unsuitable on account of his work and conduct, it is open to the competent

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authority to terminate his services and retain the services of juniors who may be found suitable for the service. Such a procedure does not violate principle of equality, enshrined under Articles 14 and 16 of the Constitution. If a junior employee is hardworking, efficient and honest his service could not be terminated with a view to accommodate the senior employee even though he is found unsuitable for the service. If this principle is not accepted there would be discrimination and the order of termination of a junior employee would be unreasonable and discriminatory."

The above-quoted passage would show that in the case where the services of a temporary employee are terminated on the assessment of his work and suitability in accordance with the terms and conditions of his service, that would not amount to retrenchment and, as such, the principle of last come first go' would not be applicable. It has also been held that if the services of a junior temporary employee, who is more proficient in his work are sought to be terminated while retaining the services of a senior, though inefficient temporary employee, this action of the Government would, in fact, amount to discrimination and would be unreasonable.

8. A distinction must also be drawn on the principle of 'last come first go', as applicable to Industrial Law, and the law relating to public servants. It has been pointed out that the frequent cause of labour unrest being the victimisation of employees in the guise of retrenchment, the principle of last come first go' has been evolved. The primary object, however, of the law relating to public servants is to secure efficient in Government service. The said rule although salutary in principle, cannot be rigidly employed in the case

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of Public Servants. This is the conclusion that has specifically been drawn in Y.K. Bhatia's case (supra).

9. In the light of the discussions made above, we are of the view that the judgments of this Court in Y.K. Bhatia's case (supra) and in Krishan Chand Goyal's case (supra) lay down the correct proposition of law. The mere fact that the services of a temporary Government employee are terminated in terms of his contract of service or the statutory rules which govern it, would not ipso facto be held to be arbitrary and violative of Articles 14 and 16 of the Constitution, if his juniors are retained. However, if a Government employee can make out a case of discrimination by showing from the material placed on the record that he being senior and similarly circumstanced as his junior in service has been singled out for discriminatory treatment, the action of the Government can be struck down as being violative of Articles 14 and 16 of the Constitution. The question referred to having been answered as above, the various cases would now go before the appropriate Benches for decision on merits.

Reference answered.”

16. Coming back to the facts of the present case, admittedly, the plaintiff rendered service of less than 11 months on short-term basis and the said appointment was made in violation of the provisions of Articles 14 and 16 of the Constitution of India as no procedure was followed while making his engagement. He was employed against specified job by virtue of specified sanction and the plaintiff could not have raised the issue of violation of any provisions of the Industrial Disputes Act in a suit filed before the civil Court. The plaintiff was put in service on temporary basis and it is settled law that a temporary employee has no

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the judgments and decrees of the Courts below cannot be sustained in
the eyes of law,

17. Consequently, while answering the substantial questions of
law as detailed above, present appeal is allowed. Judgments and decrees
passed by the Courts below are set aside and the suit of the respondent-
plaintiff is dismissed.

07.02.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether Reportable

:

Yes/No